



African Banking Corporation Limited v Zeituns Holdings Limited & 5 others; Aden (Objector) (Civil Suit 648 of 2005) [2022] KEHC 54 (KLR) (Commercial and Tax) (31 January 2022) (Ruling)

Neutral citation: [2022] KEHC 54 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 648 OF 2005
DAS MAJANJA, J
JANUARY 31, 2022**

BETWEEN

AFRICAN BANKING CORPORATION LIMITED PLAINTIFF

AND

ZEITUNS HOLDINGS LIMITED 1ST DEFENDANT

ABDIRIZAK MAALIMU AHMED 2ND DEFENDANT

JABRI ABDULNASSIR SEIF 3RD DEFENDANT

SONIA WANJIRU 4TH DEFENDANT

ANITA NYAMBURA 5TH DEFENDANT

CHIEF LANDS REGISTRAR 6TH DEFENDANT

AND

ISAACK NOOR ADEN OBJECTOR

RULING

1. On 9th April 2021, this court concluded this matter on the following terms:
 - a. Judgment be and is hereby entered for the Plaintiff against the 1st, 2nd, 3rd, 4th and 5th Defendants jointly and severally for KES 227,626,588.49.00 save that judgment against the 2nd, 3rd, 4th and 5th Defendants shall be limited to KES 84,000,000.00 for each defendant.
 - b. Interest (a) shall accrue at court rates from the date of filing suit.



- c. The suit against the 6th Defendant is struck out.
 - d. The 1st, 2nd, 3rd, 4th and 5th Defendants shall bear costs of the suit.
2. In a bid to execute the decree, the Plaintiff instructed Wiskam Auctioneers (“the Auctioneers”) to proceed with execution by way attachment and sale of the Defendants’ moveable properties. The Auctioneers issued a proclamation dated 22nd October 2021 attaching several motor vehicles registration numbers; KDA 478A and KCC 988J, KCC 007P, KCF 186S and KCT 655P and personal effects from the home of the Major (Rtd) Isaak Noor Aden (“the Objector”). The Objector has now filed the application dated 16th November 2021 under Order 22 rules 51 of the Civil Procedure Rules seeking, inter alia, lifting of the attachment.
3. The application is supported by the Objector’s deposition sworn on 16th November 2021 and is opposed by the Plaintiff (“the Bank”) through the affidavit of its Legal Officer, Louis Omukhulu, sworn on 18th November 2021.
4. The main issue for determination is whether the Objector has established a legal or equitable interest in the whole or part of the attached property. Order 22 Rule 51 of the *Civil Procedure Rules* provides as follows:
 51. Objection to attachment [Order 22, rule 51.]
 - (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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 the parties and to the decree-holder of his objection to the attachment of such property.
 - (2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.
 - (3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.
5. The aforesaid provision places on the Objector the burden of proving that it has a legal or equitable interest on the whole or part of the proclaimed/attached goods. *In Chotabhai M. Patel v Chaprabhi Patel [1958] EA 743*, the court distilled the following principles:
 - a) Where an objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to attachment the court shall proceed to investigate the objection with the like power as regards examination of the Objector, and in all other respects as if he was party to the suit.
 - b) The Objector shall adduce evidence to show that at the date of attachment he had some interest in the property attached.
 - c) The question to be decided is, whether on the date of attachment, the Judgment Debtor or the Objector was in possession, or where the court is satisfied that the property was in the possession of the Objector, it must be found whether he held it on his own account or in trust for the Judgment



Debtor. The sole question to be investigated is, thus, one of possession of, and some interest in the property.

- d) Questions of legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment Debtor or some other person. To that extent the title may be part of the inquiry. [Emphasis mine]

6. As regards the motor vehicles, the question of ownership is easy to resolve by producing certificates of ownership to show that they are registered in the names of the objectors as such certificates are prima facie evidence of ownership under section 8 of the *Traffic Act* (Chapter 403 of the Laws of Kenya) (see also Joel Muga Opinja v. East Africa Sea Food Ltd [2013] eKLR). The evidence produced by the Objector shows as follows: KCC 988J is registered in the names of Rentco Africa Limited and Kenya Commercial Bank. KCC 989J is registered in the names of Rentco Africa Limited and Kenya Commercial Bank. KCC 007P is registered in the names of Rentco Africa Limited and Kenya Commercial Bank Limited. KDA 478A is registered in the names of Mwananchi Credit Limited and the Objector. KCF 186C is registered in the names of Rentco Africa Limited and Kenya Commercial Bank Limited.
7. It is clear from the deposition and certificates produced, the Objector has not shown his relationship with Kenya Commercial Bank and Rentco Africa Limited hence the attached property therein ought to proceed. I would however point out that Rentco East Africa Limited filed a Notice of Objection dated 15th December 2021 through the firm of Mukunga, Wathome and Company Advocates. The only vehicle that is owned by the Objector is KDA 478A hence the attachment on this motor vehicle is now raised.
8. As concerns the household goods, the Objector has only deponed that the Auctioneers came upon his residence and threatened to attach personal effects. He does not state whether the items belong to him or to the 5th Defendant, Anita Nyambura, who it is alleged is his wife. Neither the Objector nor the 5th Defendant has denied this averment. I therefore hold that the Objector has not proved that the household goods attached belong to him.
9. For the reasons I have set out above, I allow the 16th November 2021 on the following terms:
- a. The attachment in respect of motor vehicle registration number KDA 478A is registered in the names of Mwananchi Credit Limited and the Objector be and is hereby raised.
 - b. The attachment in respect of motor vehicle registration number KCC 988J, KCC 989J, KCC 007P, KCF 186C registered in the names of Rentco Africa Limited and Kenya Commercial Bank is hereby stayed pending further orders/directions of the court.**
 - c. The attachment of the household goods attached by Wiksam Auctioneers may proceed.
 - d. The Objector shall bear half the costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2022.

D. S. MAJANJA

JUDGE



Court Assistant: Mr M. Onyango.

Ms Asli instructed by Ahmednasir Abdullahi Advocates LLP for the Objector.

Mr Owino instructed by Kimani Michuki Advocates for the Plaintiff.

Mr Memba instructed by Busaidy, Mwaura, Ng'arua and Company Advocates for the Defendant.

