



REPUBLIC OF KENYA



**Gathere v Kaburi & 3 others (Environment & Land Case  
664 of 2017) [2024] KEELC 755 (KLR) (19 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 755 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 664 OF 2017  
MN GICHERU, J  
FEBRUARY 19, 2024**

**BETWEEN**

**DR SAMUEL KAGIMA GATHERE ..... PLAINTIFF**

**AND**

**KENNEDY MONCHERE KABURI ..... 1<sup>ST</sup> DEFENDANT**

**ALLOYS NYAMBWORO OSORO ..... 2<sup>ND</sup> DEFENDANT**

**GH MEENYE T/A KIRIMA ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of objection dated 2/5/2023. The objection which is by the two objectors Spourtinal Moraa and Elizabeth Nyabocho is brought under Order 22 Rule 51 (1), (2) and 3 [Civil Procedure Rules](#). It seeks the following residual orders.
  - a. Lifting of the proclamation and attachment levied on the objectors goods by Betabase Auctioneers, agents of the plaintiff/decreed holder on 25/4/2023.
  - b. That the costs of these proceeds be provided for.
2. The motion is supported by an affidavit sworn by the first objector dated 2/5/2023 which has two (2) annexures which include the proclamations, the invoice, the warrants of attachment and sale and four cash sale receipts in the names of the objectors. In summary, the objectors are saying that they own the attached goods and that they are not owned by the judgment debtor.
3. The decreed holder has intimated that he wishes to proceed with the attachment of the goods as attached. In so doing, he has sworn a replying affidavit dated 15/5/2023 in which he deposes that the cash sale receipts are fictitious and replete with falsehoods and conjecture. The receipts are also said to offend



the *Stamp Duty Act* for failure to indicate the duty paid and missing other mandatory electronic tax register requirements. Secondly the decree holder deposes that the said goods were found in the homes of the judgment debtors.

4. Further to the replying affidavit, the decree holder has filed a certificate of urgency dated 4/12/2023 which is not supported by any notice of motion or affidavit in which he states that he is desirous of exercising other options in execution of the decree but he is hampered by the order dated 8/5/2023.

5. I have carefully considered the objection to attachment in its entirety including the grounds, the supporting affidavit, the replying affidavit, the annexures and the submissions by learned counsel for the parties including the law cited therein. I make the following findings.

Firstly, the decree holder has not explained how the attached goods were identified to belong to the judgment debtors. There is no evidence of the house in which they were found. There is no explanation of the relation between the objectors and the judgment debtors. In view of the objection, it was incumbent upon the decree holder to lay a strong basis regarding ownership of the said goods.

6. Secondly, the evidence adduced by the objectors saying that they own the attached goods cannot be ignored in the absence of better evidence proving ownership of the said goods by the judgment debtors.

7. Thirdly, these proceedings relate to the attachment of the goods listed in the proclamation dated 25/4/2023. They have nothing to do with any other property that belongs to the judgment debtors. The other modes of execution of decrees known to the law are open to the decree holder and have been open all through.

8. In summary, I uphold the objection to the attachment dated 2/5/2023 and also rule that the decree holder is free to exercise all options available to him to execute the decree and enjoy its fruits.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 19<sup>TH</sup> DAY OF FEBRUARY 2024.**

**M.N. GICHERU**

**JUDGE**

