



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

**Civil Suit 1059 of 1999**

**LEE EUN HEE.....PLAINTIFF/DECREE HOLDER**

**-versus-**

**CHARLES GITONGA GAKUU 3 OTHERS.....DEFENDANTS/ JUDGMENT DEBTOR**

**-and-**

**DALLAGO TOURS & SAFARIS LTD AND 2 OTHERS.....OBJECTORS**

**R U L I N G**

By Chamber Summons application dated the 4<sup>th</sup> December 2003 brought under Order 21 Rules 56 and 57 of the Civil Procedure Rules, the Objectors have sought orders including:-

“**THAT** the purported proclamations of the Objector’s goods herein by the Decree Holder on 15<sup>th</sup> November, 2003 against all the named goods and items as set out therein in the schedule of movable properties be and is hereby set aside and/or raised unconditionally.”

Upon grounds set forth therein and supported by the affidavit of **Nicholas Kariuki Gichobi** made also on the 4<sup>th</sup> December 2003.

The Plaintiff/Decree Holder/Respondent opposes the application on the basis of the Replying Affidavit of Francis N. Kimani made on the 6<sup>th</sup> January 2004.

Whilst I have heard the respective submissions of Mr. Njuguna and Mrs. Kimani for the Objectors/Applicants and Plaintiff/Decree Holder/Respondent respectively, I will not for the purposes of this Ruling consider in any manner whatsoever the merits or otherwise of such submissions nor of the application and the grounds upon which it is made principally because of my finding that technically the application is not properly before the court inasmuch as it has not been served on the Respondents/Judgment Debtors in accordance with the provisions of Order 21 rule 57 (2) of the Civil Procedure Rules which are mandatory, unless the court otherwise directs, and the court has not done so in the present case.

Accordingly, and for this reason only it is ordered that the application dated the 4<sup>th</sup> December 2003 be and is hereby struck out with costs to the Plaintiff/Decree Holder.

Dated at Nairobi this 13<sup>th</sup> day of February 2004.

**P. KIHARA KARIUKI**

**Ag. JUDGE**