

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

CIVIL CASE NO. 478 OF 2002

BRAEBURN LIMITED.....PLAINTIFF

VERSUS

CAPTAIN KUNGU MUIGAI.....DEFENDANT

R U L I N G

The Objector's application by chamber summons dated 8th September, 2004 filed herein is very badly drafted. That is understandable as it was drawn by the Objector in person. What is surprising is that her learned counsel, Mr. Kuria, decided to proceed with it as it is. It does not even state under what provisions of the Civil Procedure Rules it is brought. But from what was stated by learned counsel during arguments, it is an application under Rules 56 and 57 of Order 21 of the Civil Procedure Rules (the Rules). It is essentially brought upon the grounds that the attached goods belong to the Objector and not to the Defendant/Judgment-Debtor who is her brother-in-law. The Plaintiff/Decree-Holder opposes the application as indicated in the grounds of objection dated 17th November, 2004.

An Objector proceeding under Rule 56 aforesaid must establish his legal or equitable interest in the whole or part of the property attached in execution of decree. Needless to say, to do this he must bring forth some evidence that will tilt the balance of probabilities in his favour. In the instant case, beyond the statement that the attached goods are her personal property, the Objector has not attempted at all to show how those goods are her personal properties. The execution itself was against the Judgment- Debtor's surety, not against the Judgment-Debtor himself, and was levied under section 92(a) of the Civil Procedure Act, Cap. 21. The consent order dated 4th November, 2003 by which the surety, one NGENGI MUIGAI, bound himself to satisfy the decree on behalf of the Judgment-Debtor, shows that he is the occupier of the premises where attachment was made. The Objector has not exhibited any document tending to show that she is the occupier of the said premises.

In the premises the Objector has not discharged her burden. This application is without merit. It is hereby dismissed with costs. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MARCH, 2005.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF MARCH, 2005.