



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 728 OF 2000

ELECTROWATTS LIMITED PLAINTIFF/DECREE HOLDER

-VERSUS-

COUNTRYSIDE SUPPLIERS

LIMITED1ST DEFENDANT/JUDGEMENT DEBTOR

JOHN MUTUTHO..... 2ND DEFENDANT/JUDGEMENT DEBTOR

MARY W. KAMAU..... OBJECTOR

R U L I N G

1. By a Chamber Summons dated 20/10/2020 brought under **Order 22, Rule 51 & 52 of the Civil Procedure Rules 2010 and Section 63(e) of the Civil Procedure Act**, the Objector has sought an order to restrain the plaintiff from selling or offering for sale by auction or by private treaty or interfering in any way whatsoever, her matrimonial properties proclaimed in the notice of attachment dated 15/10/2020.

2. The grounds for the application are set out in the body of the Summons and her supporting affidavit sworn on 20/10/2020. These are that; the properties proclaimed on 15/10/2020 are her sole matrimonial properties and not the defendants'. That she has been living in the matrimonial house since 2010 and has over time solely acquired the proclaimed items. She bears no liability to the plaintiff.

3. She contends that the defendants did not have any legal or equitable interest in the property proclaimed. That if the reliefs sought are not granted, her properties will be sold to satisfy the debts of the defendants.

4. The application was opposed by the plaintiff through the replying affidavit of **Stephen Edward Elkington** sworn on 5/11/2020. It is contended that the Plaintiff obtained a decree in its favour dated 4/09/2020 for Kshs. 4,763,228.67. It subsequently instructed Messrs. Clear Real Auctioneers to apply for Warrants for Attachment and Sale of goods in a bid to execute against the defendants. That the Auctioneers duly carried out a proclamation of household goods present at the 2nd defendant's premises on 15th October 2020.

5. The Plaintiff contends that an injunction against attachment of goods can only be granted on goods belonging to a third party subject to proof of ownership which the objector has failed in the present case.

6. The objector filed a further affidavit in response to the plaintiff's replying affidavit. She contends that she is the lawful owner of all the household goods proclaimed for over a period of ten (10) years between the year 2010 to date. She produced various receipts as proof of purchase marked as '**MWK-1 to MWK-5**'. That she acquired the household goods when she was working as a Civil Servant in the Ministry of Agriculture before her retirement in 2018.

7. The Court has considered the record in its entirety and the depositions of the parties.

8. These are objection proceedings. **Order 22 Rule 51 of the Civil Procedure Rules** provides: -

“Any person claiming to be entitled to or to have a legal or equitable interest in the whole 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 parties to the decree-holder, of his objection to the attachment of such property”.

9. In **Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector) [2019] Eklr**, the court held: -

“The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached.”

10. Further, in **Arun C. Sharma versus Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others [2014] Eklr**, it was held:

“The objector bears the burden of proving that he is entitled to or has legal or 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. Has the objector proved it is entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree?”

11. From the foregoing, it is clear that in objection proceedings, all that an objector has to establish is that, he/she has a legal or equitable interest in the goods attached. In the present case, the objector swore that the attached items belonged to her. They were attached from her matrimonial home where she has lived since 2010. She attached copies of receipts as proof of having purchased the same.

12. She further stated that she purchased the goods in question when she was an employee of the Ministry of Agriculture. That being in gainful employment, she was capable of purchasing the items on her own accord. That the 2nd defendant resides in Nakuru where he runs his businesses and therefore has no claim to the household goods in her matrimonial home situated along Masai Lane, off Masai Road, Karen Nairobi.

13. In **Michael Kwena v Raza Properties Limited & Another [2008] Eklr**, the court held: -

“In a situation of man and wife, a situation that this court, has judicial notice of as a result of the discharge of duties in relation to disputes relating to man and wife property rights, the right to contribution to acquisition either directly or indirectly is almost unquestionable. Household goods are meant to be for the use of the entire family. It is therefore difficult to put a clear distinguishing line as between what belongs to the husband as opposed to what belongs to the wife. The assumption usually is that there is common usage for all the family of all the households, thus making difficult to make a clear and precise decision as to what belongs to the wife as opposed to the husband.

As observed by Ringera Judge, as he then was, the person who could be called upon to shed some light on the ownership, are the shop keepers from whom the goods were purchased. But as observed, it is not a normal practice for courts to call shop keepers to prove such purchases. The decision of who owns the households will therefore depend on whether the objector has demonstrated ability to acquire. In this courts’ opinion, the objector herein has demonstrated such an ability by virtue of her being in gainful employment and by her being a family member. The objection against the attachment of the household goods is therefore upheld.”

14. As already stated, the objector has produced evidence of receipts of purchase of the household goods that bears her name. On the other hand, the plaintiff relied on the case of **Charles Muraya Ndegwa v Nahashon M. Gatere & 2 others [2006] eKLR** to submit that the receipts should be supported by further evidence to prove authenticity. I note that in that case, the goods attached were not household goods but goods attached from a business premises. The case is not applicable in the circumstances.

15. The plaintiff has submitted that the receipts produced were not sufficient evidence for proof of ownership. That the objector should have provided Electronic Tax Register (ETR) receipts to prove her ownership. In my view, in circumstances of household items, once an objector demonstrates ability to acquire those items, the burden shifts to the judgment creditor to demonstrate otherwise.

16. In **MHW v Thomas Ogutta Ongori; AHH (Objector) [2019] Eklr**, the court observed: -

“The applicant also produced receipts to prove that she had actually purchased a Hot Point fridge, assorted gas cylinders, an LG 21” TV set and assorted shop commodities including bales of wheat and maize flour. Even though she did not avail any evidence to prove that she had purchased the sofa set, coffee table, gas cooker/cylinder and floor carpet listed in the proclamation, I am prepared to find, which I hereby do, that these were her household goods since her averment that she had stopped living in the same house with the judgment debtor since year 2011 was not controverted by the respondent.”

17. In the present case, there is proof that the items attached were in the objector’s matrimonial home. That she was capable of having purchased them as she was in gainful employment. That she produced receipts in proof of ownership thereof.

18. Accordingly, I am satisfied that the objector has proved her case to the required standard. In the circumstances, I allow the application with costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF APRIL, 2021.

A. MABEYA, FCI Arb

JUDGE