



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 131 of 2002

MOHIDEEN GILANI.....1ST PLAINTIFF

YASMIN GILANI.....2ND PLAINTIFF

VERSUS

VIJAY V. SINGH.....1ST DEFENDANT

RITA WALIA.....2ND DEFENDANT

ST. MICHAEL'S HIGH SCHOOL NAKURU LTD.....1ST OBJECTOR

RAJ WALIA.....2ND OBJECTOR

RULING

On 6th September, 2005, the second objector herein, Raj Walia, filed an application by way of a chamber summons brought under Order XXI Rules 56 & 57 of the Civil Procedure Rules urging this court to set aside the attachment of its property by the plaintiffs/decreed holders that was effected on 17th August, 2005.

The application was made on the ground that the attached goods belonged to the second objector's deceased husband's estate. This court had earlier granted conditional stay of execution of a judgment which it had delivered in favour of the plaintiffs. The defendants (judgment debtors) were to pay to the decree holders certain amounts of money and secure the balance of the decretal sum by way of a banker's guarantee within a given period of time but the judgment debtors failed to comply with the said orders and the decree holders commenced execution proceedings.

The application was supported by an affidavit sworn by Rita Walia, a daughter of the second objector who stated that the second objector was currently out of the country but had authorised her to swear the affidavit in support of her application. The deponent stated that the second objector i.e. her mother, was the executor of the will of her later father and that her mother was in the process of distributing the estate of her late husband to the beneficiaries of the same. She alleged that on 17th August, 2005 M/S Nasioki Auctioneers had unlawfully invaded her mother's house in Nakuru and attached her late husband's household goods and motor vehicles registration numbers KAE o45B and KAL 605Q. She said that the decree holders knew that the attached items belonged to the second objector and that she was in the United Kingdom at the moment and the deponent was merely taking care of the property. However, upon

filing the notice of objection to the said attachment, the decree holders lifted attachment to the said motor vehicles. She blamed the auctioneer for having proceeded to attach the said items before he had verified their ownership.

The plaintiffs opposed the said application and the first plaintiff swore an affidavit on his behalf and on behalf of his wife, the second plaintiff. He stated that the objection proceedings were a deliberate attempt by the defendants in collusion with the second objector to evade their just obligations under the decree. He deposed that the defendants actually resided in the house where the properties were proclaimed and he gave the property title number as Nakuru Municipality Block 12/61 which he said comprised of a house located on Tiriki Avenue in Milimani Estate in Nakuru town which belonged to a Mr. Tarsem Singh, a person whom he knew very well.

Mr. Mohideen Gilani further stated that the properties proclaimed comprised of household goods situated in the above named parcel of land and the items were in actual use of the defendants at all material times. He said that he knew the house very well as the defendants were the plaintiffs' former business partners and he had visited the premises on several occasions and he was the one who personally showed the auctioneer the house in question on the day of the proclamation.

Regarding a motor vehicle registration number KAP 347P which had been proclaimed at Bhogal's Garage, the first plaintiff stated that it belonged to the first defendant as he had bought it while he was in business together with the plaintiffs and that the second objector had lied in the second defendant's affidavit that the motor vehicle belonged to the Estate of D. Walia.

I have considered the affidavits on record as well as the submissions that were made by counsel for the plaintiffs and counsel for the objectors.

Order XXI Rule 56 places the burden of establishing an objector's claim to attached goods upon the objector. It states as follows:-

“Should the attaching creditor, in pursuance of a notice issued under Rule 54 intimate to the court and

the objector that he proposes to proceed with the attachment, the objector shall take proceedings to establish his claim within 10 days of service upon him of such intimation.”

It was incumbent upon the second objector to state the house number where the proclaimed goods were kept and show that it belonged to her and not otherwise. The second defendant did not describe her mother's house and neither did she adduce any evidence that the attached items truly belonged to the second objector. As was rightly stated by Mr. Waiganjo for the second objector, the plaintiffs and the defendants knew each other well, having been business partners and I found the first plaintiff's description of the house where the proclamation of the household goods was done to be credible. That description had not been denied by the second objector.

I would also have expected the second objector to avail a copy of the registration book for motor vehicle registration number KAP 347N to prove that it belonged to her and not to any of the defendants. She failed to do that.

I find that the second objector has not established her claim to the proclaimed goods and I dismiss her application with costs.

DATED at Nakuru this 23rd day of November, 2005.

D. MUSINGA

JUDGE

23/11/2005

Ruling delivered in open court in the presence of Mr. Ndumia holding brief for Mr. Musangi for the plaintiffs and Mr. Waiganjo for the objector.

D. MUSINGA

JUDGE

23/11/2005