



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO.165 OF 2016

PAMELA MANDELA IDENYA.....PLAINTIFF/DECREE HOLDER

-VERSUS-

DUCHESS PARK DEVELOPMENT CO. LTD.....DEFENDANT/JUDGMENT DEBTOR

AND

WILLIAM OPANGA OYUGI.....OBJECTOR/APPLICANT

R U L I N G

1. Before me is a Notice of Motion dated 28/01/2021 brought under *sections 1A,1B & 3A of the Civil Procedure Act, Order 22 rule 51 and 52 and Order 50 of the Civil Procedure Rules, 2010*. A Notice of Objection to Attachment of even date was filed concurrently with the application.

2. The applicant objected to the attachment of the judgment debtor's assets in satisfaction of the judgment and decree of this Court dated 19/1/2019. He sought that the warrants of attachment and proclamation levied against his assets be set aside and further sought to have a prior search verification carried out before proceeding with any further execution.

3. The application was based on the grounds set out in the supporting affidavit sworn by **William Opanga Oyugi**, the Objector, on 28/1/2021. The grounds are that the Objector was not a party to these proceedings. That he had purchased apartment No. A13 from the judgment debtor in the building owned by the latter.

4. That within the sale agreement, he has the right to use the lifts which he was informed had been proclaimed and will be unfitted by the auctioneer. That he had been informed that his fixtures such as doors and electricity fittings had been proclaimed and will be unfitted by the auctioneer. That it was unlawful to attach his assets yet he has never been a party to these proceedings. He prayed the application be allowed.

5. I have considered the record and the objector's deposition. By a decree dated 18/01/2019, the Court ordered the Judgment Debtor to pay to the Plaintiff a sum of Kshs. 7,560,000/=. Out of this amount, an amount of Kshs. 4,523,583/53 remains unpaid. A Warrant of Attachment of Movable property and a Warrant of Sale of Property in Execution of the decree for money dated 18/03/2021 were issued to Nextten Auctioneers.

6. Pursuant thereto, Nexttgen Auctioneers proclaimed the following items: -

a) **140 White bathtubs**

b) **70 wooden main doors**

c) **560 wooden doors**

d) **420 sinks**

e) **350 electrical fittings**

f) **6 lifts**

7. The Objector/Applicant contended that he had paid the requisite purchase price and the full ownership and possession of Apartment No. A13 was handed over to him by the Judgment Debtor. In support of this contention, he produced the Sale Agreement of the said apartment.

8. **Section 44(1) of the Civil Procedure Act** provides:

“All property belonging to a judgment debtor, including property over which or over the profits of which he has a disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree”

9. On the other hand, **Order 22 Rule 51 of the Civil Procedure Rules** provides:-

“(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.

(2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached”.

10. From the foregoing, an Objector must explain his interest or claim in the attached property. The explanation must be accompanied with evidence to support the claim and/or interest. Mere and wild claims cannot suffice. This is so notwithstanding that there may be no response to his claim. The same is still subject to the general rule of evidence that *‘he who alleges must prove’* which is found in **sections 107, 108 and 109 of the Evidence Act, Cap 80**.

11. The objector’s claim is that the attached items, *to wit*, **white bath tabs, wooden main door, wooden doors sinks electric fittings and 6 lifts** belong to him. The objector did not state, and neither did he provide any evidence to show, that the said items are affixed to apartment A13. If the items belong to the defendant but for the general use by others, that does not give the objector any superior right to the items than that of the defendant.

12. In this regard, I am satisfied that the objector has not produced any evidence to support the allegation that he is exclusively entitled to use the attached items.

13. In the premises, the application is dismissed with no order as to costs as the application was not opposed.

It is so ordered.

DATED and DELIVERED at Nairobi this 4th day of March, 2021.

A. MABEYA, FCI Arb

JUDGE