



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 399 OF 2011**

**KENNEDY NJUGUNA MWANGI.....PLAINTIFF/RESPONDENT**  
**VERSUS**  
**COLLINS KIPRONO BETT.....DEFENDANT**  
**C.K. BETT TRADERS LIMITED.....1<sup>ST</sup> OBJECTOR**  
**JANE NAISHULU NDINDA .....2<sup>ND</sup> OBJECTOR**  
**MALAWANZA LIMITED .....3<sup>RD</sup> OBJECTOR**

**RULING**

1. This ruling relates to a Notice of Motion Application dated 14<sup>th</sup> December 2017, brought under the provisions of Section 1A, 1B, and 3A of the Civil Procedure Act, Order 22 Rules 51 and 52 of the Civil Procedure Rules.
2. The Applicant is seeking for orders;
  - (i) *That there be stay of execution against the attachment and sale of goods removed and not scheduled for sale in execution of the decree herein;*
  - (ii) *That the costs of this Application be provided for.*
3. The Application is premised on the grounds on the face of it and on a supporting Affidavit dated 14<sup>th</sup> December 2017, sworn by Jane Naishulu Ndinda, the second Objector herein and also a Director of the First Objector/Applicant.
4. She averred that she travelled to China, and upon return, she learnt from her house help, one Hellen Koech and her husband, who is the Defendant herein that on the 7<sup>th</sup> December 2017, or thereabouts, some persons who identified themselves as officers and/or agents of Bealine Kenya Auctioneers, went to her matrimonial residential premises, situate in Milimani, Kitengela and caused to be removed carried away for sale by public auction in execution of decree against the Defendant herein, not only her sentimental household properties but also motor vehicles parked inside her compound. That the motor vehicles belong to the First and Third Objectors herein.
5. She argued that she is the legal owner of the household goods that were illegally and irregularly removed by the Plaintiff and his Auctioneers and that the goods removed had not been proclaimed before or at all. If a proclamation notice, if any, exist it is fictitious and or fraudulently made.
6. That the Plaintiff herein and the Auctioneers have acted recklessly and are bent to sale the removed goods at a pittance amount, bearing in mind that, in light of all the relevant receipts tendered herein, the value of the goods indicated in the aforesaid notification of sale does not reflect the true and actual value. According to the inventory she has prepared, the value of the house goods removed is in excess of Kshs 3,000,000 exclusive of the motor vehicles.
7. To her knowledge the real legal and rightful owner of the attached motor vehicle pick up described as KAW 836G, is the First Objector and the Third Objector is the real owner of the attached motor vehicle a lorry KCF 834V which the First Objector had leased from the Third Objector, for purposes of facilitating its business venture relating to the supply of Bauxite and related materials used in the manufacture of cement.
8. She averred that the Defendant herein has absolutely no legal right in or claim to any of the movable properties attached whether now or at any time hereto before and that it is mischievous on the part of the Plaintiff and the Auctioneers to purport to want to execute the decree by attaching the Objector's properties when they understand very well that, it is the Defendant who is indebted to them, and therefore it will be illegal for the Plaintiff and the Auctioneers to execute and/or attach the Objector's property in settlement of a decree against the defendant.
9. She deposed that the furniture removed by the Auctioneers are of great sentimental value to her and her prayer is that the Honourable Court be pleased to stop the eminent sale scheduled for 2<sup>0th</sup> December 2017, in that unless the orders sought are granted, she and the other Objectors stand to suffer embarrassment, irreparable loss and damage.
10. Therefore any attachment on the Objectors' properties in execution of the decree herein against the Defendant be lifted and that the Plaintiff and Bealine Auctioneers whether acting by themselves, their directors, managers, officers, servants, agents or representatives or in any other way whatsoever and howsoever be restrained from purporting to attach, remove, carry away, sell by public auction or private treaty and from any other way whatsoever disposing of the objector's movable goods and from trespassing on Objector's premises and interfering with the Objector's quiet possession and enjoyment of the attached goods.
11. The Plaintiff (herein "the Respondent"), filed a Replying Affidavit dated 5<sup>th</sup> February 2018 in response to the Application. He deposed that the of Judgment was entered in his favour on 17<sup>th</sup> March 2016, whereby he awarded:
  - i. *Special damages of Kshs. 7,500,000 and interest thereon at court rates until payment in full*
  - ii. *Costs of this suit shall be for the Plaintiff*
12. That a Bill of Costs was further filed by his Advocates and a ruling delivered thereon on 30<sup>th</sup> September 2016, awarding him Kshs. 511,213, as costs, which is yet to be paid to date, despite service made on 2<sup>nd</sup> November 2016 and a letter written by his Advocates on record to the firm of H.M. Mudeizi& Company Advocates, requesting for payment of the same with no response forthcoming.
13. That sometime in March 2017, he instructed his Advocates to file an Application for execution of the Decree issued in April 2016. The same was done, whereby the Advocates sought "Warrants of arrest against the Defendant and to have him committed to civil jail". This was not successful as the 2<sup>nd</sup> Objector, barred the officers of the Court accompanied by Police officers from arresting the Defendant. Further that,

