

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 295 OF 2014

CHARLENE NJERI KURIA.....PLAINTIFF

VERSUS

SIMON GITU MBIRUA.....1ST DEFENDANT

GEOFFREY GITU.....2ND DEFENDANT

AND

FRANCIS KAIMIRU GITU.....1ST OBJECTOR

DINAL WACHECHI GITU.....2ND OBJECTOR

R U L I N G

The plaintiff herein has a judgment against the judgment debtor which is yet to be executed. In the process of enforcing that judgment, the objectors' properties were attached, which was followed by a notice of objection under Order 22 Rule 51 of the Civil procedure Rules. As required, the objectors lodged an application under Order 22 Rules 51 and 52 of the Civil Procedure Rules to lift the said attachment on the grounds that they are the owners of the goods proclaimed in that process. The application was opposed by the plaintiff/deeree-holder leading to this ruling.

The objectors are supposed to establish on a balance of probability, that they are the owners of the said goods and that they did not belong to the judgment debtors. The judgment debtors and objectors are related. It would appear that the 2nd objector is the mother and/or relative of the judgment debtors and the 1st objector.

Other than the motor vehicle Registration No. KBF 678U, the rest of the goods proclaimed are household goods. The motor vehicle is registered in the name of the 2nd Objector. Dinah Wangechi Gitu as confirmed by a copy of motor vehicle records annexed to the supporting affidavit as FMG 3.

It would appear the reason for the said attachment is because, the judgment debtors and the objectors share the same house as a family. In proceedings of this nature, the court must be careful to draw a line between the judgment debtors and any other person who may be related therewith in execution of any decree. I say so because, any judgment debtor should be in apposition to carry his or her burden and that should not be extended to any other person, unless it is established that, that other person has been used to defeat the course of justice.

There is no evidence to show that the judgment debtors in this case have any title or interest in the goods proclaimed. It may cause injustice to the objectors if the court were to allow the execution of the decree to be extended to them.

My assessment of the evidence provided is that, the objectors have discharged the duty bestowed upon them under the relevant rules showing the goods do not belong to the judgment-debtors. It follows, therefore, that the objection herein succeeds and the proclamation must be lifted forthwith. The objectors are entitled to the costs of the objection proceedings.

Orders accordingly.

Dated, signed and delivered at Nairobi this 14th day of November, 2019.

A. MBOGHOLI MSAGHA

JUDGE