



REPUBLIC OF KENYA

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

**Civil Suit 1379 of 2000**

**TRANSNATIONAL BANK LIMITED.....PLAINTIFF**

**VERSUS**

**FLORENCE ODHIAMBO.....1<sup>ST</sup> DEFENDANT**

**WILLIAM OCHORO MBAYE.....2<sup>ND</sup> DEFENDANT**

**AND**

**DIANA ADHIAMBO WASUNA.....OBJECTOR**

**R U L I N G**

This is an application by the Objector under Order 21 rule 57 of the Civil Procedure Rules. In essence she is seeking the lifting of the attachment of certain household goods in execution of decree herein upon the ground that she is the owner thereof. The goods were attached from House No. 361, Komarock Phase II, Nairobi. She says in her grounds of the application appearing on the face thereof that she bought and paid for the goods herself and that therefore she is the sole owner thereof; that she has never been indebted to the Plaintiff/Decree-holder and there is no justification for attachment of her property in execution of decree herein; and that the attached goods do not belong to the 2<sup>nd</sup> Defendant/Judgment-Debtor. There is an affidavit sworn by the Objector in support of her application. There is a further affidavit sworn by her on 18<sup>th</sup> November, 2005 in response to the replying affidavit, and filed with the leave of court on the same day.

The Plaintiff/Decree-Holder has opposed the application upon the grounds set out in the replying affidavit sworn by its advocate, SAADIA KARIMBUX-EFFENDY, on 3<sup>rd</sup> November, 2005 and filed on the same day. Those grounds are essentially that the house from which the goods were attached belongs to the 2<sup>nd</sup> Defendant/Judgment-Debtor; that the Objector has not disclosed her relationship with the 2<sup>nd</sup> Defendant/Judgment-Debtor; and that the Objector has not discharged her burden of proof in respect to the attached goods.

I have read the supporting and the replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing, including the authorities cited. To successfully challenge an attachment of any property in execution of decree, an objector must prove, on a balance of probabilities, that he is entitled to or to have a legal or equitable interest in the whole or part of such property. See rule 53 (1) of Order 21. All the attached goods appear to be household appliances and furniture. It is not correct to say that the Objector has not disclosed her relationship to the 2<sup>nd</sup> Defendant/Judgement-Debtor. She says she is his wife living with him in the house from which the goods were attached. The Objector further says that she is a joint tenant in the house with her husband, the 2<sup>nd</sup> Defendant/Judgment-Debtor. She has exhibited evidence of her joint tenancy. This is not disputed by the Plaintiff/Decree-Holder. I have had occasion before to consider the interest of a spouse in household goods found in a matrimonial home where she lives, and attached in execution of decree against her husband. This was in the case of **HELLEN A. OLIMA vs JOHN KIPKEMBOI KILEL, Nairobi (Milimani) HCCC No. 1016 of 2002 (unreported)**, where I stated as follows in a ruling dated 11<sup>th</sup> May, 2006:-

***“.....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 she/he lives unless it can be shown that any particular item is legally and exclusively owned by the other spouse.....”***

It is the same in the instant suit. The attached household goods were found in the Objector's matrimonial home where she lives with her husband, the 2<sup>nd</sup> Defendant/Judgment-Debtor. She would be entitled to use them as of right by virtue of her being part-owner of the matrimonial home and the spouse of her husband. She would have an equitable interest in all those goods and would be entitled to them as of right.

As it happens, the Objector has exhibited receipts and hire-purchase agreements showing clearly that she personally purchased and paid for all the attached goods. They in fact belong to her exclusively and not to the 2<sup>nd</sup> Defendant/Judgment-Debtor. She has proved on balance that she has a legal interest in them. They should not have been attached in execution of the decree against the 2<sup>nd</sup> Defendant/Judgment-Debtor.

For all the above reasons I will allow the application by chamber summons dated 5<sup>th</sup> October, 2005. The attachment of the Objector's goods by proclamation dated 29<sup>th</sup> August, 2005 is hereby lifted. The Objector shall have the costs of the application. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF JUNE, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 9<sup>TH</sup> DAY OF JUNE, 2006.**