the 2<sup>nd</sup> Objector has continuously acted in bad faith, and has been a hindrance to execution of lawful orders of the Honourable Court. Therefore she cannot purport innocence on her part as alleged in her Affidavit.

14. That a second Application was made on 27<sup>th</sup> September 2017, seeking for a notice to show cause why the judgment debtor's property should not be attached and sold to recover the decretal sum and costs, as an alternative mode of execution, the first one having failed. That, his Advocates further instructed the firm of Bealine Auctioneers, who carried out investigations and issued a proclamation to the Defendant and by extension to the 2<sup>nd</sup> Objector. But as is the norm, the Defendant claimed that he would not receive but instead would go and see his lawyer, a similar case as, deponed by Francis Matu in the Affidavit of service.

15. The Respondent argued that the allegation that the motor vehicles belong to "First and Third Objectors herein" is a false and aimed at misleading the Honourable Court as the Auctioneer conducted a motor vehicle search at the National Transport and Safety Authority (NTSA), on 23<sup>rd</sup> November 2017, and the results indicated the owner of the Motor vehicle KAW 836G- Mitsubishi was the Defendant, Collins Kiprono Bett.

16. That the purported log book for motor vehicle KAW 836G produced by the 2<sup>nd</sup> Objector dated 6<sup>th</sup> December 2017, is another of fraud in that it is deliberately dated, a day before the attachment and it further indicates that the previous owner is the Defendant. This is not only an attempt to mislead the Honourable Court but a clear manifestation of the fraud propagated by the Defendant and the 2<sup>nd</sup> Objector, the "fraudulent couple".

17. Further the purported annexure CR 12, dated 13<sup>th</sup> January 2016 and the claim that the Defendant is not a Director in the First Objector's Company is a connivance of fraud and a deliberate attempt to mislead unsuspecting members of the public and the Honourable Court as the alleged name of the Company is C.K. Bett Traders Limited, whereas the Defendant's name is Collings Kiprono Bett. Clearly the Company is named after the Defendant, and he and the wife are Directors.

18. The Respondent argued that the property proclaimed is owned by both the Defendant and the Objector, hence, subject to legal action by either of them and contrary to the allegations that the 2<sup>nd</sup> Objector is the legal owner of the said goods, pursuant to Article 45(3) of the Constitution, read with the Matrimonial Property Act, Sections 2, 6 and 10 on Liability of Spouses.

19. That further, it is without doubt that the Objector is uncertain on whether or not the proclamation was served as she is not the Defendant and therefore cannot purport knowledge of the same.

20. As regards the value of the goods the Respondent argued that the 2<sup>nd</sup> Objector is making reference to a document admittedly generated by herself, in total disregard of the market value, the depreciation after use and by all means, has exaggerated the same values. Further to that, the Objector's claim that the goods will be sold at a low value, is baseless as no bids have been made, nor any indication whatsoever, as to what the values are at the auction as the Auctioneer referred to herein has neither set the price, nor has he received any bids. This therefore remains a moot issue and unfounded.

