



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 2339 OF 2012**

**CONSOLIDATED WITH CAUSE NO 2340 OF 2012**

**EDITH MUTUKU.....1<sup>ST</sup> CLAIMANT**

**MARY WAVINYA.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**KARESH HARDWARE CONSTRUCTION CO LTD.....1<sup>ST</sup> RESPONDENT**

**RICHARD KALEMBE NDILE.....2<sup>ND</sup> RESPONDENT**

**AND**

**MAGDALENE KAMENE.....OBJECTOR**

**RULING**

1. On 6<sup>th</sup> November 2015 I delivered judgment in favour of the Claimants in the respective sums of Kshs. 117,277 and 102,667 plus costs.
2. Upon attachment, the Objector moved the Court by Notice of Motion under certificate of urgency dated 8<sup>th</sup> February 2017 seeking stay of execution.
3. The application which is supported by the Objector's affidavit and further affidavit sworn on 8<sup>th</sup> February 2017 and 28<sup>th</sup> February 2017 respectively is based on the following grounds:
  - a) That the attachment is unlawful;
  - b) That the attached goods belong to the Objector and not the Respondent;
  - c) That the Objector will suffer great prejudice if the execution proceeds.
4. In her affidavits in support of the application the Objector depones that she is the wife of the 2<sup>nd</sup> Respondent and that she is the legal and equitable owner of the attached goods.
5. The Objector further depones that she is not a party to this suit and was not aware of its existence until 27<sup>th</sup> January 2017 when her goods were proclaimed. She adds that she is not a director in the 1<sup>st</sup> Respondent Company and has no co-ownership of the proclaimed goods with the Respondents.

6. The Claimants' response is contained in a relying affidavit sworn by the 1<sup>st</sup> Claimant, Edith Mutuku on 23<sup>rd</sup> February 2017. She states that the Objector's application is incompetent.

7. Mutuku depones that in a bid to defeat realisation of the Court award the Respondents have closed down their office. She deems the application by the Objector who is the 2<sup>nd</sup> Respondent's wife, as a further move to frustrate realisation of the award.

8. This application turns on the question whether the Objector has demonstrated legal and equitable ownership of the proclaimed goods.

9. In her further affidavit sworn on 28<sup>th</sup> February 2017, the Objector states she has no record of ownership of the proclaimed goods because she never anticipated that she would be required to prove ownership of her household goods.

10. Order 21 Rule 53 of the Civil Procedure Rules specifically places the burden of proof in an application such as the one before me on the Objector (see

***Harley's Limited v Wockaine (K) Limited (HCCC No 1753 of 2001).***

11. If the objector wishes to stop execution which is a legal process, they must have the basis to do so. It is not enough for an Objector to state that the proclaimed goods belong to them. In this case, the Objector is the wife of the 2<sup>nd</sup> Respondent and in the absence of clear evidence the Court cannot decipher the proprietorship arrangement between man and wife.

12. In light of this, the Objector's application dated 8<sup>th</sup> February 2017 is dismissed with costs to the Claimants. The interim orders granted on 9<sup>th</sup> February 2017 are vacated.

13. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Jumba for the Objector

Mr. Onenga for the Claimants