



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
CIVIL CASE NO.347 OF 2016

AHMED GELLE DUALE.....1ST PLAINTIFF

AHMED ALI DUALE.....2ND PLAINTIFF

VERSUS

ALI HAJI MOHAMMED SHIRE.....DEFENDANT

AND

FATUMA.....OBJECTOR

RULING

This is a ruling on application dated 15th June 2017 filed by the objector herein. It seeks to stay execution of a decree and lift and/or set aside attachment of objectors goods. Grounds on the face of the application are that the judgment debtor has no assets in the premises, and goods attached by auctioneers belong to the objector. The application is supported by affidavit sworn by Fatuma Jama Mohammed sworn on 15th June 2017 and a further affidavit sworn on 22nd June 2017. She averred that on 8th June 2017 trans-field Auctioneers attached her household goods and her motor vehicle registration number KBQ208Q by way of proclamation report dated 8th June 2017. She attached logbook and receipts for household goods to confirm that she is the owner. She deponed that her daughter informed the auctioneers that the judgment debtor does not live in Kenya. She prayed for lifting of the attachment as the goods belong to a wrong party not judgment debtor.

In response the defendant/respondent filed replying affidavit sworn by the 2nd plaintiff herein on 23rd June 2017. He averred that the objector is the wife of the judgment debtor and that they live in the same house where proclamation took place. He stated that the objector has failed to disclose to this court that summons were served in the same house where proclamation took place. He averred that at the time of proclamation the defendant's daughter confirmed to the auctioneers that the house belong to the defendant and called him to notify him of the attachment. He averred that even if the objector has stated that the defendant does not currently live in Kenya, it does not mean the household goods no longer belong to him. He added that annexures FJA3 do not prove with certainty that the goods belong to the objector; that there is no sufficient prove that the goods do not belong to the defendant. He urged court to dismiss the objection proceedings with costs.

Counsels for the decree holder and the objector submitted orally. Mr. Mutua holding brief for Wandia Advocate for the objector submitted that the objector has disclosed that she is the wife of the judgment

debtor but the judgment debtor lives in Somalia they do not live together. He submitted that the judgment debtor has submitted that the motor vehicle is registered in her name as shown in the logbook attached. He submitted she has equally attached receipts for household goods from a reputable franchise ODDS & ENDS which show they were purchased between year 2010 and 2012. He further submitted that the replying affidavit other than indicating that summons were served in the same place where proclamation was done it does not dispute ownership.

In response Mr. Wesonga for the Decree holder the judgment debtor is colluding with the objector to run away from the Decree of this honorable court. He submitted that it is Mr. mutua who entered appearance for the judgment debtor. He added that summons were served in the premises where goods were proclaimed, its admitted that the objector is the wife to the judgement debtor; the only reason given is that the judgment debtor no longer live with objector but there is no prove that they never purchased goods together. He conclude that the judgment debtor is trying to run away from this courts decree.

In response Mr. Mutua said he is holding brief for wandia who is on record for the objector as earlier indicated in the Coram. He submitted that counsel for the decree holder has not challenged that the log book is in the name of the objector and the goods cannot be said to belong to the judgment debtor. He prayed that find that the goods belong to the objector and lift attachment.

I have considered submitted by both counsels. I have also perused pleadings herein and annexures to the affidavits supporting the application. On perusal of the logbook I note that the objector was registered as the owner of the vehicle attached on 6th October 2011. Authenticity of the log book has not been challenged nor is there prove that she purchased it with the judgement debtor. Receipts annexed to the further affidavit show that the household goods were purchased in 2010 and 2012. ETR receipts are also annexed. Authenticity of the receipts have not also been challenged. They all bear the objectors name. It is not disputed that the objector is the wife of the judgement debtor. She is not however a party to this suit which gave rise to decree herein and the fact that she is a wife does not mean that she cannot own property independent from her spouse unless it is proved that the spouse contributed to the purchase of the propert. There is no prove of contribution by judgment debtor nor transfer of property to objector to avoid payment of debt. From the forgoing I find that the goods attached belong to the objector and lift the attachment accordingly.

Dated and Delivered this...14THday of JULY 2017

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

.....COUNSEL FOR PLAINTIFF/RESPONDENT

.....COUNSEL FOR DEFENDANT

..... COUNSEL FOR OBJECTOR/APPLICANT

.....COURT ASSISTANT