21. In addition, the claim of legal ownership is unfounded as the reference IS made to the receipt from Tusky's Supermarket, dated 1<sup>st</sup> June 2016, which neither indicates the 2<sup>nd</sup> Objector's name nor that of the Defendant as being owners. Further to that, the same receipts have been fraudulently lumped up in the bundle and remain unmarked and therefore the Honourable Court should disregard them completely. Further, the unmarked receipt dated 24<sup>th</sup> April 2016, clearly indicates the name of the Defendant, as the customer, hence a furtherance of the Respondent's averments. It was argued that although the 2<sup>nd</sup> Objector, has purported to dissociate herself from the Defendant, liability is spread upon her as the spouse to the Defendant,

22. Further the 3<sup>rd</sup> Objector confirmation that the ownership of the motor vehicle lorry, KCF 834V, is not his, is yet another contravening statement of manifestation of fraud, aimed at misleading the Honourable Court and that the 3<sup>rd</sup> Objector cannot suffer embarrassment and irreparable loss, as the value of the lorry can be ascertained by a certified valuer prior to the sale.

23. Even then the Objector is in no position to prove ownership of all the moveable properties except that which she lays claim over, any other assertion is an umbrella attempt to mislead the Court, to believing her, without proof. Therefore the Application is an abuse of the Court process and a tactic used by the Defendant and his spouse to delay the Plaintiff from enjoying the fruits of his judgment and it should therefore be dismissed with costs to him.

24. The 1<sup>st</sup> and 2<sup>nd</sup> Objectors filed a further Affidavit dated 27<sup>th</sup> February 2018, sworn by Jane Naishulu Ndinda duly authorized by the Board of Directors of the First Objector to swear the Affidavit. She termed the averments in most of the paragraphs of the Replying Affidavit by the Respondent as patently false, misleading and plainly non-sustainable.

25. She argued that the Respondent has not adduced evidence to support his assertions that the proclamation was issued to her by the Bealine Kenya Auctioneers and she rejected the same. She reiterated the averments that the vehicle in question KAW 836G belongs to the first Objector as the true legal and rightful owner and there is evidence to this effect. That she finds it extremely disturbing for the Respondent to refer to the Defendant and herself as "fraudulent couple" when for a fact, the Respondent is insisting on attaching properties belonging to the Objectors.

26. Similarly there is no dispute that the Log Book indicates the true legal and rightful owner of the Motor vehicles. That a Company Limited is an artificial legal person independent of the person who forms it including directors and shareholders and that the 1<sup>st</sup> Objector is autonomous and a separate entity independent from the Defendant, with a capacity to carry out business and to own its own properties. The 2<sup>nd</sup> objector argued and she should not be victimized simply because she is a wife to the Defendant herein and a Director to the 1<sup>st</sup> Objector. She strongly opposed the argument by the Plaintiff's that, she owns the subject goods jointly with her husband and argued that she is protected by inter alia by Section 7 which provides that ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition.

27. That the Plaintiff is so desperate to have the Objectors properties attached that he goes to the extent of relying on typographical errors in the 3<sup>rd</sup> Objector's affidavit at paragraph 3 to justify to the Honourable Court that they are entitled to attach the properties.

28. The 3<sup>rd</sup> Objector also filed a further Affidavit dated 28<sup>th</sup> February 2018 sworn by Moses Malakwen Rotich duly authorized by the Board of Directors of the Third Objector. He reiterated that the 3<sup>rd</sup> Objector is the real legal owner of the attached motor vehicle lorry number KCF 834 and that the 1<sup>st</sup> Objector had leased the same from it. He regretted the error its earlier Affidavit which indicated the motor vehicle does not belong to it and argued that, even if the vehicle belongs to the 1<sup>st</sup> Objector, still it cannot be subject of attachment since the Respondent is legally entitled to only attach property belonging to the Defendant. Therefore it still stands to lose and or suffer damage should the vehicle be sold.

