



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

MILIMANI LAW COURTS

HCCC NO. 329 OF 2015

THATCHMAANZ LIMITED.....PLAINTIFF

VERSUS

PRIDE INN LIMITED.....DEFENDANT

GLORY RENT A CAR EAST AFRICA LIMITED.....1ST OBJECTOR

GLORY HOTELS & INVESTMENT LIMITED.....2ND OBJECTOR

RULING

1. The Notice of Motion dated 8th September 2020 is in the nature of objection proceedings brought by Glory Rent a Car East Africa Ltd (1st Objector) and Glory Hotels & Investment Ltd (2nd Objector).
2. The execution resisted is the intended attachment of motor vehicle registration numbers KCF 832Q, KCF 252S, KCF 835Q and KCX I54N and all other goods proclaimed by Front Bench Auctioneers on behalf of the Plaintiff/Decree holder.
3. The objectors approach this Court under Order 22 Rule 51:-

“Objection to attachment;

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.”

4. The task of an objector is to demonstrate a legal or equitable interest in the whole or part of any of the attached property. The onus is squarely on the objector.
5. Regarding the 1st Objector, its claim is to the four motor vehicles. Shown to this Court are the registration certificates issued under Section 6(5) of the Traffic Act in which the four vehicles are registered in the joint names of the 1st Objector and Gulf African Bank Limited, presumably a financier.
6. The evidence presented by the Decree Holder is that the motor vehicles were found in the Judgment debtor’s premises and were branded with the Defendant’s Logo and names. Counsel for the Decree Holder concludes that the said vehicles are held for the benefit of the Defendant.
7. In regard to ownership of motor vehicles, Section 8 of the Act reads:-

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”

8. Save that the vehicles are branded in the name of the Judgment Debtor and that they may be in use and for its benefit, the Decree Holder has not furnished any evidence that displaces the proof of ownership in the certificates of registration. The 1st Objector has proved a legal interest in the four vehicles and the objection succeeds.

9. The second objection is not as straightforward. Shown to this Court is a lease over 209/76/1 dated 1st August 2011 and registered on 15th September 2011 from Imperial Properties Limited in favour to the 2nd Objector. Details are unnecessary save that it shows that, by an earlier lease, the landlord had permitted the tenant to erect and build a hotel with accommodation, restaurant and ancillary facilities on the suit premises. The 2nd Objector lays ownership over all the rest of the proclaimed goods which it contends were proclaimed at their premises on the leased property.

10. In a further affidavit of 12th September 2020 by Johnson Matara, the 2nd Objector’s display copies of sales invoices and quotations from suppliers as proof that the proclaimed goods indeed belong to the objecting firm.

11. In responding to the objection, Edward Ahn on behalf of the Decree Holder depones that the auctioneers visited the premises on 14th September 2020 for purposes of carting away the attached goods and were denied access. He produces photographs to the outside of the premises which show it to be of the Judgment Debtor.

12. Further, Mr. Ahn seeks to demonstrate that the 2nd Objector and the Judgment Debtor have common directors and shareholders.

13. In the submissions filed by counsel for the Decree Holder, the Court is urged that on the strength of the decision in **New Look Estates Limited & Another vs Kheira Omar Maalim [2013] eKLR**, the Court should hold that licenses and leases do not amount to entitlement to attached property without documentary evidence to show entitlement.

14.. It is further submitted that the lease does not establish whether it relates to the Defendant’s premise along Westlands Road or not.

15. It is not denied that the 2nd Objector and the Judgment Debtor share some directors and shareholders. It is therefore critical, in examining the objection, for the Court to be certain that the relationship has not been used to defeat an otherwise lawful execution.

16. This is how I understand the objection. The goods under contention were proclaimed while in certain premises. The 2nd Objector asserts that it is the owner of the proclaimed goods and that the goods were in premises over which it holds a lease. That premises is said to be LR. No. 209/76/1 situated in Westlands.

17. On the other hand, the Decree Holder has provided some proof that signage on premises in which the goods were proclaimed reads “PRIDE INN” which is the Judgment Debtor. It is then submitted that the 2nd Objector ought to have proved that this indeed is the same premises over which it holds a lease.

18. A fundamental issue presented by these set of circumstances is the question on who the onus to prove the occupant of the premises lies. The law is that it is the objector to prove and demonstrate legal or equitable interest in the goods whose attachment is objected to. In the matter at hand, the 2nd Objector produces a lease and asserts “this is the lease over the premises in which the proclaimed goods were found, the proclaimed goods belong to us.” The Decree Holder on the other hand asserts that by a signage found on the premises, the occupant of the premises is the Judgment Debtor who is the owner of the goods in the premises

19. This Court thinks and finds that, in the face of this challenge by the Decree Holder, the onus was on the 2nd Objector to demonstrate why premises over which it supposedly holds a lease are somehow in the hands of the Judgment Debtor. If it is on account of a sublease or a license then that is a matter which would be in the intimate knowledge of the 2nd Objector on whose shoulders then the responsibility of making an explanation lies.

20. The significance of such proof becomes apparent because the proclamation does not, beyond describing what is attached, identify the goods with any specification which readily connect them with those in the invoices and receipts. The connection sought to be made is that the goods in the documents are those found in premises known as 209/76/1 in which the 2nd Objector is a tenant. What the 2nd Objector has not explained is why those premises are in the hands of the Judgment Debtor. In a word, the 2nd Objector has failed to prove that goods for which it lays a claim are the goods found in the premises occupied by the Judgment Debtor and which were the subject of the proclamation.

21. The upshot.

21.1. The objection by the 1st Objector succeeds with costs.

21.2. The objection by the 2nd Objector fails with costs to the Plaintiff.

21.3. That is the outcome of the Motion of 8th September 2020.

Dated, Signed and Delivered in Court at Nairobi this 25th Day of January 2021

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17th April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Court Assistant: Nixon

Osoro for Nyakwana for Objectors

Miss Okimaru for Plaintiff

No appearance for Defendant