



REPUBLIC OF KENYA



**Munialo v Simiyu (Civil Appeal E023 of 2024)
[2025] KEHC 788 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E023 OF 2024
REA OUGO, J
JANUARY 29, 2025**

BETWEEN

DAVID BARASA MUNIALO APPELLANT

AND

LYDIA NAFULA SIMIYU RESPONDENT

*(An appeal from the original Bungoma Chief
Magistrates Court Bungoma CMCC No 222 of 2022)*

JUDGMENT

1. This is an appeal against the ruling of the subordinate court which dismissed the appellant’s application dated 15th September 2023. The appellant filed an objection to an attachment claiming that he was not a party to the main suit and that attachment was done without proclamation.
2. By way of background the respondent filed a suit against PAULINE BARASA MUKOKO. Judgment was entered in favour of the respondent and she was awarded general damages of Kshs 220,000/- and Kshs 3,000/- respectively. Lufree Auctioneers on instructions of the respondent obtained warrants of attachment and proclaimed 6 heads of cattle and a plough with its York.
3. The trial magistrate considered the objection and held as follows:

“There is nothing to show that the same belonged to the objector in any way without wholly or otherwise. In the circumstances, I would find no merit in his allegation of ownership of the attached goods and dismiss it in favour of the respondent. Additionally, the record shows that the said goods have already been auctioned and it is apparent that proceeds thereof have already been paid out forward settlement of the decretal sum. It would be correct to say that this application is apparently overtaken by events.”



4. At the hearing of this appeal the appellant submits that he was an innocent party and suffered injustice as his livestock worth Kshs 330,000/- was sold by auction and that he was further compelled to pay Kshs 95,600/- as costs. He submits that Pauline Mukoko is his daughter but is married and stays with her husband in Lumakanda and resides in Thika where they work. He argued that the respondent intentionally misdirected the auctioneers to his home.

Analysis And Determination

5. The only issue raised by the appeal is whether the objection was merited. The appellant argues that the livestock were taken from his home even though the case involved his daughter he was not a party to the suit and therefore the proclamation and sale were unlawful.
6. However, a careful look at the evidence before the trial court does not reveal that the cows were taken from his home and neither does it explain his relationship with Pauline Mukoko. I have reproduced the appellant's supporting affidavit as filed before the lower court below:
 1. That I am the objector/Applicant herein hence competent to swear this supporting affidavit.
 2. That my animals were attached by LUFREE AUCTIONEERS on the 15th day of September 2023 without any proclamation.
 3. That the Auctioneers carried away my five cows and one pig. (Annexed is the notification of sale...)
 4. That the auctioneers did not serve me with any proclamation notice to enable me to oppose the attachment of my animals.
 5. That I am not a party to the suit herein and hence my animals were attached wrongly.
 6. That in the above circumstances, I pray that the auctioneers be ordered to release my animals to me unconditionally.
 7. That I also pray that the auctioneer be stopped from selling the animals within 48 hours.
 8. That if the above animals are sold, I will suffer irreparable loss since I am not a party to the case herein.
 9. That the plaintiff and the defendant/respondent will not suffer any loss if the above orders are granted.
7. The appellant did not give any evidence in his supporting affidavit that the cows were in his home and not the home of the judgment debtor therefore they were his. He has revealed this in his submissions and it is trite law that submissions cannot take the place of evidence.
8. In an application for objection to execution, the objector must show that the goods attached belong to him and not the judgment debtor (see Julius Owino Abiero & Riley Falcon Security Services Ltd v Oscar Otieno Odongo t/a Odongo Investment Auctioneers [2017] KEHC 4333 (KLR)). In Dubai Bank (K) Ltd v. Come- Cons Africa Ltd and Impak Holdings Co Ltd (2012) eKLR the court correctly expressed itself thus:

“ Although the law is that in the objection proceedings the court does not and cannot make a finding as to the ownership of the property the subject of the objection proceedings, but simply decide whether or not the objector has interest legal or equitable in the attached property, it is equally true that the onus of proof in objection proceedings is on the objector



to establish ownership see Chatabhai M. Patel & Another HCCC No. 544 Of 1957 (Lewis)
On 8/12/58 Hcu (1958) 743.

9. The appellant did not give any evidence of the ownership of the home and cows. The appellant presented no evidence sufficient to establish, on a balance of probabilities, his ownership interest in the attached goods. Therefore, the trial court was correct in dismissing his application. Consequently, the appeal is hereby dismissed. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 29TH DAY OF JANUARY 2025.

R.E. OUGO

JUDGE

In the presence of:

David Barasa Munialo /Appellant - in person

Miss Wanyama - For the Respondent

Wilkister - C/A

