



Haji & 28 others v Seif (As Trustee of Seif Bin Salim Trust) & 4 others (Environment & Land Petition 155 of 2015) [2025] KEELC 3930 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3930 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION 155 OF 2015**

YM ANGIMA, J

MAY 22, 2025

BETWEEN

ABDILLAHI FARAH HAJI & 28 OTHERS PETITIONER

AND

SAID BIN SEIF (AS TRUSTEE OF SEIF BIN SALIM TRUST) & 4 OTHERS & 4 OTHERS & 4 OTHERS RESPONDENT

RULING

A. Introduction

1. On 26.07.2022 the court delivered the judgement herein and held that the petition did not meet the threshold of a constitutional petition. The court proceeded to find that the petition was not sustainable and constituted an abuse of the court process and struck it out with costs to the respondents. The 1st, 2nd and 3rd respondents filed a party and party bill of costs dated 03.07.2023, which was duly taxed and allowed in the sum of Kshs 339,913.33 by the taxing master on 03.10.2023. The respondents' auctioneers issued a proclamation notice dated 30.05.2024, leading to the filing of the two applications before the court.

B. First application

2. By a notice of motion dated 21.05.2024 brought under Order 22 Rule 51 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act* the applicant sought, inter alia, the following orders:
 - a. That this Honourable Court be pleased to make a finding that the attached movable property and all other movable property as listed on proclamation of attachment by Messers Makini Auctioneers Agencies dated 30.5.2024 is property of the Objector's/Applicant's solely and absolutely and/or that the Objector has equitable interest over the said movable property.



- b. That this Honourable Court be pleased to raise the attachment levied on the proclaimed property by Messrs Makini auctioneers' agencies dated 30.05.2024.
3. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Ahmed Mineto on 21.05.2024. The applicant contended he was neither a party to this suit nor aware of its existence before Makini auctioneers proclaimed his movable properties on 30.05.2024. He maintained that the proclaimed goods belonged to him, not the judgment debtors. He urged the court to order the release of his proclaimed goods.

C. Second application

4. By a chamber summons dated 19.06.2024 brought under Order 21 Rule 9A, Order 22 Rules 22 and 25, and Sections 1, 1A, 3A, 3B 63, 3A of the *Civil Procedure Act* and all other enabling provisions of the law, the 1st petitioner/applicant sought the enlargement of time to file a reference to the respondents' bill of costs and for the said bill to be set aside and taxed afresh.
5. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Abdillahi Farah Haji on 19.06.2024. It was contended that the 1st petitioner was never served with the bill of costs nor made aware of its proceedings occasioned by non-attendance of his previous counsel. The applicant further maintained that the petition was a representative suit and the execution process should not be aimed at him and his properties alone. The court was urged to grant leave to the applicant to file a reference out of time to set aside the taxed costs.

D. Response by the respondents

6. There was no response by the respondents to either of the applications.

E. Directions on Submissions

7. When the applications were listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. However, there were no submissions on record by the time of preparation of this ruling.

F. Issues for Determination

8. The court has perused the two applications as well as the material on record. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the court should enlarge the time for the 1st petitioner to file a reference out of time.
 - b. Whether the court should set aside the proclamation dated 30.05.2024.
 - c. Who shall bear the costs of the applications.

G. Analysis and Determination

a. Whether the court should enlarge the time for the 1st petitioner to file a reference out of time

9. When the court struck out the petitioners' petition with costs on 26.07.2022, the petitioners were absent from court. From the court record, the counsel representing the petitioners was last in court on 14.03.2022 when the suit was coming up for hearing and sought an adjournment. The court granted a final adjournment to the petitioners and ordered them to pay court adjournment fees. The court



proceeded to have a sitting on 16.05.2022 and later on 15.06.2022 where the petitioners did not attend court despite being served and a return of service filed in court.

