



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**CIVIL CASE NO. 279 OF 1999**

HARAMBEE CO-OPERATIVE SOCIETY LTD.....PLAINTIFF

VERSUS

AFRO ELECTRICAL SERVICE LTD.....DEFENDANT

**R U L I N G**

The suit against defendant for recovery of the leased premises is still pending for hearing. The dispute between plaintiff and defendant is merely a land and tenant dispute.

On 24.5.2002 plaintiff levied distress to recover Shs.964,000/= as rent arrears. A notice of objection to attachment as filed by Ranjit Singh as Objector through S. Ndege Advocate. The objection was filed under Order XXI Rule 53 (1) and (2) of Land Procedure Act.

He objector subsequently filed a chamber summons under Order XXI Rule 56 and 57 of Civil Procedure Rules praying that the proclamation objectors household goods be lifted.

Plaintiff filed a notice of preliminary objection to the application. The main ground of preliminary objection is that the court has no jurisdiction to entertain the objectors claim as there is no attachment of a decree.

The objectors counsel did not attend the hearing. I have considered Mr. Nyamondi's submissions in support of the preliminary objection. I agree that court has no jurisdiction to grant the relief sought because the goods allegedly belonging to the objector were not proclaimed in pursuant to execution of a decree of any court since there is no decree in existence the objection proceedings under Order XXI Civil Procedure Rules are grossly misconceived. Plaintiff did not attach the objectors goods in execution of a decree. Plaintiff levied distress as a landlord against tenant pursuant to Section 3(1) of Distress for Rent Act. Plaintiff in levying the distress was exercising a statutory right as a landlord and not a judgment debtor's right under a decree of the court. The applicants remedy lies under the distress for Rent Act and not under the Civil Procedure Act or Rules.

It is for these reasons that I uphold the preliminary objector and strike out the application dated 26.6.2002 with costs which should be taxed and paid forthwith.

E.M. GITHINJI

JUDGE

5.11.2002

Mr. Mutunge holding brief for Mr. Nyamondi present

Mr. Muriuki holding brief for Mr. Ndege present