



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**(CORAM: CHERERE-J)**  
**COMMERCIAL CASE NO. 83 OF 2018**  
**(FORMERLY ELC CASE NO. 269 OF 2017)**

**BETWEEN**

**ERI LIMITED.....PLAINTIFF/JUDGMENT DEBTOR**

**AND**

**EQUITORIAL COMMERCIAL BANK**

**(Formerly Southern Credit Banking**

**Corporation Limited).....1<sup>ST</sup> DEFENDANT/JUDGMENT CREDITOR**

**ZAINUL GALIB VELJI.....2<sup>ND</sup> DEFENDANT JUDGMENT CREDITOR**

**AND**

**SANGRAJKA DAMYANTI.....OBJECTOR**

**RULING**

1. The Judgment Debtor's claim against the Judgment Creditors was struck out with costs by an order dated 08<sup>th</sup> September, 2016.
2. The Judgment Creditors commenced execution and a proclamation notice dated 17<sup>th</sup> December, 2018 was issued in execution of the decree herein.

**Objection**

3. On 19<sup>th</sup> December, 2018, the Objector/Applicant filed a notice of motion of even date premised under the provisions of Section 1A, 1B, 3,3A, 44 and 63(e) of the Civil Procedure Act and Order 51 and 52 of the Civil Procedure Rules seeking prayers **THAT**: -

**a. The attachment herein be raised and/or vacated**

**b. Costs of this application be payable to the Objector**

4. The application is based on the grounds among others that the Objector/Applicant has a beneficial interest on motor vehicle KAT 666R Toyota Carina and assorted household goods, tyres or any other properties found in her matrimonial home in Nehru Road Milimani Estate in Kisumu.

5. The application is supported by an affidavit sworn by the Objector/Applicant on 19<sup>th</sup> December, 2018 in which she reiterates the grounds on the face of the application. Annexed to the affidavit is a Proclamation Notice and Auctioneer's bill of costs; decree and warrants of attachment, logbook for M/V KAT 666R Toyota Carina which she avers was bought by her son who stays in South Africa as a birthday present and notice of intention to proceed with attachment all marked **SRD1** to **SRD4** respectively. She similarly avers that the proclamation was not prepared at her premises.

6. The application is opposed on the basis of a replying affidavit sworn by the 2<sup>nd</sup> Defendant/Respondent on 25<sup>th</sup> January, 2019. He avers that the warrants of attachment were served on Mr. Rasik Lavji **Sangrajka, a director of the Eri Limited (Judgment Debtor). It has been averred that the Applicant has not demonstrated that she resides in the premises where the property was proclaimed by the auctioneer.**

7. In her further affidavit, the Applicant/Objector avers that the warrants of attachment were served on one Francis Odundo a house help of Rasik Lavji **Sangrajka.**

#### **Analysis and determination**

8. I have carefully considered the application in the light of the affidavits on record and submissions filed on behalf of the Applicant/Objector and the 2<sup>nd</sup> Defendant/Respondent.

9. The law is clear; under Order 22 rule 51(1) of the Civil Procedure Rules that:

*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. The objector bears the burden of proving that she is entitled to or has legal or equitable interest on the whole or part of the attached property. (See **Awo t/a Shariff Mohamed Investment v Abdikadir Shariff Abdirahim & Another (2006) eKLR.**

10. The Applicant/Objector's assertion that the proclamation was not prepared at her premises is not convincing for the reason that it has not been demonstrated that the auctioneer had any other means of determining what was in the premises without visiting it.

11. And whereas M/V KAT 666R Toyota Carina is not registered in the name of the Applicant/Objector, it doesn't belong to the Judgment Debtor either and cannot therefore be the subject of attachment to satisfy a decree against the Judgment Debtor.

12. I have considered the Applicant/Objector's claim and I find that she has not placed any material before the court, sufficient to demonstrate that she has a legal or equitable interest in the whole or part of any assorted household goods, tyres or any other properties proclaimed on 17<sup>th</sup> December, 2018 at the premises along Nehru Road Milimani Estate in Kisumu.

#### **DISPOSITION**

13. Consequently, the notice of motion dated 29.6.18 partly succeeds and is allowed on the following terms: -

**a. Attachment of M/V KAT 666R Toyota Carina is lifted.**

**b. The Applicant/Objector is condemned to pay to the 2<sup>nd</sup> Judgment Creditor the costs of this objection proceedings**

**DATED AND DATED IN KISUMU THIS 7<sup>th</sup> DAY OF November 2019**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant - Okodoi**

**For Objector/Applicant -Mr. Ayayo hb for Mr. Achura**

**For plaintiff/Judgment Debtor - N/A**

**For 1<sup>st</sup> Judgment Creditor -N/A**

**For 2<sup>nd</sup> Judgment Creditor -Ms. Onsongo hb for Mr. Otieno**