



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**Civil Suit No. 29 of 2005**

**CHARLES MURAYA NDEGWA ..... PLAINTIFF**

**VERSUS**

**1. NAHASHON M. GATERE ..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**2. SOLOMON KIIGE NGECHA**

**T/A SKAMP AGENCY ..... 2<sup>ND</sup>  
DEFENDANT/RESPONDENT**

**AND**

**LILIAN WATURI MBUGUA ..... OBJECTOR**

**R U L I N G**

By a Chamber Summons brought under Order XXI rules 5, 6 & 57 of the civil Procedure Rules Lillian Waturi Mbugua hereinafter referred to as the Objector seeks to have the attachment levied by Providence Auctioneers against the Plaintiff Charles Muraya in execution of the decree issued by this court lifted as the goods attached to wit Pool table, nine table and 24 chairs belong to the objector and not the Plaintiff. The Objector has sworn an affidavit to which she has annexed a receipt in the name of Lillian Waturi Muya for 1 pool table, and another receipt in the name of Lillian W. Mbugua for 9 tables and 24 metal chairs. The Objector maintains that the attached goods belong to her and not to the Plaintiff/Judgment Debtor. The Judgment Debtor has also sworn a replying affidavit in which he maintains that the attached goods do not belong to him, but that the goods belong to the Objector who had let the same to him.

The Defendant/Decree Holder opposes the application. Relying on an affidavit sworn by the Auctioneer, it is contended that all the goods were found in the actual custody of the judgment Debtor. It is contended that the Objector is a wife to the Judgment Debtor and that the Objection is raised purely to frustrate the execution of the decree.

I have considered this application and the affidavit in support and in reply. Although the Objector claims that the attached goods belong to her, she concedes that the goods were attached from the premises of Savanah Bar on plot number 7787/X/2 Nanyuki Municipality, this is the same premises from which the Plaintiff has been carrying on business. The Objector has not explained in her affidavit what connection she had with the plaintiff and why the goods were in the Plaintiff's business premises. This was very crucial information which the Objector ought to have revealed.

According to the Plaintiff the Objector had let the goods to him. However this averment has not been supported by any agreement or any evidence that the goods were actually handed over to the Plaintiff by the Objector.

The receipts relied upon by the Objector in proof of ownership are cash sale receipt unsupported by any other evidence that it was actually the Objector who bought the goods. I find that the Objector has not satisfied this court that the goods belong to her and not to the Plaintiff. I do therefore overrule the Objection and order that the Decree Holder shall be at liberty to proceed with the attachment and sale of the goods.

*Dated signed and delivered this 23<sup>rd</sup> day of March 2006*

**H. M. OKWENGU**

**JUDGE**