



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 1016 of 2002**

**MRS HELLEN A. OLIMA.....PLAINTIFF**

**VERSUS**

**JOHN KIPKEMBOI KILEL.....DEFENDANT**

**AND**

**JACKLINE CHELANGAT CHERIRO.....OBJECTOR**

**RULING**

The Objector herein has in this application (chamber summons dated 14<sup>th</sup> October, 2005) challenged under rules 56 and 57 of Order 21 OF THE Civil Procedure Rules the attachment of 19<sup>th</sup> September, 2005 of certain properties in execution of decree herein. The main ground of the challenge is that the attached goods wholly belong to her and not to the Defendant/Judgment-Debtor who is her husband. The answer of the Plaintiff/Decree-Holder to this challenge is that the attached goods having been found in the matrimonial home of the Objector and the Judgment-Debtor must be deemed to belong to both of them, and that therefore they could be lawfully attached in the execution of the decree against the Judgment-Debtor.

I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing. I do not accept the proposition that a married couple leaving together cannot own and hold property separately from each other. There is nothing to stop the Objector herein from owning properties separate from her husband, the Judgment-Debtor, even if that property is found in the matrimonial home, unless it can be shown that the property was purchased or is held jointly by them. Such property can be household items. No authority was cited to me for the proposition that all property found in a matrimonial home must be deemed to be jointly owned by the couple. Such law would in my view be bad in this day and age.

The Objector has exhibited receipts in her own name in respect to seven (7) of the attached items. These are:-

- (i) A Sony hi-fi system.
- (ii) A cooker
- (iii) A fridge

- (iv) A sofa set (worth KShs. 16,000/00)
- (v) A sofa set (worth Kshs.30,000/00)
- (vi) A coffee table
- (vii) A dining set

I find no reason at all to doubt the genuineness of these receipts as urged by the learned counsel for the Decree-Holder. If the Objector could obtain fake receipts in respect of these seven (7) items she could just as easily have obtained similar receipts for the other attached items. I am therefore satisfied on balance that the Objector and not the Judgment-Debtor is the lawful and sole owner of the above seven (7) items for which she produced receipts. These items should not have been attached in execution of the decree against the Judgment-Debtor.

Regarding the other attached items, the Objector has not discharged her burden to establish that she has a legal interest in them. But being ordinary household items which were found in her own matrimonial home where she lives, she obviously has an equitable interest in them, and I so find. It seems to me that a spouse will always have an equitable interest in all the household goods in his/her matrimonial home where he/she lives unless it can be shown that any particular item is legally and exclusively owned by the other spouse. So, these items as well should not have been attached in execution of decree.

In the circumstances I will allow this application with costs to the Objector. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MAY, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 12<sup>TH</sup> DAY OF MAY, 2006.**