



Hakken Consulting Limited & 2 others v Seven Seas Technologies Limited & another; Rentworks East Africa Limited (Objector) (Civil Case 287 of 2015) [2021] KEHC 128 (KLR) (Commercial and Tax) (30 September 2021) (Ruling)

Neutral citation: [2021] KEHC 128 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 287 OF 2015
WA OKWANY, J
SEPTEMBER 30, 2021**

BETWEEN

**HAKKEN CONSULTING LIMITED 1ST PLAINTIFF
HAKKEN S.A 2ND PLAINTIFF
CARLOS OLIVERA 3RD PLAINTIFF**

AND

**SEVEN SEAS TECHNOLOGIES LIMITED 1ST DEFENDANT
SEVEN SEAS TECHNOLOGIES NIGERIA LIMITED 2ND DEFENDANT**

AND

RENTWORKS EAST AFRICA LIMITED OBJECTOR

RULING

1. This ruling is in respect to the application dated 24th February 2020. The applicant seeks the following orders;
 - a. Spent
 - b. Spent
 - c. THAT this Honourable Court be pleased to vacate the proclamation and/or attachment of the Objectors movable assets/goods listed in the proclamation dated 20th February 2020.
 - d. THAT this Honourable Court be pleased to permanently restrain the plaintiffs acting through their agents Beta Base Auctioneers from proclaiming, attaching and/or selling the Objectors



properties as listed in the Proclamation notice dated 20th February 2020 or any such properties at all.

- e. THAT this Honourable court be pleased to raise, cancel, set aside, recall and lift the Warrants of attachment and sale of movable properties dated 17th April 2020 and the proclamation notices dated 20th February 2020 for listing goods that do not belong to the Judgment debtor.
 - f. THAT the costs of this application be borne by the plaintiffs.
2. The application is supported by the affidavit sworn by Sarah Nyamchae and is based on the following grounds: -
- a. The objector is the sole and exclusive owner of the proclaimed movable property/goods and had only rented them out to the 1st defendant herein through a Master Rental Agreement dated 5th December 2012.
 - b. The movable property/goods the subject matter of the proclamation herein form part if the subject matter in an ongoing suit filed by the objector against the 1st defendant herein NAIROBI HCCCC NO 194 OF 2019 RENTWORKS EAST AFRICA LIMITED V SEVEN SEAS TECHNOLOGIES LIMITED, for the recovery of debt owed to the Objector as well as the return of all equipment/ movable assets rented to the 1st defendant.
 - c. However, on 20th February 2020, the plaintiffs herein through Betabase Auctioneers issued proclamation notices against the movable assets/goods of the Objector purporting to execute warrants of attachment and sale issued in the suit herein.
 - d. The Objector is the sole and exclusive owner of the proclaimed movable assets/goods therefore the purported proclamation is not only unlawful but also illegal as the proclaimed movable assets/goods do not belong to the 1st defendant.
 - e. Therefore the 1st defendant has no legal or beneficial interest in the objectors movable assets/ goods proclaimed and/or intended to be attached for sale in execution of the decree.
 - f. Despite the foregoing, Beta base auctioneers while acting under Plaintiffs express and/or ostensible instructions, have illegally and unlawfully issued proclamation notices dated 20th February 2020 purporting to proclaim assets/movable goods belonging to the objector but in the possession of the 1st defendant, in execution of a decree issued on 30th July 2018.
 - g. Unless this court intervenes, the plaintiffs herein will proceed either by themselves, their agents and/or servants, particularly Betabase auctioneers to illegally and unlawfully proclaim, attach and sell the Objectors movable assets/goods either by private treaty and/or public auction causing the Objector irreparable damage and inconveniencing their business activities.
 - h. Therefore it is in the interest of justice that this Honourable Court grants the orders sought in this application as prayed.
3. The plaintiffs/respondents opposed the application through the replying affidavit of their Director Nuno Pita who states that the objection has been brought in in bad faith and is meant to assist the judgment debtor frustrate the plaintiffs' efforts to execute the decree. He further states that the claim that the objector is the lawful owner of the goods is not true as the goods have been the subject of at least 5 previous attachments in execution of the decree and that at no time did the judgment debtor claim that the goods belong to a third party.



4. The application was canvassed by way of written submissions which I have considered. The main issue for determination is whether the applicant has made out a case for the granting of the orders sought in the application. The applicant seeks orders to vacate the proclamation and attachment the goods listed on the Proclamation dated 20th February 2020 on the basis that it owns the attached goods. The objector cited the provisions of Order 22 Rule 51 (1) of the *Civil Procedure Rules* which provides as follows: -

Any person claiming to be entitled to or to have a legal or equitable interest in the whole 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.