10. Almost one year after judgment was delivered, the respondents filed a party and party bill of costs dated 03.07.2023, which was taxed on 03.10.2023. The first petitioner moved the court vide an application dated 19.06.2024, seeking to file a reference against the taxed bill of costs under paragraph 11 of the Advocates Remuneration Order.
11. From the observation of the court proceedings, it is obvious that the petitioners and their counsel were not diligent in handling the matter. They failed to attend court to prosecute the petition and when they were ordered to pay court adjournment fees they failed to do so. Further, the petitioners failed to attend court during the delivery of the judgment despite being served. The 1st petitioner has stated that there was a breakdown of communication between him and his counsel. However, no evidence has been adduced of the petitioners actively following up on the status of their case.
12. In addition, it is evident from the material on record that even though judgment was delivered on 26.07.2022 the instant application was made on 19.06.2024 which is two years later. In the absence of a reasonable explanation the court finds that the 1st petitioner is guilty of laches. In the exercise of its inherent powers, the court has to act judiciously and in this case the court finds that the applicant is not deserving of the exercise of the court's discretion to grant the prayers sought.

b. Whether the court should set aside the proclamation dated 30.05.2024

13. The applicant claims to be the sole proprietor of New Island Dishes and contends that on 30.05.2024 Makini Auctioneers, with instructions from the respondents, proclaimed his movable properties. The court has perused the Proclamation of attachment of movable property dated 30.04.2024 and movable properties to be proclaimed. The applicant has attached various receipts, for instance a receipt from Topline Electrical Centre dated 20.7.2022 where he bought a Samsung smart TV for Kshs 250,000/=. The applicant has demonstrated that he bought the proclaimed goods hence they do not belong to the judgment debtors.
14. The guiding provisions of the law regarding objections to attachments is found in Order 22 Rule 51 (1)(2)(3) of the Rules as follows:-

any persons claiming to be entitled to or have a legal or equitable interest in the whole or part of any property attached in execution of 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 parties and to the decree holder of his objection to the attachment of such property.

15. The applicant has the burden of proving that he is entitled to or has a legal or equitable interest in the attached property. The objector has produced some receipts showing that he owns the goods. It seems the applicant has some stake in the proclaimed goods. In *Precast Portal Structures v Kenya Pencil Company Ltd & 2 others* [1993] KEHC 100 (KLR) it was held;

“The burden is on the objector to prove and establish his right to have the attached property released from the 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 judgment-debtor for himself, or by some other person in trust for the judgment-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 judgment – 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 judgment-debtor, or that ownership has changed whereby the judgment – debtor has been divested of the property in order to evade execution or the change is tainted with fraud, the Court shall dismiss the objection.

The Court takes into account the grounds of objections raised, and the contentions of the respective parties to the objection proceedings. Any special features evident in the proceedings which throw light on the controversy must be regarded.”

16. It would appear to the court that the applicant has offered a genuine explanation with the receipts proving ownership or beneficial interest in the proclaimed goods. It would also appear to the court that even the proclamation dated 30.05.2024 was addressed to several judgment debtors and not the applicant himself. The court is satisfied that the objector has demonstrated a reasonable claim over the proclaimed goods hence he is entitled to the orders sought in his application.

c Who shall bear the costs of the application

17. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule.

H. Conclusion and Disposal Order

18. The upshot of the foregoing is that the court finds and holds that the application dated 21.05.2024 is merited, while the application dated 19.06.2024 is not merited. As a consequence, the court makes the following orders for the disposal of the applications;
- i. The 1st petitioner’s application dated 19.06.2024 be and is hereby dismissed with costs.
 - ii. The objector’s application dated 21.5.2024 be and is hereby allowed with costs.
 - iii. The proclamation and attachment by Makini Auctioneers Agencies dated 30.5.2024 in execution of the decree in favour of the respondents is hereby lifted forthwith.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 22ND DAY OF MAY, 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

No appearance for the petitioner

Ms. Ziwa for the 1st to 3rd respondents

No appearance for the 4th respondent



Mr. Egunza (muted) for the objector

