



Kagai v Kilonzo & 61 others; Atieno & another (Objector) (Environment & Land Case E007 of 2022) [2025] KEELC 983 (KLR) (4 March 2025) (Ruling)

Neutral citation: [2025] KEELC 983 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E007 OF 2022**

AY KOROSS, J

MARCH 4, 2025

BETWEEN

ROSE WAIRIMU KAGAI PLAINTIFF

AND

PHILIP MUNYWOKI KILONZO & 61 OTHERS & 61 OTHERS & 61 OTHERS DEFENDANT

AND

EUNICE EVERLINE ATIENO OBJECTOR

COLLINS ODHIAMBO OSORO OBJECTOR

RULING

Objectors' case

1. This ruling seeks to determine the notice of motion that has been moved under several provisions of law, and it is dated 3/05/2024. It seeks numerous reliefs from this court, some of which are spent, and the residual prayers for determination are: -
 - a. That the items proclaimed as per the proclamation dated 19th and served on 30/04/2024 by the agents of the plaintiff/deed holder, belong to the 1st and 2nd objectors, and the attachment herein be lifted and/or set aside.
 - b. That the defendants/judgment debtors have no legal or equitable interests in the items proclaimed on 30/04/2024.
 - c. Costs of the application be provided for.
2. The motion is supported by the grounds set out in the body thereof and the supporting affidavits of the objectors, which they swore on 3/05/2024.



3. In a summary, the 1st objector, Eunice Everline Atieno, contended on 30/04/2024 Philemon Aloo Oniala (Oniala), who is one of the defendants/judgment debtors, forwarded to her a proclamation by Bealine Kenya Auctioneers (auctioneers).
4. She contended the items contained in the proclamation were her household items and they were obtained from a house located on land parcel no. Nairobi Block 111/1758 Komarock Sector 1, owned by her late husband, Silvanus Ooko Odede. According to her, the proclamation was illegal.
5. For his part, the 2nd objector, who is the 1st objector's nephew, contended that the proclaimed motor vehicle KBV 353G, albeit registered in Oniala's name, was bought by him from Oniala for ksh. 450,000/- on 14/09/2023, and the purchase price was paid either by cash or mpesa. In other words, he owned the subject vehicle.

Decree holder's case

6. The motion was opposed by the decree holder's replying affidavit that she deposed on 27/06/2024. In it, she stated the subject vehicle was registered in Oniala's name, and by Section 8 of the [Traffic Act](#), the 2nd objector had not established his relationship with it.
7. As for the items listed in the proclamation in which the 1st objector contended she had an interest, the decree-holder asserted that the burden of proof lay with the 1st objector.

Parties' submissions

8. The court directed the parties to file written submissions. In compliance, the objectors' law firm on record M/s. K.A. Nyachoti Advocates did file written submissions dated 16/10/2024. In them, counsel reiterated the averments contained in the objectors' affidavit.
9. Additionally, the decree holder's law firm on record M/s. Fred Musyimi & Ass. Advocates filed written submissions dated 15/01/2025. By it, a singular issue was framed for determination- whether the 1st and 2nd objectors have proven they had a proprietary interest in the items proclaimed for attachment on 19/04/2024.
10. Therefore, upon identifying and considering the issues for determination, this ruling shall, later on in its analysis and determination, consider the arguments contained on the particular issue and also bear in mind the law and judicial precedents.

Issues for determination.

11. I have carefully considered the motion, its grounds, affidavits and submissions and the following issues arise for resolution: -
 - a. Whether the motion is merited.
 - b. What orders should this court issue, including an order as to costs?