5. Order 22 Rule 52 of the Civil Procedure Rules stipulates as follows: -

Upon receipt of a valid notice and application as provided under rule 51, the court may order a stay of the execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.

6. Order 22 Rule 53 of the Civil Procedure Rules states that: -

Should the attaching creditor in pursuance of a notice issued under rule 52 either fail to reply to the court and the objector within the period prescribed by the notice or intimate in writing to the court and the objector within the period prescribed by such notice that he does not propose to proceed with the execution of the attachment of the whole or of a portion of the property subject to the attachment, the court shall make an order raising the attachment as to the whole or a portion of the property subject to the attachment in accordance with the intimation received from the attaching creditor and shall make such order as to costs as it shall deem fit.

7. Further Order 22 Rule 54 of the Civil Procedure Rules stipulates that: -

If the attaching creditor proposes to proceed with the attachment pursuant to rule 52, the intimation shall be accompanied by a replying affidavit and the court shall proceed to hear the application expeditiously.

8. From the foregoing provisions, it is clear that a party who objects to an attachment must establish a legal or equitable interest in the attached goods. In the present case, the objector alleges it on 5th December 2012 entered into a Mater Rental Agreement with the defendant wherein it agreed to lease equipment and machinery to the defendant. The objector states that under Clause 13 of the said Agreement, the defendant was required to return the equipment at the expiry or termination of the agreement.

9. The respondent, on the other hand, submitted that the decree holder had on 5 previous occasions attached the goods in question and that the neither the objector nor the judgment debtor claimed that the goods belonged to a third party. The respondent maintained that the application is intended to defeat its execution of the decree.

10. In *Chotabhai M. Patel vs Chaprabhi Patel* and *David Mubenda & 3 Others vs Margaret Kamuje* the court stated as follows: -

“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 a party to the suit. The objector shall adduce evidence to show that at the date of attachment he has some interest in the property attached. The question to be decided is, whether on the date of attachment, the judgement debtor or the objector was in possession or where the court is satisfied that the property was in possession of the objector, it must be found whether he held it on his own account or in trust for the judgement debtor. The sole question to be investigated is, thus one of possession of and some interest in the property.”

11. Further in *Arun C. Sharma vs Ashana Raikundalia T/A Raikundalia & Co. Advocates & 4 Others* ; the Court observed that: -

“The objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property.”

12. In *Stephen Kiprotich Koech vs Edwin K. Barchilei; Joel Sitienei (Objector)* , the court held: -

“The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached.”

13. In the case of *Grace Wanjiru Mbugua vs Philip Karumi Matu and Precast Portal Structures vs Kenya Penal Co. Ltd & 2 Others* the courts observed that, “The burden is on the objector to prove and establish his right to have attached property released from attachment. On the evidential material before the court, a release from attachment may be made if the court is satisfied: -

- (1) That the property was not when attached held by the judgement debtor for himself or by some other person in trust for the judgement debtor; or
- (2) That the objector holds that property on his own account. But where the court is satisfied that the property was, at the time of attachment, held by the judgement debtor, as his own and not on account of any other person, or that it was held by some other person in trust for the judgement debtor or that ownership has changed, whereby the judgement debtor has been divested of the property in order to evade execution, on the change is tainted with fraud, the court shall dismiss the objection.

14. The principle that arises from the above cited authorities is that the objector bears the burden of proving that he has a legal or equitable interest in the attached goods. The objector herein alleges that it entered into a Master Rental Agreement with the defendant/judgment debtor that contained a rental schedule of an array of security equipment that it leased to the defendant.

15. I have also perused the schedule of goods listed in the proclamation that is the subject of these objection proceedings and I note that the objector did not clarify or identify the specific goods in the Master Rental Agreement schedule that were attached during the execution. My finding is that it was not enough for the objector to attach the schedule of goods but that it was imperative to demonstrate, on a balance of probabilities, that the attached equipment actually belong to the objector. In this regard, the objector was expected, besides the Master Rental Agreement, to tender documents of proof of ownership such as receipts as proof of purchase, log books or any such other ownership documents. I further note that neither the objector nor the judgment debtor denied refuted the plaintiffs’ position



that the same goods had been the subject of 5 previous attachments without any objection being lodged.

16. For the above reasons, I find that the present application does not meet the threshold set for objection proceedings and I therefore dismiss it with costs to the plaintiffs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17TH APRIL 2020.

W. A. OKWANY

JUDGE

In the presence of:

Ms Mideva for Ms Ngumo for the objector.

Ms Kalu for Mutua for Plaintiff/Respondent.

Mr. Owiti for Defendant.

Court Assistant: Sylvia.

