



**Gulf African Bank Limited v Plaza Magnetic Resonance Limited & 4 others;
 RWSA Medical Company Limited (Objector) (Commercial Case E025 of 2021)
 [2025] KEHC 4971 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4971 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
 COMMERCIAL AND TAX
 COMMERCIAL CASE E025 OF 2021**

PM MULWA, J

APRIL 24, 2025

BETWEEN

GULF AFRICAN BANK LIMITED PLAINTIFF

AND

PLAZA MAGNETIC RESONANCE LIMITED 1ST DEFENDANT

NAIROBI IMAGING SOLUTIONS LIMITED 2ND DEFENDANT

THOMAS OTIENO OBAT KWASA 3RD DEFENDANT

BENJAMIN IMALINGAT 4TH DEFENDANT

ALFRED ODHIAMBO OTIENO 5TH DEFENDANT

AND

RWSA MEDICAL COMPANY LIMITED OBJECTOR

RULING

1. By way of Chamber Summons dated 1st July 2024, the Objector, RSWA Medical Company Limited, seeks the following orders:
 - i. Spent
 - ii. That the proclamation, attachment, and/or intended sale of the MRI machine as listed in the proclamation notice dated 18th June 2024 be set aside and/or quashed;
 - iii. That the Respondents, whether by themselves, their servants or agents, be restrained from proclaiming, attaching, or selling the said MRI machine;



- iv. That there be a stay of all execution proceedings pending the hearing and determination of this application.
2. The application is premised on the ground that the Objector is the beneficial owner of the MRI machine subject to the proclamation notice dated 18th June 2024, the same having been leased to the Judgment Debtor. It is the Objector's position that it has neither consented to the sale of the said equipment nor relinquished its proprietary interest therein, and as such, the same ought not to be used in satisfaction of the decree issued against the Judgment Debtor.
3. In support of the application, Abdel Mgeed Mohamed Elmahdi Mandour, a director of the Objector, swore a supporting affidavit on 1st July 2024. Annexed thereto is a copy of the MRI Operation Partnership Agreement dated 13th October 2021. In his affidavit, he denies that the Objector is indebted to the Decree Holder in any manner whatsoever. He contends that the Objector is not a party to the proceedings giving rise to the decree and that the MRI machine, being its property, ought not to be subjected to execution. He further avers that the Objector stands to suffer irreparable loss and prejudice should the execution be allowed to proceed against its property.
4. In response, the 1st and 2nd Defendants, through a replying affidavit sworn by Dr. Alfred Odhiambo on 17th July 2024, concede that the MRI machine belongs to the Objector. He avers that although the Defendants obtained a loan facility from the Decree Holder for the purposes of acquiring an MRI machine, they did not purchase the equipment outright but instead entered into a lease arrangement with the Objector. Consequently, the legal title to the MRI machine did not pass to the Defendants. Dr. Odhiambo further proposes that the parties explore a mutually agreeable payment plan for the settlement of the outstanding debt, in lieu of proceeding with the auction of the proclaimed assets. He asserts that the attached assets constitute the Defendants' sole source of income, and that their sale would severely cripple the Defendants' business operations.
5. In opposition to the application, Lewis Sato, the Legal Officer of the Decree Holder, filed a replying affidavit sworn on 11th July 2024. He avers that the present application is incurably defective, having been brought by way of Chamber Summons instead of a Notice of Motion, as is procedurally required. He further contends that the Objector has not established any legal or equitable interest in the MRI machine. In particular, he asserts that the proforma invoice annexed by the Objector does not amount to proof of purchase but merely reflects an intention or commitment to purchase.
6. In the absence of tangible evidence demonstrating actual purchase and subsequent use of the MRI machine by the Objector, Mr. Sato argues that the Objector is being improperly used as a vehicle by the 1st Defendant to shield assets from lawful execution. He concludes that the objection is a calculated attempt to frustrate the Decree Holder's legitimate efforts to recover the decretal sum.
7. The application was heard by way of written submissions.

Analysis and determination

8. Before I delve into the substantive merits of the application, it is necessary to first address the objection raised by the Plaintiff. The Plaintiff contends that the application is fatally defective, having been brought by way of Chamber Summons instead of a Notice of Motion.
9. This Court is guided by the provisions of Order 22 Rule 51(1) of the Civil Procedure Rules, which prescribes the procedure for objecting to attachment in execution proceedings. The said Rule provides:

“ 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.”

10. While procedural rules exist to promote order and efficiency in litigation, the overriding objective of the Court remains the administration of substantive justice. Article 159(2)(d) of *the Constitution* of Kenya, 2010 enjoins courts to dispense justice without undue regard to procedural technicalities. Accordingly, the procedural irregularity identified does not, in my considered view, render the application fatally defective. It is curable and does not warrant dismissal at this preliminary stage.
11. The issues that, therefore fall for determination in this application are:
 - a. Whether the Objector has established ownership or legal interest in the MRI machine sufficient to bar execution.
 - b. Whether an injunctive relief should issue.

Whether the Objector has established ownership or legal interest in the MRI machine sufficient to bar execution

12. The application is premised on Order 22 Rule 51(1) of the Civil Procedure Rules, which grants any person claiming an interest in property under attachment the right to lodge an objection.
13. The law is clear that the onus lies on the Objector to establish its legal or equitable interest in the properties which are subject matter of the proclamation and attachment objected to, and not for the decree holder to prove that the goods belong to the Defendant.
14. In *Arun v C. Sharma Astana Raikundaha t/a Raikundaha & Co. Advocates & 4 Others* [2014], the court stated as follows:

“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. The key words are, entitled or to have a legal or equitable interest in the whole or part of the property.”
15. In the instant case, the Objector has placed reliance on an MRI Operation Partnership Agreement dated 13th October 2021, which it submits confers proprietary interest over the MRI machine. Notably, the Defendants have not disputed this claim and, in their response, have conceded that the MRI machine belongs to the Objector and was leased to them.
16. The Decree Holder has argued that the Objector has failed to provide proof of ownership, citing that a proforma invoice cannot suffice. While this may be accurate in isolation, the Objector has not solely relied on the said invoice. Instead, it has produced a duly executed partnership agreement outlining the terms under which the MRI machine was made available to the Defendants, thus establishing an equitable interest in the property.
17. I am of the considered view that the Objector has provided cogent evidence demonstrating operational control and proprietary interest over the MRI machine, supported by a contractual agreement whose authenticity and validity have not been challenged or impugned.
18. It is trite law that execution proceedings must be confined to the property of the Judgment Debtor. Attaching the property of a third party amounts to an unlawful act. This principle was succinctly



enunciated in *Precast Portal Structures v Kenya Pencil Company Ltd & 2 Others* [1993] eKLR, where the Court observed that:

“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.”

19. From the evidence on record, it is evident that the MRI machine was neither held by the Judgment Debtor nor by any person in trust for the Judgment Debtor.

Whether an injunctive relief should issue

20. The Objector has prayed for orders of injunction to restrain the Respondents from proceeding with the attachment and sale of the MRI machine. The guiding principles for the grant of injunctive relief were laid out in the landmark decision of *Giella v Cassman Brown* [1973] EA 358, where the Court set out the threefold test:

“The applicant must establish a prima facie case with a probability of success; the applicant must demonstrate that he will suffer irreparable harm; and if in doubt, the court should decide the matter on a balance of convenience.”

21. These principles were reaffirmed in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, where the Court emphasized that the conditions are sequential and not to be applied in isolation.

22. In the present case, the Objector has demonstrated a prima facie case through evidence of its proprietary interest in the MRI machine, further bolstered by the Defendants’ own admission.

23. On the second limb, the Objector has shown that the sale of the MRI machine would occasion irreparable harm, not merely in the loss of a valuable asset but in the disruption of essential medical services and a critical revenue stream. Such loss cannot be adequately compensated by an award of damages.

24. Finally, on the balance of convenience, the Court is persuaded that it lies in favour of preserving the status quo and safeguarding the Objector’s interest in the MRI machine pending full resolution of the matter.

25. Having considered the material before this Court, I am satisfied that the Objector has established a legal and equitable interest in the MRI machine and has met the threshold for the relief sought. Accordingly, the Court makes the following orders:

- a. The proclamation, attachment and intended sale of the MRI machine, as listed in the proclamation notice dated 18th June 2024, is hereby set aside.
- b. The Respondents, their agents or servants, are restrained from proclaiming, attaching, or selling the said MRI machine.
- c. The stay of execution with respect to the MRI machine is granted.
- d. The Objector shall have the costs of the objection.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Kongere for Plaintiff/Decree holder

Ms. Mwanga for Defendants

Ms. Kate h/b for Mr. Busiega for Objector (RWSA)

Court Assistant: Carlos

