



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC. APP NO 279 OF 2013

OSERO AND CO. ADVOCATES.....PLAINTIFF/DECREE HOLDER

=VERSUS=

EASY PROPERTIES LIMITED.....DEFENDANT/JUDGMENT DEBTOR

AND

MELLAPHEN LIMITED.....1ST OBJECTOR /APPLICANT

EASY HOTEL KENYA LIMITED.....2ND OBJECTOR/APPLICANT

RULING

1. This is the Notice of Motion dated 8th April 2021 brought under section 1A, 1B, 3A and 64(c) of the Civil Procedure Rules and all enabling provisions of the law.

2. It seeks orders:-

1. Spent.

2. Spent.

3. Spent.

4. That there be an order directed at the auctioneers to the effect that motor vehicles registration number KBU 647D and KBN 126T and assorted hotel goods which were wrongfully and illegally proclaimed by the Auctioneers are the properties of the objectors against whom no judgment is pending or has been passed.

5. That the attachment herein pursuant to the warrant of attachment dated 31st day of March 2021 and proclamation notice be raised in whole.

6. That the costs of the application be provided for.

3. The grounds are on the face of the Application and are:-

(a) That on the 31st day of March 2021, Clear, Real Auctioneers on instructions of the Plaintiff/Decree Holder proclaimed and attached motor vehicles registration numbers KBU 647d and KBN 126t and assorted hotel goods owned by the Objectors/Applicants.

(b) That the proclaimed property does not belong to the Decree/Judgment Debtor but is in fact owned by the Objectors/Applicants.

(c) That the Objectors/Applicants are not parties to the proceedings herein hence the proclamation is wrong, illegal and ought to be lifted altogether.

(d) That unless the orders sought herein are granted the Objectors/Applicants shall suffer irreparable loss.

4. The Application is supported by the affidavit of Vincent Dequare a co-director of Tiganeb LLC, sworn on the 8th April 2021.
5. The Application is opposed. There is a replying affidavit sworn by Lewis Ndemo Osero, the proprietor of the Decree Holder, sworn on the 14th June 2021.
6. On the 17th June 2021, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.
7. The Objectors submissions are dated 16th September 2021. The 1st Objector has attached a Certificates of Registration for the two motor vehicles KBU 647D and KBN 126T. They confirm that they belong to the 1st Objector. This has not been challenged by the Decree Holder.
8. I have considered the notice of motion, the supplementary affidavit and the annexures. I have also considered the replying affidavit and the written submissions filed on behalf of the parties. The issue for determination is whether this application is merited.
9. **Order 22 rule 51(1)** of the Civil Procedure Rules 2010 provides that:-

“(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.”

10. I rely on the quoted case of **Michira Messah & Co. Advocates vs Katana Kalume Nduriya; Kalume Kenga Katana (Objector) [2021] eKLR** which quoted the decision of **Arun v C. Sherma Astana Raikundeha t/a Raikundaha & Co. Advocates & 4 Others [2014] eKLR** where the court stated:-

“The objector bears the burden of proving that it is entitled to or has legal equitable interest on the whole or part of the attached property. The key words are entitled to or to have a legal or equitable interest in the whole or part of the property”.

I am satisfied that the 1st Objector has proved that it is the owner of motor vehicle registration Numbers KBU 647D and KBN 126T.

11. The Objectors have not satisfied the court as to the ownership of the other properties proclaimed.
12. In my view that attachment out to proceed in respect to items 3-11 in the proclamation list.
13. I find merit in this application and I grant the following orders:-

(a) That an order is hereby issued that motor vehicle Registration Nos KBU 647D and KBN 126T were wrongfully and illegally proclaimed by the Auctioneers as they are the properties of the 1st Objector and the proclamation notice in respect of the said motor vehicles is hereby lifted.

(b) That attachment do proceed in respect of items 3 to 11 of the proclamation.

(c) That each party will bear own costs of this application

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 18TH DAY OF NOVEMBER 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Decree Holder

No appearance for the Defendant/Judgment Debtor

Ms Machira for Mr. Orina for the Objectors

