



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT KERICHO

CAUSE NO.12 OF 2017

STEPHEN KIPROTICH KOECH.....CLAIMANT

VERSUS

HON. EDWIN K. BARCHILEI.....RESPONDENT

AND

JOEL SITIENEI.....OBJECTOR

RULING

By application and Notice of Motion dated 8th February, 2019 the Objector herein Joel Sitienei applied for stay of execution by the claimant on the grounds that he is entitled to and has legal and equitable title and beneficial interests in the proclaimed property set out in the proclamation of attachment in execution of the decree of the court issued on 1st February, 2019 over;

- a) motor vehicle KBK 420C;
- b) Two flat screen TV 42 inch Samsung;
- c) Two coffee tables;
- d) Three sets of sofa sets;
- e) One radio system;
- f) Motor vehicle KAP 309P.

These properties cannot be sold in execution of the warrants against the judgement/debtor as they belong to the objector. The claimant has caused the objections' property to be proclaimed by James Makori trading as Lifewood Traders Auctioneers on 1st February, 2019 in execution of a decree passed on 15th September, 2017. The proclamation of attachment was not addressed to the objector.

In his affidavit in support of the application and objections made, Mr Sitienei avers that the auctioneers proclaimed his properties at his home in Eldoret causing him to file the objections herein. Upon perusal of the court file, the proclamation issued related to vehicle No.KAP 309W Nissan DCAB pickup which belongs to him upon purchase in the year 2014 from Drake Anlaju Company limited and is yet to change the transfer documents. Vehicle No.KBK 420C belongs to him having purchased it from Ruth Mary Muthoni Mugane and is yet to have it transferred.

The furniture and electronic equipment proclaimed belong to the objector placed in his matrimonial home. To allow such properties to be proclaimed is wrongful and shall cause irreparable loss and damage to the objector and should be stopped.

The claimant filed Grounds of Opposition to the application by the Objector and on the basis that

No legal and or equitable interest has been established by the objector with regard to the proclaimed property. There is no nexus between the objector and motor vehicle registration No. KAP 309W and KBK 420C as the objector is not the registered owner and the Traffic Act deny the objector the standing to make objections raised. No certificate of search over the vehicle has been attached to the application and no proof of purchase for the other properties. There is no record or evidence given with regard to Motor vehicle No.KBK 420C and the objection proceedings are a nullity.

The respondent did not attend these proceedings.

The objector and claimant addressed the application by written submissions.

The objector submitted that his properties were proclaimed by the auctioneers to satisfy the decree of the court for Ksh.510,140.00 and being aggrieved, the objector filed these proceedings. The proclamation was not warranted as the objector has legal and equitable interests in the whole and all the properties attached. The objector was not a party to the proceedings and his property should not be used to satisfy the decree herein. The objector has a privileged position over the attached properties and the objector has demonstrated ownership and evidence of his legal and equitable interest in the whole attached properties.

The objector relied on **Kenya Chemicals & Allied Workers univon versus East Africa Portland Cement Company & another; Dubai Bank (K) Ltd versus Come-cons Africa Ltd & Impack Holdings Co. Ltd [2012] eKLR.**

The claimant submitted that the motion by the objector has failed to meet the provisions of Order 22 Rule 55 and 54 of the Civil Procedure Rules and no relief has been pleaded as set out in the case of **Captain Harry Gandy versus Caspar Air Charters Limited [1956] EACA.** Under section 8 of the Traffic Act there is no nexus established between the objector and ownership to motor vehicles KAP 309W and KBK 420C to claim any interest(s) therefrom. There is no proof of purchase or a search made to confirm ownership status as held in **Arun C Sharma versus Ashana Raikundalia t/a Raikundalia & Co Advocates & 2 others [2014] eKLR.**

The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, *inter alia*, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached. So, a mortgagor can bring an objection on the ground that his interest in the property, *viz*, the equity of redemption cannot be attached and sold in execution of a decree against the mortgagee. See **Precast Portal Structures versus Kenya Pencil Company Ltd & 2 others [1993] eKLR;**

The burden is on the objector to prove and establish his right to have the attached property released from the attachment. On the evidential material before the Court, a release from attachment may be made if the Court is satisfied.

(1) that the property was not, when attached, held by the judgment-debtor for himself, or by some other person in trust for the judgment-debtor; or

(2) that the objector holds that property on his own account.

The Court takes into account the grounds of objections raised, and the contentions of the respective parties to the objection proceedings. Any special features evident in the proceedings which throw light on the controversy must be regarded.

the objector's case is that the auctioneers under the instructions of the claimant as the decree holder visited his matrimonial house in Eldoret and proclaimed his properties being motor vehicles No.KAP 309W and KBK 420C which vehicles he purchased from Drake Anlaju Company Limited in the year 2014 and from Ruth Mary Muthoni Mogane respectively but has not effected the transfers of the same to his name. that the other household items proclaimed belong to him and under use in his matrimonial home.

The objector attached the Kenya Revenue Authority registration book for motor vehicles attached. There is nothing more.

The rationale should be traced under Order 22 rule 51(1) of the Civil Procedure Rules which provides as follows;

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.

Has the objector established a legal or equitable interest in the whole or part of any property attached in execution of the decree herein?

As submitted by the claimant in the case of **Arun C. Sharma versus Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others [2014] eKLR** where the court held as follows;

The objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The key words are; entitled to or to have a legal or equitable interest in the whole or part of the property. H as the objector proved it is entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree?

In this case, the Kenya Revenue Authority certificates for motor vehicles KAP 309W and KBK 420C are not evidence of ownership by the objector nor are they evidence of legal possession by him. these cannot be used to found objection proceeding on the basis that the objector is *entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree.* Second, it cannot be tendered in evidence in these proceedings or their own and without any other material for legal title or possession in equity as prove that the objector is *entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree.*

The objector has not demonstrated any direct, indirect or remote relation with the attached properties to justify the objection proceedings herein. The averments in the affidavit and in the application are bare.

For these reasons, I disallow the objections, dismiss the proceedings and prayers therein, and allow the attachment and execution shall proceed. The objector is to pay the costs of these proceedings to the decree-holder. Orders accordingly.

Delivered in open court at Nakuru this 29th day of April, 2019.

M. MBARU

JUDGE

In the presence of: