



**Canuk Holdings Limited v Lutta t/a Lutta & Company Advocates
& 2 others; Tuitoek (Objector) (Civil Case E822 of 2010)
[2023] KEHC 1050 (KLR) (Commercial and Tax) (17 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E822 OF 2010
EC MWITA, J
FEBRUARY 17, 2023**

BETWEEN

CANUK HOLDINGS LIMITED APPLICANT

AND

PATRICK LUTTA T/A LUTTA & COMPANY ADVOCATES ... 1ST DEFENDANT

ENOCK TUITOEK 2ND DEFENDANT

MAURICE ALDOUS OPAR 3RD DEFENDANT

AND

MELODY JEMUTAI TUITOEK OBJECTOR

RULING

1. Melody Jemutai Tuitoek, (Jemutai) the objector, filed a notice of objection dated July 21, 2021, together with a notice of motion of the same date, under orders 22 rules 51 and 53 of the *Civil Procedure Rules*, opposing the proclamation and attachment of her goods on July 16, 2021 in satisfaction of the decree in this suit.
2. Jemutai sought an order raising attachment of the goods on the basis that she has a legal and equitable title and beneficial interest on the attached goods and further that she is not the judgment debtor or a party to the suit.
3. According to Jemutai, she is the marketing manager of Specialized Suppliers Investments Limited and resides in Maisonette No 10 on Land Reference 209/8198 Kiambere Road Nairobi where the



goods were attachment. Jemutai further stated the premises were rented for her by the company, (her employer).

4. According to Jemutai, Auctioneers attached the goods on July 16, 2021 in her absence and only the housekeeper one Lucky Chamwada was present. Jemutai protested the attachment to no avail. She maintained that she is not the judgment debtor and that the decree is against Maurice Aldous Opar and her father, Enock Tuitoek (Tuitoek).
5. Jemutai argued that her application had met the threshold for raising the attachment and relied on [*Arun C Sharma v Ashana Raikundalia T/A A Raikundalia & Co Advocates & 4 others \[2014\] eKLR*](#) and [*Stephen Kiprotich Koech v Edwin K Barchilei; Joel Sitienei \(Objector\) \[2019\] eKLR*](#).
6. Jemutai further relied on [*Joseph Mutenga v Photofocus U Ltd \[1996\] KLR*](#) and [*Equitorial Commercial Bank Ltd v Bubacon Agencies Ltd & 3 others \[2013\] eKLR*](#) to argue that it is unreasonable to expect her to produce receipts going back several years to prove ownership of the attached goods since she was in possession at the time of passing of the decree.
7. Although Jemutai admitted that Tuitoek, the 2nd judgment debtor, would occasionally visit and spend some days in the premises, she is independent from her father's liability.

Response

8. Canuk Holdings Limited, (Canuk), opposed the application through a replying affidavit sworn its director, Zoher Pirbhai, on September 2, 2021. Canuk argued that Jemutai did not serve a notice of the objection and disputed Jemutai's claim of ownership of the attached goods. According to Canuk, jemutai had not adduced evidence to prove ownership of the attached goods. Canuk, maintained that the tenancy agreement attached to the objection did not prove that the premises were rented by specialized Suppliers Ltd. Canuk further asserted that Jemutai had admitted that she resided in the premises with the 2nd judgment debtor.
9. Canuk maintained that Jemutai had failed to demonstrate that the attached goods belonged to her as no receipts were produced to prove ownership. Canuk relied on [*Foss v Harbottle \[1843\] 67 ER 189*](#) and [*East African Portland Cement Ltd v The Capital Markets Authority & 5 Others \(Petition No 600 of 2013\)*](#) and urged the court to dismiss the objection with costs.

Determination

10. What is before this court is an objection by Jemutai attachment of household goods by Canuk to satisfy the decree in this suit. Jemutai's case is that she is the owner of the goods; she is neither the judgment debtor nor a party to the suit and that there was no basis for attaching her goods to settle a decree she is not party to. Canuk on its part argued that Jemutai had not proved that she is the owner of the goods and, therefore, the objection should be dismissed.
11. There is no issue on whether or not Jemutai resided in the premises where goods were attached. What is in contention is ownership of the attached goods.
12. Order 22 rule 51 of the [*Civil Procedure Rules*](#) requires a person claiming to have legal interest in any property attached in execution of a decree to object to the attachment of the property and set the nature of the claim and how it relates to the property. In that respect, it is the duty of the objector in objection proceedings to adduce evidence to show that the attached goods belong to him/her.



13. In *Akiba Bank Ltd v Jetha & Sons Ltd [2005] eKLR*, the court observed that “for an objector to succeed in his objection he must exhibit evidence of his legal or equitable interest in the whole or part of any property attached in execution of a decree.”

1. In *Dubai Bank (K) Ltd v Come-Cons Africa Ltd and Impak Holdings Co Ltd [2012] eKLR*, the court again stated that:

[I]n 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...the onus of proof in objection proceedings is on the objector to establish ownership.

14. In *Zingo Investment Limited v Miema Enterprises Limited [2015] eKLR*, the Court of Appeal expressed itself thus:

It is our considered view that title documents or ownership of premises is not by itself sufficient in objection proceedings; there must be ample documentation of ownership of attached items. The issue is not ownership of premises but proprietary interest in the attached goods. If this were not the case landlords may well become objectors whenever a tenant's goods are proclaimed and this cannot be the law.

15. The decisions make it plain that an objector must adduce evidence of legal or equitable ownership of the goods attached in execution of a decree absence of which the objection proceedings cannot succeed.

16. Jemutai did not adduce evidence that she had legal or equitable interest in the attached goods. Her case is that since she is a tenant in the premises and therefore the attached goods be hers. Jemutai argued that it is not always that receipts must be produced to prove ownership as this may be an unreasonable requirement.

17. Mere occupation of premises does not confer on the occupier legal or equitable ownership of goods in the premises. One may even occupy furnished rental premises which would not in itself confer ownership, legal or equitable to that person. In that regard, the tenancy agreement Jemutai attached to the objection is not proof of ownership of the goods.

18. What is more, Jemutai admitted that Tuitoek, the 2nd judgment debtor, sometimes resides in the premises, thus casting doubt on the claim that she is the owner of the goods. The onus of proof in objection proceedings is on the objector to establish ownership and Jemutai could only do this by adducing ample documentation of ownership of attached items.

19. In the circumstances, and for the foregoing reasons, I am not satisfied that the Jemutai has established that she is the legal or equitable owner of the goods that were attached on premises to sustain these objection proceedings. The objection has no merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF FEBRUARY 2023

E C MWITA

JUDGE

