



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CONST. PETITION NO. 3 OF 2017**

**BETWEEN**

**JACKTON NYANUNGO RANGUMA .....PETITIONER/APPLICANT**

**VERSUS**

**THE INDEPENDENT ELECTORAL**

**AND BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE COUNTY RETURNING OFFICER**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION**

**KISUMU COUNTY (JOHN C. LORIONOKU).....2<sup>ND</sup> RESPONDENT**

**H.E. PETER ANYANG' NYONG'O .....3<sup>RD</sup> RESPONDENT**

**AND**

**ROSEMARY ANYANGO MKOK .....OBJECTOR**

**VICTORIA BLUE AUCTIONEERS SERVICES .....RESPONDENT**

**RULING**

The Objector, **ROSEMARY ANYANGO MKOK** filed the application dated 9<sup>th</sup> September 2020, asking the Court to declare unlawful the attachment of property which was effected by Messrs **VICTORIA BLUE SERVICES** on 2<sup>nd</sup> September 2020 and 4<sup>th</sup> September 2020.

1. She claimed that all the items listed in the 2 proclamations belonged to her.
2. One proclamation was effected at a place called **RAINBOW**, which is described as being near the lake. At that place the court broker listed the following particulars as constituting the attached moveable property.

***“(1) Assorted house hold items locked inside the premises at a place called Rainbow near the lake.***

***(2) And any other moveable properties that belong to the J/D.”***

3. The second proclamation was effected at **SENDAI GARDENS, KAREN**, where the following items were proclaimed;

***“(1) Living Room Seats.***

***(2) Household Electronics, Television set, Radio DVD, Home Theatre, Fridge, Gas cooker.***

***(3) Motor vehicles to be identified.***

**(4) Any other moveable property on day of execution.”**

4. In order to determine whether or not the execution process was unlawful, the court needs to ascertain whether or not the goods which were attached belong to the Objector.
5. Pursuant to **Order 22 Rule 51 (1)** of the **Civil Procedure Rules**, an Objector is required to demonstrate to the court that he has a legal or equitable interest in the whole or part of the property which had been attached.
6. If the Objector discharged the onus of establishing his entitlement to the attached goods, the court would order that the said goods be discharged from attachment.
7. In this case, the Objector exhibited a large number of receipts.
8. Notwithstanding the said receipts, the Decree-Holder submitted that the Objector had not met the evidentiary threshold for showing her legal or equitable interest in the attached goods.
9. I appreciate that the Objector did not specify which particular receipt was in relation to which particular item.
10. However, I note that on the face of the Proclamation which was carried out at the Sendai Gardens, Karen, it was indicated that the person who was served with the said proclamation was Rosemary Mkok, the Objector herein.
11. The Objector exhibited a title document which shows that **L.R. No. 14652** was transferred to **PRAXEDES ASENDWA MUTULI** and **ROSEMARY ANYANGO MKOK**, as Joint Tenants in Common, in equal shares, from July 1998.
12. Based upon the said document pertaining to ownership, coupled with the receipts provided by the Objector, I find, on a balance of probability, that the items proclaimed at the house in Karen, belong to the Objector.
13. As regards the motor vehicle Registration Number **KAR 918B**, the same was not on the Proclamation in issue. Therefore, the Objector had no obligation to demonstrate to the court that that vehicle belonged to her.
14. I am satisfied that the Objector has shown, on a balance of probability that she has a legal and beneficial interest in the items proclaimed at the residence in Karen.
15. However, there is no sufficient evidence upon which the court could properly have found a conclusion about the proclamation carried out at the place called Rainbow.
16. I so find because the proclamation itself does not state, in any identifiable manner, the particulars of the items that were attached.
17. First, it is important to emphasize that when a Court Broker was carrying out the process of execution of a Decree or Order; and is doing so through the attachment of moveable property, the particulars of the said goods must be spelt out in the proclamation.
18. A statement such as “*Assorted household items....*” is too generalized.
19. A Court Broker must take cognizance of the fact that some items in one household or premises, may belong to different people.
20. Secondly, there are items which are not, in law, amenable to attachment.
21. Therefore, a blanket phrase would not be useful to any  
Person. I say so because unless the item being attached belongs to an Objector, he could only raise an objection when the  
particular item has been listed in the proclamation.
22. Secondly, if the attached goods are not specifically identified, the Court Broker could be unable to hold the Judgment-Debtor to account, if any such items are removed between the date of proclamation and the date when they are supposed to be carted away.
23. As the identity of the items at the place called Rainbow is not clear, I am not satisfied that the Objector is the legal or beneficial owner thereof. I therefore decline to discharge the said items from the proclamation.
24. Nonetheless, this is not a licence to the Court Broker to proceed to cart away the items at the place called Rainbow. Should the Decree-Holder and the Court Broker be desirous of proceeding with the attachment at that place, a proper proclamation will need to be undertaken.
25. On the issue of costs, I award to the Objector the costs in relation to the attachment at the house in Karen. The said costs shall be paid by the Decree-Holders because they made a choice to proceed with execution even after receiving notification of the Objection.

26. As regards the attachment at the place called Rainbow, the Court Broker will be required to Show Cause why he should not have to shoulder the costs thereof.

**DATED, SIGNED and DELIVERED at KISUMU**

This 9<sup>th</sup> day of **March** 2021

**FRED A. OCHIENG**

**JUDGE**