29. The parties disposed off the Application by filing submissions, which I have considered herein. The Objectors submitted that they "ran" to this Honourable for refuge to protect their property which is protected under Article 40(1) of the Constitution 2010, which states that:

*(1) subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property*

*(a) of any description; and*

*(b) in any part of Kenya.*

*(2) Parliament shall not enact a law that permits the state or any person;*

*(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description;*

or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).

Article 27 (4) states that:

*“The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth”.*

30. The Objectors also relied on part II (4) of the Matrimonial Property Act, 2013, to submit that despite any other law, a married woman has the same rights as a married man to acquire, administer, hold, control, use and dispose of property whether movable or immovable.

31. It was further submitted that the Respondent is disregarding these provisions to justify its biasness and discrimination against the 2<sup>nd</sup> Objector basing on sex (her being a woman) and her marital status, and makes an allusion that she is incapable of owning any property, except jointly with her husband, due to the fact that she is married.

32. The Objectors further submitted that the 1<sup>st</sup> and 3<sup>rd</sup> Objectors are limited companies registered under the Company’s Act, and it has been held over and over by the Courts that a company is a different person from its directors and subscribers as held in the cases of; Joel Ndemo Ong’au & another v Loyce Mukunya [2015] eKLR, and Salomon v. Salomon & Co. [1897] A.C. 22.

33. That in Multichoice Kenya Ltd v Mainkam Ltd & Anor. (2013) eKLR the Court held that:

*“I agree that directors are generally not personally liable on contracts purporting to bind their company. If the directors have authority to make a contract, then only the company is liable on it. To my mind, there is no doubt that ever since famous case of Salomon v Salomon (1897) A.C. 22 Courts have applied the principle of corporate personality strictly. But exceptions to the principle have also been made where it is too flagrantly oppose to justice or convenience. Other instances include when a fraudulent and improper design by scheming directors or shareholders is imputed. In such exceptional cases, the law either goes behind the corporate personality to the individual members or regards the subsidiary and its holding company as one entity.”*

34. It was submitted that on that basis, the property owned by the Objectors cannot be said in way to be owned at the same time by the Defendant who is not a Director to either the 1<sup>st</sup> or 3<sup>rd</sup> Objectors.

35. The Respondent filed submissions in which, he detailed in a chronological manner the frustrations he has gone through to realize the fruit of his judgment. He submitted that the 2<sup>nd</sup> Objector is not a party to the suit and therefore was not required to be served with the proceedings or with the proclamation prior to the properties being attached.

36. It was reiterated that the records held at the registrar of Motor Vehicles, National Transport and Safety Authority (NTSA), confirms that the owner of the vehicle KAW 836G Mitsubishi Pick-Up is Collins Kiprono Bett, the Judgment debtor. That the purported log book, referred to as JNN 3b showing transfer No. 2017120600653 and dated 6<sup>th</sup> December 2017, of the transfer of the said motor vehicle, just one day before the said attachment which was done on 7<sup>th</sup> December 2017, is aimed at defeating the Order’s of the Court done. Further, the purported acquisition of the motor vehicle by the Objector does not show for what consideration the same was acquired hence a sham.

37. The case of; George Gikubu Mbuthiavs Peter Njeru Mugo, Geoffrey Kariuki Mwanda, Attorney General & Consolidated Bank of Kenya Ltd, Nairobi Milimani Commercial Court Case NO. 1260 of 2002, was cited where Kasango J. at page 5 of the Ruling quoted with approval Rule 14 of the Auctioneers Rules 1997 as follows:

*“no person shall remove, alter, damage, substitute or alienate any goods comprised in the proclamation until they are reclaimed by payment in full of the amount in the court, warrant or letter of instruction or such lesser amount as the creditor or his Advocate shall agree in writing. It is clear from this rule that attachment is complete on proclamation. It follows that I find that attachment of motor vehicle KVE 001 was completed on 23rd November 2004 since it is a moveable item.”*

38. The Respondent also relied on the case of; Mugenyi & Company Advocates -v- The Attorney General [1999] 2 EA 199 to argue that the corporate veil may be lifted where the private company is founded on personal relationship between the members.