Analysis and Determination

12. These two issues shall be handled together as the outcome of issue (b) flows from the findings of issue (a).



13. The authority by which this court can entertain the motion is founded in Order 22 Rule 51 of the Civil Procedure Rules (CPR), and from the face of the motion, the objectors properly moved this court. This provision of the law states as follows: -
- “(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.”
14. This law allows persons who were not parties to the original suit to seek the court’s intervention if their interests in properties that are the subject of execution of a decree are at risk of being auctioned.
15. It is a procedure that protects innocent 3rd parties from losing their properties at the execution stage. I concur with the persuasive decision of *Kiarie v Faith Wanjugu t/a Compliance Auctioneers & 2 others* [2024] KEHC 7695 (KLR), which described an objector as an intervener but limited to the execution proceedings.
16. Consequently, it can be concluded that although an execution is a lawful process, innocent 3rd parties cannot be held accountable for the acts of the judgment debtors.
17. In considering the motion, this court will be guided by the Court of Appeal decision of *Southern Bell Limited v National Social Security Fund Board of Trustees & 4 others* [2023] KECA 1170 (KLR), which summarised the guiding principles of objection proceedings in the following manner;
- “For a person to properly bring himself within the ambit of order 22 rule 51(1) of the Civil Procedure Rules, he has to meet certain conditions. First, he must prove that he is not the person against whom the decree was issued and, therefore not liable in respect thereof. Secondly, he must prove that attachment of his property has been levied in execution of the said decree. Thirdly, he must prove that he is entitled to or has a legal or equitable interest in the whole or part of any property attached in execution of the decree.”
18. Therefore, in circumstances such as this, where the objectors have claimed an interest in the proclaimed items and as rightfully submitted by the decree-holder, the onus is on them to prove their stake. The objectors had the onus of demonstrating they had an interest, legal or equitable, in the attached properties.
19. In this case, it was not contradicted the proclamation took place within Nairobi Block 111/1758 Komarock Sector 1, which is property registered in the name of Sylvanus Ooko Adede (Sylvanus), who is not the judgment debtor.
20. It has not been disputed that the proclaimed household items were found in this property, whereby the 1st objector, who is Sylvanus’s widow, resides with her children.



21. Although the decree-holder attacked the credibility of various receipts, she did not prove they were not genuine, and in my humble view, the absence of tax payments could not discredit the goods belonged to the 1st objector.
22. Moreover, of most significance, the items were found in the objector's matrimonial house, and the decree-holder was unable to establish a nexus between the judgment debtor and the 1st objector. As a result, I find the 1st objector is deserving of the orders sought.
23. Turning to the portion of the proclamation on the motor vehicle, the copy of records undoubtedly shows it is registered in Oniala's name and by the provisions of Section 8 of the *Traffic Act*, he is prima facie the owner. Nonetheless, this presumption is rebuttable as was held in Southern Bell Limited (Supra) thus:-

“The purport of section 8 of the *Traffic Act* is that unless the contrary is proved, the person in whose name the motor vehicle is registered is deemed to be the owner. In other words, the fact of registration is only prima facie evidence of ownership, and contrary facts can show otherwise...”

24. The 2nd objector produced an agreement for sale, which showed he purchased the motor vehicle on 14/09/2023, and his mpesa statements demonstrate he paid colossal sums of money to the judgment debtor on diverse dates of 14/09/2023 and 05/12/2023.
25. These transactions took place long before the proclamation, and the 2nd objector's assertions that he bought the motor vehicle from Oniala have not been dislodged by the decree-holder.
26. Considering this motor vehicle is now in the hands of the 2nd objector, who is a 3rd party to the proceedings, his interests should be protected, and I find he is similarly deserving of the orders sought.
27. For these reasons, this court finds and holds that the proclamation of the objectors' properties and/or goods is illegal, null and void.
28. The upshot is that I find the motion dated 3/05/2024 merited. I shall not make any orders as to costs. I ultimately make the following final disposal orders: -
 - a. The proclamation notice dated 19/04/2024 and the attachment against the objectors' properties and or goods is hereby lifted, and the same is declared a nullity.
 - b. There shall be no orders as to costs.
 - c. This file is hereby effectively marked as closed.

Orders accordingly.

DATED AT MACHAKOS THIS 4TH DAY OF MARCH, 2025

HON A. Y. KOROSS

JUDGE

04.03.2025

Delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Mutinda holding brief for Musyimi for 8th defendant/respondent



Mr. Nyachoti for objectors

Ms Kanja- Court Assistant

