



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT NAIROBI**

**CIVIL SUIT NO 1640 OF 1981**

**COMMONWEALTH DEVELOPMENT CORPORATION.....**  
**.....PLAINTIFF**

**versus**

**WAMINNEH ENTERPRISES LIMITED & 4 OTHERS ..... RESPONDENT**

**RULING**

On August 27, 1984 American Life Insurance Company (hereinafter referred to as the Objector) filed this chamber summons seeking for two main orders.

- 1) That the D/A be restrained from proceedings with the sale of the judgment debtor's property.
- 2) If allowed the objection be allowed to place a reserve price

The sale did not proceed. It was stopped a few days before the date of the sale. Secondly it is no longer necessary for the decree holder to sell the property because he has been paid the decreed amount in full. The only issue which received and was argued before me was the question of the auctioneers costs and costs of this application. It is the objection contention that their costs and those costs of the auctioneer be paid by either the decree holder as the judgment debtor. Their reasons being (a) that efforts made out of court to have the plaintiff/respondent fix a reserve price completely failed thereby necessitating the filing of these proceedings. (b) The objector had no other way of stopping the auctioneer since making the application he could not have otherwise joined as a 3rd party.

Plaintiff/respondent have objected to the suggestion that they bear the costs. Main grounds being that:-

- (a) The proceedings held would not have been necessary if the objector had made an application before the deputy registrar for a reserve price to be fixed.
- (b) The whole chamber summons was misconceived.
- (c) The interest of the objector had already been taken care of by the registrar. Paragraph (3) of the proclamation clearly states that the sale would be subject to a charge in favour of the objector.

As to whether the chamber summons would have been heard, succeeded or failed is a matter neither here nor there. I will therefore not venture and make findings as to whether the chamber summons was properly before me or not. This is not the issue that has been conversed before me. However, in passing it may be useful to mention that there is a lot of common sense in Mrs Mugo's submission in that the objection could not have been a party to the proceedings before the registrar since he was not a party to the whole proceedings. His coming to court therefore to seek the orders he sought was not the kind of step

he could have taken before the registrar.

Finally therefore, I have carefully considered the application by the objector and heard the arguments on both sides. I am satisfied that there was no necessity whatsoever for the objector to lodge further proceedings in the manner they are now claiming. My view is supported by the fact that in the notification of sale the decree holder advocate has disclosed the interest of the objector in that if the property had to be sold it was subject to the encumbrance including the American Life Insurance Charge, and they had a further opportunity of submitting particulars of their charge to the decree holder's advocate. They also could have appeared before the registrar. I hereby therefore rule that the auctioneers charges should be borne by the objector along with the costs of this application. Such costs to be taxed and paid forthwith.

**E OWUOR (MRS)**

**JUDGE**

September 26, 1986

Coram: Owuor (J)

Meneck for the respondent

Mugo for the applicant

Court Clerk – Nganga

Court: Ruling read in court