39. Further, Warsame, J. (as he then was) while ruling in the case of Zingo Investment Limited V Miema Enterprises Limited [2015] eKLR held that:

*“I am satisfied that the objection has no legal basis. I hold that there is no evidence to show that the 2nd Objector owns the machinery that was attached by the plaintiff. I am satisfied beyond doubt that the goods attached are the property of the defendant disguised in a manner to defeat the claim of the plaintiff. It is my decision that the objection is based on distortion, deceit and deception with a view to obstruct the cause of justice.... Indeed, the assets of the defendant company is (sic) held by this dummy company called Zingo Investment Limited in order to defeat or derail the liabilities that had accrued to the company. The way Mr. Muthara and his wife are changing and setting up companies is a clear reflection or manifestation of persons engaged in unlawful activities ..... There are two vehicles i.e. KAL 644V and KAL 645 V which were proclaimed by the auctioneer. The two objectors have not shown any evidence to show the ownership of the two vehicles. As things stand, there is no valid objection against the proclamation done by the auctioneer.... I hold the attachment of the two vehicles to be valid hence the plaintiff is at liberty to proceed as it deems fit.”*

40. The Respondent further relied on the Court of Appeal decision in Research International East Africa Ltd. -V- Julius Arisi & 213 Others Nairobi ca 321 where the Court reiterated that where *“the authority to act if given it has to be in writing and filed in court”*.

41. It was argued that the law of the land does not draw a distinction of ownership of property in marriage and that according to Article 45(3) of the Constitution, as read with Sections 2, 6, and 10 the Matrimonial Property Act; on Liability of Spouses, the property is owned by both the Defendant and the Objector, hence subject to legal action by either of them.

42. The provisions of Sections 6 the Matrimonial Property Act, states that;

1) For the purposes of this Act, matrimonial property means—

a) the matrimonial home or homes;

b) household goods and effects in the matrimonial home or homes; or

c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

43. Further Sections 10 (1) thereof states that any liability incurred by a spouse before the marriage and relating to the property shall, after marriage, remain the liability of the spouse who incurred it and despite sub-section(1), any liability that was reasonably and justifiably incurred shall, if the property becomes matrimonial property be equally shared by the spouses, unless they otherwise agree.

44. That further Section 143, of the Insolvency Act No. 18 of 2015, states a Court may impose a charge on a Bankrupt's property

“(1) If—

a) any property consisting of an interest in a dwelling house that is occupied by the bankrupt or by the bankrupt's spouse or former spouse is comprised in the bankrupt's estate; and

b) the bankruptcy trustee is, for any reason, unable for the time being to realize that property, that trustee may apply to the Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.”

45. The Respondent therefore submitted that, there is no other explanation as to why the debt cannot be recovered from the Defendant and the purported Objectors, more than two years after Judgment and it will be blatant disregard to orders of the Honourable Court and mockery to the justice system if such conduct is allowed to thrive!

46. The Respondent argued that with the foregoing, the issue of receipts, vouchers and a purported price schedule as referred to as JNN2a-2b9 is neither here nor there. Further, the purported exhibit JNN2b9 is a biased estimate of prices for commodities, in actual sense, the commodities depreciate every single day of usage and therefore the alleged “Current Price Value” is of minimal value. Further exhibit JNN2b5 was allegedly bought in 2006; more than 12 years back hence cannot attract the market value let alone the purported price as per JNN2b9.

47. The Respondent referred to; a Roman Stoic philosopher; *Seneca the Younger*, quoted in *Day's Collacon*, as follows:

“Whatever we owe, it is our part to find where to pay it, and to do it without asking, too; for whether the creditor be good or bad, the debt is still the same.”

48. Finally the Respondent submitted that the debt herein is not denied and remains outstanding, and prayed that the Honourable Court dismisses the Application with costs to the Respondent.

49. I have considered the Application, the Affidavits in support and opposition alongside the submission and/or arguments advanced by the respective Parties and I am grateful to the parties for the extensive submissions. However I shall go straight to the issues herein, which is mainly whether the Applicants have proved that the goods allegedly proclaimed do not belong to the Judgment Debtor and/ or legally belong to them.

