



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**MISC. CAUSE NO. 119 OF 2015**

**PEER MWANGI GATHOGO**

**T/A DAYSTAR AUCTIONEERS.....APPLICANT**

**J.M. NJENGA & CO. ADVOCATES.....ADVOCATE/APPLICANT**

**VERSUS**

**FRANCIS CHEGE MAINA.....1<sup>ST</sup> RESPONDENT/JUDGMENT DEBTOR**

**JOSEPH MACHARIA MAINA.....2<sup>ND</sup>RESPONDENT/JUDGMENT DEBTOR**

**JAMES KIHARA MAINA.....3<sup>RD</sup> RESPONDENT/JUDGMENT DEBTOR**

**DEDAN MUTHAIGA MAINA.....4<sup>TH</sup>RESPONDENT/JUDGMENT DEBTOR**

**AND**

**PHILLIAN WAITHIRA NG'ANG'A.....OBJECTOR/APPLICANT**

**RULING**

1. On 28<sup>th</sup> November 2019 the court entered a judgment in the sum of Kshs.14,023,394/96 in favour of J.M. Njenga & Co. Advocates against the respondents/judgment debtors Francis Chege Maina, Joseph Macharia Maina, James Kihara Maina and Dedan Muthaiga Maina jointly and severally. A decree was extracted, but the debt remains not settled.
2. The judgment creditor instructed Peter Mwangi Gathogo T/a Daystar Auctioneers to go and attach the properties of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> judgment debtors. On 13<sup>th</sup> January 2020 the auctioneer, armed with warrants of attachment and sale, proclaimed the 2<sup>nd</sup> judgment debtor's goods at his house at Thome Estate, the 1<sup>st</sup> judgment debtor's goods at New Muthaiga Estate and the 3<sup>rd</sup> judgment debtor's goods at Kandara Villas at Kileleshwa. On 21<sup>st</sup> January 2020, and upon the expiry of the notice, the auctioneer went to the house of each of the three judgment debtors to attach the goods but, in each house, he was denied access. He found the houses guarded by security guards with instructions not to let him in. On 27<sup>th</sup> January 2020 he came to court seeking that I order that he be accompanied by police officers to maintain law and order as he proceeds to attach the proclaimed goods.
3. The objector Phillian Waithira Ng'ang'a states that the items that were proclaimed in the alleged house of the 1<sup>st</sup> judgment debtor Francis Chege Maina were in fact not his but were hers. Her case is that the house in which the goods were found was hers, her being the registered owner of the house since 28<sup>th</sup> February 2019. She claimed both the house and the goods, and stated that she was not party to the suit and debt and therefore her property could not be attached in settlement. Her motion of objection to the attachment was brought under **Order 22 rule 52** of the **Civil Procedure Rules**.
4. There is no dispute that the objector is the wife of the 1<sup>st</sup> judgment debtor. Both stay in the house in which the goods proclaimed were found. From the record this was not the first time the auctioneer has been to his house to attach in respect of this debt. Attachment has been going on for the last two years. It is clear that the house belonged to the 1<sup>st</sup> judgment debtor till it was transferred to the objector on 28<sup>th</sup> February 2019. I find that the transfer was a deliberate effort intended to defeat any attachment process against the house and the goods

therein. Secondly, the objector did not provide any evidence to prove, on the balance of probabilities, that she had any legal or equitable interest in the attached goods (**Njeru Kaburu –v- Germano Mugereka [2019]eKLR**). It is for these reasons that I will not allow the objection.

5. The 2<sup>nd</sup> and 3<sup>rd</sup> judgment debtors did not oppose the auctioneer's application.

6. In conclusion therefore, I allow the auctioneer's application dated 27<sup>th</sup> January 2020, and dismiss with costs the objections dated 16<sup>th</sup> January 2020 and 27<sup>th</sup> January 2020.

**DATED and DELIVERED at NAIROBI this 19<sup>TH</sup> FEBRUARY 2020.**

**A.O. MUCHELULE**

**JUDGE**