



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CIVIL CASE NO. 429 OF 1997**

**CLEMENT KAKO ODILO.....PLAINTIFF**

**VERSUS**

**OLIVE OWALA**

**T/A BAO. TRANSPORTERS SERVICES.....DEFENDANT**

**RULING**

By a chamber summons dated 21st November, 2001, Benedict Augustine Owala., the Objector , seeks an order for the lifting of an attachment of motor vehicles reg. NO.KAB 528Y Peugeot 504 Station Wagon, KTG 128 and KTG 819 Tata lorries, on the ground that they do not belong to Olive Agnes Owala t/a BAO Transporters, the Judgment debtor in this case

. The application is brought under Order XX1 rules 56 and 57 of C.P.R. and is supported by grounds on the body of the Summons and an affidavit of the Objector. The decree – holder opposes the application relying on a replying affidavit of Walimbwa Musungu an agent of Sadique Enterprises the auctioneer who proclaimed the said vehicles.

Mr. Kopot for the Objector submitted that the basis of this application is that the attached vehicles do not belong to the judgment debtor and are therefore not available for attachment in satisfaction of the decree in this case. According to Mr. Kopot that contention was not controverted by the decree-holder. He added that all that the agent of the auctioneer was saying in the replying affidavit was that as the judgment debtor was seen driving the Peugeot 504 station wagon it belonged to her; that the other two Tata lorries bear the name of BAO which name the judgment debtor had traded in for a long time; that the judgment – debtor is the wife of the objector and that when the vehicles were being proclaimed she was in the objector’s residence but she refused to co-operate with the auctioneer’s agents. According to Mr. Kopot the word ‘BAO’ alone cannot create a presumption of the owners of the said motor vehicles by the judgment-debtor especially as she had been sued in her name of Olive Agnes Owala trading as BAO Transporters. He contented that the two lorries were earlier on owned by BAO Balanced Farming and Stores Ltd before they were transferred in the name of Victoria General Repairs (E.A.) Ltd. The Objector as a husband of the judgment – debtor is not responsible for his wife’s torts Mr. Kopot claimed.

For the decree-holder Mr. Olago-Oluoch submitted that the Objector has failed to distinguish whether BAO appearing in the log books as the owner of the lorries is that of judgment-debtor or of the Objector. Mr. Olago Oluoch further stated that the log books for the lorries indicated that they were originally registered in the name of BAO Balanced Farming and Stores Ltd but it has not been shown when they were transferred into the name of Victoria General Repair (E.A.) Ltd and that the failure to disclose the date of transfer was mischievous and deliberate one . He also submitted that the proclamation was carried out by the auctioneer who is under duty to investigate the properties of a judgment debtor before carrying out proclamations. It has been shown by the Objector that the Peugeot Station Wagon registration No. KAB 528Y is registered in his name i.e. B.A. Owala and not in the name of Olive Agnes Owala the judgment-debtor . The proclamation of this vehicle was therefore irregular and the Objector is correct in his claim.

I note that the log books of the Tata lorries reg. No. KTG 128 and KTG 819 shows that they are

owned by Victoria General Repairs (E.A.) Ltd. Earlier on the two motor vehicles were owned by BAO Balanced Farming and stores Ltd and that the transfer of the two vehicles was effected on 30th September 2000. There is nothing to show that the vehicles were ever owned by Olive Agnes Owala prior to 30th September 2000 or at any time after that date. The proclamation of these vehicles was also without any basis or grounds.

The attachment is therefore lifted. The Objector is to have the costs of this Objection against the decree-holder and M/S Sadique Enterprises. Dated and delivered this 20th August, 2003.

**B.K. Tanui**

**JUDGE**