50. This Application has been brought under Order 22 Rule 51 and 52 of the Civil Procedure Rules which states that;

“Any person claiming to have legal interest in any property attached in execution of a decree may at any time give notice of his objection to attachment of the property. Briefly set the nature of claim, how one relates to the property”.

51. It is clear therefore that the Objectors must produce evidence of the legal and/or equitable interest in the whole or part of any property attached in execution of decree (see, *Akiba Bank Ltd v. Jetha & Sons Ltd* (2005) eKLR). Basically, therefore the burden of proof is on the Applicants to establish ownership (see also *Chatabhai M. Patel & Another HCCC No. 544 Of 1957 (Lewis) On 8/12/58 HCU (1958) 743*).

52. Further in the case of *Zingo Investment Limited v Miema Enterprises Limited [2015] eKLR*, the Court had this to say:

“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. (See *Nairobi HC Misc. Civil App. No 802 of 2010 Arun C. Sharma -v- Ashana Raikundalia t/a A.R. Raikundalia & Co. Advocates & others*).

53. I have considered the documents produced by the Applicants attached to the Affidavit in support of the Application and I note that there is a Notification of Sale showing the attached goods. The goods listed therein, comprise basically of two motor vehicles: KCF 834 V and KAW 836G, 3 Bicycles and house hold goods namely: tables, chairs, Television set, water dispenser, 6 sofa set, washing machine, deep freezer, gas cooker and cylinder, fridges, stools, vacuum cleaner and video player.

54. In proof of ownership, the 2nd Objector has annexed to her affidavit in support of the Application, 5 invoices relating to: day bed, regency stools, flower stand, TV stand column, sofa, trays, Regency coffee table without stools, Tables, sofa set, wall unit wall hangings and mirrors. Also produced is a receipt of Kshs 140,000 from Panesar Kenya Ltd for payment of furniture, though the specific furniture is not tabulated therein. Other receipts are from Tusker Mattresses Limited to prove purchase of a water dispenser. Another receipt from Naivas Ltd is also annexed to prove ownership of micro-wave. The 2nd Objector has also produced a quotation dated 13th December, 2017, showing description of various furniture (sofa set, TV stand, coffee table, flower stand, stools and daybed for an amount of Kshs 1,398,000.

55. She also sworn a further Affidavit and annexed thereto a cash sale receipt from Falcon Collection and total of 10 cash sale receipts from Tusker Mattresses Limited in her names, for purchase of various goods. Although the content thereof in relation to the goods purchased are clear, as there is a Stamp embossed on the face thereof. However, I was able to pick up micro-wave, vacuum cleaner, Ariston cooker, LG washing machine, Samsung smart TV, and a fridge as part of the goods indicated therein.

56. The Respondent in opposing the Application submitted that since the 2nd Objector and the Defendant reside in the same house and are spouses, they own the property together. That the attached property is matrimonial property available for attachment. With outmost due respect, the provisions relied on by the Respondent are more relevant in a matrimonial cause of action and/or distribution of matrimonial property. I don't want to really venture in that area of law. But even then, the provisions of the Matrimonial Property Act and of the Constitution cited do not provide that such property becomes available for attachment on a debt and/or liability incurred by one spouse in total disregard of the other spouse's right to a share therein.

57. In the instant case in addition to receipts produced to support ownership of the house hold goods, the Objectors produced records of registration of Motor Vehicle KAW 836G, showing it belongs to C.K Bett Traders Limited, and a Form CR/2012/80245 showing that the Defendant is not a Director in that Company. These documents have been heavily criticized by the Respondent and termed as not only “an attempt to mislead the Honourable Court but a clear manifestation of the fraud propagated by the Defendant and the 2nd Objector, the “fraudulent couple”.

58. However, the Respondent annexed to the Replying Affidavit, search results of the Motor Vehicle KAW 836G, which shows that as at 23rd November, 2017 the registered owner was the Judgment Debtor, who is the Defendant herein. The record that the Respondent produced

also show the subject motor vehicle was registered on 9th November, 2006. I note that the search results produced by the 1st Objector were issued on 6th December, 2017. It therefore follows that a transfer, if any, was effected after 23rd November, 2017.

