

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL CASE NO 545 OF 1991

MATHIGIAPPLICANT

VERSUS

MUNUVI & ANOTHER..... OBJECTOR

RULING

This is an application under order XXI rule 58 of the Civil Procedure Rules seeking an objection to the attachment of a house which was done in execution of the decree in this suit.

The evidence by the affidavits which were in this application reveal the following events:

On the 12th August, 1991 the plaintiff was given judgment in the suit after the defendant had failed to file his defence. It was followed by an attachment of the defendant's *swahili* house at Likoni on 29th October, 1991. Both on the 9th December, 1991 a consent order was recorded to the effect that the defendant would settle the sum claimed by monthly instalments of Shs 12,500/-. The defendant defaulted on the consent order. His *swahili* house without land was re-attached on the 21st October, 1992 in execution of the decree.

But by the notice given on the 26th October, 1992 the objector said that the house no longer belonged to the defendant and was not available as property to be attached and disposed of in order to satisfy the decree. He contended that he had bought the same on the 29th December, 1991 which was 20 days from the date when the consent order was recorded. According to Miss Munyari for the decree holder the sale transaction cannot be valid as the property was still under attachment; it remained under attachment until the debt was fully liquidated. But Mr Ogola argued that the objector as a purchaser had no knowledge of the vendor's problem in relation to the property; that the objector was a purchaser for value without notice. In the meantime the judgment debtor has vanished into the thin air and so he cannot be traced to account for his wickedness to either party.

I uphold Mr Ogola's submission. There is no evidence which would prove or suggest that the objector knew that the property was under attachment when he bought it. I therefore find him to be an innocent purchaser for value without notice. Thus, the title he has acquired in the property cannot be challenged by the decree holder in this case. Accordingly, the application is dismissed with costs.

Dated and Delivered at Mombasa this 22nd day of October, 1993

I.C.C. WAMBILYANGAH

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JUDGE