



Case Number:	Civil Case 545 of 1991
Date Delivered:	22 Oct 1993
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	Ruling
Judge:	Isaac Charles Cheskaki Wambilyangah
Citation:	Mathigi v Munuvi & another [1993] eKLR
Advocates:	-
Case Summary:	<p style="text-align: center;">Mathigi v Munuvi & another</p> <p style="text-align: center;">High Court, at Mombasa October 22, 1993</p> <p style="text-align: center;">Wambilyangah J</p> <p style="text-align: center;">Civil Case No 545 of 1991</p> <p><i>Civil Practice and procedure – execution objection to attachment – application for – where one’s property is attached – debtors entering into consent agreement for repayment - default in payment leading to sale of property to a third party - whether the innocent purchaser without notice acquired a valid title that could not be challenged.</i></p> <p>This was an application under order XXI rule 58 of Civil Procedure Rules seeking attachment of the house which was done in executing decree. On 12.8.91 the plaintiff was given judgment after defendant had failed to file defence. Defendant’s <i>swahili</i> house was then attached on 29.10.91.</p> <p>9.12.91, a consent order was recorded to the effect that defendants would settle the sum claimed by monthly installments of Shs 12,500, whereupon he defaulted and the house was</p>

	<p>reattached on 21.10.92 in execution of decree. The objector gave notice on 26.10.92 that the house no longer belonged to the defendant, that he bought it on 29.12.91, 20 days from date when consent was recorded, and that he was purchaser without notice.</p> <p>It was contended for decree holder that he house was still attached, remained attached until the debt was cleared.</p> <p>Held:</p> <ol style="list-style-type: none"> 1. The objector was an innocent purchaser for value without notice. 2. The title the objector acquired in the property could not be challenged by the decree holder in the case. <p><i>Application dismissed with costs.</i></p> <p>Cases</p> <p>No cases referred to</p> <p>Statutes</p> <p>Civil Procedure Rules (cap 21 Sub Leg) order XXI rule 58</p> <p>Advocates</p> <p><i>Miss Munyari</i> for the Decree holder</p> <p><i>Mr Ogola</i> for the Objector</p>
Court Division:	Civil
History Magistrates:	-
County:	Mombasa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-

Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL CASE NO 545 OF 1991

MATHIGIAPPLICANT

VERSUS

MUNUVI & ANOTHER..... OBJECTOR

RULING

This is an application under order XXI rule 58 of the Civil Procedure Rules seeking an objection to the attachment of a house which was done in execution of the decree in this suit.

The evidence by the affidavits which were in this application reveal the following events:

On the 12th August, 1991 the plaintiff was given judgment in the suit after the defendant had failed to file his defence. It was followed by an attachment of the defendant's *swahili* house at Likoni on 29th October, 1991. Both on the 9th December, 1991 a consent order was recorded to the effect that the defendant would settle the sum claimed by monthly instalments of Shs 12,500/-. The defendant defaulted on the consent order. His *swahili* house without land was re-attached on the 21st October, 1992 in execution of the decree.

But by the notice given on the 26th October, 1992 the objector said that the house no longer belonged to the defendant and was not available as property to be attached and disposed of in order to satisfy the decree. He contended that he had bought the same on the 29th December, 1991 which was 20 days from the date when the consent order was recorded. According to Miss Munyari for the decree holder the sale transaction cannot be valid as the property was still under attachment; it remained under attachment until the debt was fully liquidated. But Mr Ogola argued that the objector as a purchaser had no knowledge of the vendor's problem in relation to the property; that the objector was a purchaser for value without notice. In the meantime the judgment debtor has vanished into the thin air and so he cannot be traced to account for his wickedness to either party.

I uphold Mr Ogola's submission. There is no evidence which would prove or suggest that the objector knew that the property was under attachment when he bought it. I therefore find him to be an innocent purchaser for value without notice. Thus, the title he has acquired in the property cannot be challenged by the decree holder in this case. Accordingly, the application is dismissed with costs.

Dated and Delivered at Mombasa this 22nd day of October, 1993

I.C.C. WAMBILYANGAH

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JUDGE



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