59. It is noteworthy that the judgment in favour of the Respondent was delivered on 17th March, 2016, and the Decree herein is dated 11th April, 2016. The bill of costs was taxed on 30th September, 2016 and a Certificate of Taxation dated 13th October, 2016 issued and a demand letter was sent to the Judgment Debtor on 31st October, 2017.

60. It is also noteworthy that the search results by the 1st Objector indicate there was one previous owner before the motor vehicle was transferred to the 1st Objector's Company. This gives credence to the Respondent's averment that the vehicle was owned by the Judgment Debtor before being transferred to the 1st Objector Company. So is there a scheme to defeat the Respondent right to realize the fruit of the judgment?

61. I shall now evaluate the search results in relation to motor vehicle KCF 834V. The search conducted by the Objectors shows the Motor Vehicle is registered in joint names of Chase Bank and Malwanza Limited, the 3rd Objector. The Registration Certificate shows since registration of the vehicle the ownership has been with one person. The Respondent has not produced a counter record of search. In addition, the Objectors have produced a Lease contract between the 1st and 3rd Objector, for provision of Transport services to be provided by the 3rd Objector to the 1st Objector. I also find that the Affidavit sworn by one Moses Malakwen Rotich proves that Vehicle is not owned by the Judgment Debtor. I am therefore satisfied that adequate evidence has been adduced that the Vehicle is not available for attachment and I order that it be returned to the 3rd Objector, the owner if it has been removed from its ownership.

62. In conclusion of this matter find that the documents produced have sufficiently proved that the 2nd Objector has a legal and/or equitable interest in the goods she has laid a claim on basically the house hold goods listed in the proclamation and/or notification of sale. Similarly, the 3rd Objector has proved its claim.

63. However, the 1st Respondent has fallen short of proof of acquisition of the MV KAW 836G in good faith and for value. The Respondent challenged the 1st Objector to produce evidence that the subject MV was transferred to it for value. That was not done. I have given herein, a chronology of events leading to the attachment of the subject property. It is clear when the subject motor vehicle, was transferred to the 1st Objector, the Defendant knew execution for the decretal sum herein was eminent. He did not act in good faith in disposing of and/or transferring the motor vehicle.

64. The law recognizes that a company is a separate legal entity distinct from its shareholders. Therefore the courts usually do not look behind "the veil" to inquire why the company was formed or who really controls it. As a general rule therefore a company is a legal person and is distinct from its members (see *Saloman v. Saloman & Co. Ltd.*). This principle is regarded as a curtain, a veil, or a shield between the company and its shareholders, thus protecting the latter from the liability of the former.

65. However, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will disregard the corporate entity and pay regard to the economic realities behind the legal façade and regard the company as an association of persons. The corporate veil will be and has been lifted where the company is being used as a mechanism to avoid legal obligations. Thus the Court may look behind the artificial person the company and take account of the personalities of natural persons.

66. *In the case of; United States v. Milwaukee Refrigerator Transit Company (1905) 142 F, edn. 247* the U.S. Supreme Court held that "where the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will disregard the corporate entity and treat it as an association of persons."

67. In view of the above principles of law and having held that the transfer of the motor vehicle was not in good faith I lift the veil of incorporation herein in relation to the 1<sup>st</sup> Objector's ownership of the subject vehicle and decline to grant the 1<sup>st</sup> Objector an order for stay of attachment and sale of MV registration **of Motor Vehicle KAW 836G.**

68. **Finally as none of the parties has fully won or lost in this Application, I make no orders as to costs, each party to meet his, her and/or its costs**

69. **It is so ordered.**

**Dated, delivered and signed in an open Court on this 16th of April 2018 at Nairobi.**

**G.L. NZIOKA**

**JUDGE**

In the presence of :

Ms Nthiwa for Mr. Olao for the Plaintiff/Decree holder

No Appearance for the Defendant/Judgment debtor

Mr. Masika for Mr. Momanyi for 1st to 3<sup>rd</sup> Objectors

Mr Langat-----Court Assistant