



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC PETITION NO. 1 OF 2016**

**DAVID LUBANGA MALEYA .....PETITIONER**

**VERSUS**

**JAPHETH MUSASA LIBESE**

**THE HON. ATTORNEY GENERAL .....RESPONDENTS**

**AND**

**ERNEST CHAVASU.....INTERESTED PARTY**

**WILSON AMAHENO LUBANGA.....OBJECTOR/APPLICANT**

**RULING**

The application is dated 29<sup>th</sup> January 2021 and is brought under Section 1A & B and 3A of The Civil Procedure Act Cap 21 Laws of Kenya and Order 22 Rule 51 of The Civil Procedure Rules, 2010 seeking for orders that:-

1. The application hereof be certified urgent and proceed to hearing expeditiously as demanded by its nature which calls for speedy hearing and disposal thereof.
2. That pending hearing and determination of the objection proceedings herein the order for stay of execution remain in force.
3. This honourable court do find that the property proclaimed and or attached by Dimonde Auctioneers in execution of the decree herein as particularized in the proclamation dated 22<sup>nd</sup> January, 2021 being assorted household goods and any other movable properties are the sole property of the objector/applicant herein and not the properties of the petitioner J/D herein and legally not liable to attachment in execution of the decree issued against the petitioner J/D herein.
4. This court be pleased to order and do order that the attachment and or proclamation on the whole of the properties by Dimonde Auctioneers be raised and the said properties be released to the objector/applicant.
5. The execution against the objector/applicant Dimonde Agencies & Auctioneers be wholly lifted and the subject properties be unconditionally released to the objector/applicant.
6. Costs of the objection proceedings herein be met by the attaching creditor or as the court shall direct.

It is based on the grounds that the properties listed in the proclamation by Dimonde Agencies & Auctioneers are the properties of the objector/applicant and not liable for attachment in execution of decree solely against the petitioner. The auctioneers were dishonest and bias on proclaiming the objector's properties who was not a party to this petition. The objector shall abide by the terms.

The applicant submitted that his household properties was proclaimed and or attached by Dimonde Agencies & Auctioneers on the 22<sup>nd</sup> January, 2021 as exhibited on the copy of the proclamation hereto annexed and marked WAL-1. That the properties are his and not liable for attachment to meet liabilities of the petitioner herein. That for the foregoing reasons, he objects to the proclamation and attachment and seek this courts orders that the attachment be raised in whole and pending the final determination of the application, there be stay of execution.

The respondent submitted that the application is not substantiated at all. That the properties herein belong to the petitioner. That the objector is merely being used to delay and/or obstruct the final determination of this matter.

This court has considered the application and the submissions therein. The applicant submitted that his household properties were proclaimed and/or attached by Dimonde Agencies & Auctioneers on the 22<sup>nd</sup> January, 2021 as exhibited on the copy of the proclamation hereto annexed and marked WAL-1. That the properties are his and not liable for attachment to meet liabilities of the petitioner herein. No evidence has been adduced to prove this. I concur with the respondent that the objector is merely being used to delay and/or obstruct the final determination of this matter. I find this application is not merited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 21<sup>ST</sup> JULY 2021.**

**N.A. MATHEKA**

**JUDGE**