



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

Civil Suit 79 of 2003

**NATIONAL BANK OF KENYAPLAINTIFF/JUDGMENT
CREDITOR**

VERSUS

INNOVATION ADVERTISING LIMITED

GORGE OGENDI

**IRIS NDUKU OGENDI.....DEFENDANT/JUDGEMENT
DEBTORS**

AND

**APOLONIA NJERI GITHAIGA.....
OBJECTOR**

RULING

These are objection proceedings brought by Apolonia Njeri Githaiga.

The objection is brought under Order XXI Rule 56 & 57 of the Civil Procedure Rules.

The objector depones that she is the legal and equitable owner of the motor vehicle KAL 223 X Mitsubishi Pajero which she had lent to the judgement debtor, George Ogendi, when the said judgment debtor's business had taken a '**downturn.**' That since 2005 the said judgment debtor has been using that vehicle with the objectors permission. It was on 16th February the judgement debtor informed the objector that the said motor vehicle had been attached by auctioneers. The objector's counsel on 16th February wrote to the auctioneers copying that letter to the decree holder's advocates, whereby they were informed that the attachment of the aforesaid motor vehicle was wrongful. On the auctioneer and the decree holder's advocate refusal to release the motor vehicle the present application was filed.

The decree holder's opposition to the application is that after proclamation, there was no objection, that was raised by the objector, and that after attachment of the vehicle, alongside with other moveable goods, another objector, Curtis O. Nzioki raised an objector over all the attached goods. Decree holder invited the court to read mischief, mala fide and conspiracy on the part of the present objection.

The court has considered the application and the evidence presented by the objector. The objector has exhibited a copy of the vehicle's logbook, a copy of the records at registrar of motor vehicle. Those documents in absence of anything to controvert them, prove that the ownership of the motor vehicle, is vested in the objector. That finding of the court is not in anyway **'watered down.'** By the allegation that there is another objector claiming ownership of all attached goods, which includes, the subject motor vehicle.

The objector has successfully proved that she has a legal interest in the attached motor vehicle. The present application would not have been necessary if the auctioneer had made effort to carry out a search at the registrar of motor vehicle, before attaching, or if the auctioneer had release the vehicle on proof of ownership being brought to their attention. The failure to release the vehicle was a flagrant disregard of proprietary right over the vehicle.

The court grants Apolonia Njeri Githaiga the following orders: -

- (1) That the attachment effected by M/s Gallant Auctioneers in respect of the motor vehicle registration No. KAL 223X Mitsubishi Pajero is hereby set aside.**
- (2) That the motor vehicle registration No. KAL 223X be released to Apolonia Njeri Githaiga.**
- (3) That the costs of the chamber summons dated 9th March 2006 which are hereby assessed at kshs 10, 000 are awarded to the objector, Apolonia Njeri Githaiga as against the decree holder/plaintiff, which cost shall be paid within 14 days, from todays date, in the absence of such payment the objector may proceed to execute for them.**

MARY KASANGO

JUDGE

Dated and delivered this 19th July 2006

MARY KASANGO

JUDGE