



Nyachiro t/a M/s Nyachiro Nyagaka & Company Advocates v Monarch Insurance Company Limited; Hegeons Auctioneers (Respondent); Anglo African Property Holdings Limited (Objector) (Miscellaneous Civil Application E150, 151, 152, 154, 156, 157, 159 & 160 of 2023 (Consolidated)) [2025] KEHC 4121 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E150, 151, 152,
154, 156, 157, 159 & 160 OF 2023 (CONSOLIDATED)**

RN NYAKUNDI, J

APRIL 2, 2025

BETWEEN

**JONES NYACHIRO T/A M/S NYACHIRO NYAGAKA & COMPANY
ADVOCATES DECREE HOLDER**

AND

MONARCH INSURANCE COMPANY LIMITED JUDGMENT DEBTOR

AND

HEGEONS AUCTIONEERS RESPONDENT

AND

ANGLO AFRICAN PROPERTY HOLDINGS LIMITED OBJECTOR

RULING

Representation:

M/s Kamau Lagat & Co. Advocates

M/s Samson Munene & Co. Advocates

1. By a Notice of Motion dated 10th February, 2025 expressed under the provisions of Section 44(1)(ii) of the [Civil Procedure Act](#), Order 22, Rule 51, 52 & 53 and Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#), the applicant seeks the following reliefs:

- a. Spent



- b. Spent
 - c. That pending the hearing and determination of this application, this Honorable court be pleased to stay the execution, proclamation, attachment and/or sale the Objector's properties namely, assorted officer computers, assorted office chairs, assorted office tables, assorted office cabinets, assorted office printers, assorted photocopier machines and more particularly described on the schedule to the proclamation of attachment dated 6th February, 2025.
 - d. That the Honorable court be pleased to set aside, and/or quash the proclamation, attachment and/or sale of the objector's properties namely assorted officer computers, assorted office chairs, assorted office tables, assorted office cabinets, assorted office printers, assorted photocopier machines and more particularly described on the schedule to the proclamation of attachment dated 6th February, 2025.
 - e. That the attachment/execution as against the objectors' properties namely, assorted office computers, assorted office chairs, assorted office tables, assorted office cabinets, assorted office printers, assorted photocopier machines and more particularly described on the schedule to the proclamation of attachment dated 6th February, 2025 in execution of the decree herein dated 5th December, 2023 be raised in whole.
 - f. That the costs of this application be awarded to the Objector.
2. The application is supported by an affidavit sworn by Jackline Onsarigo and on grounds captured as hereunder:
- a. That this honorable court issued warrants of attachment of movable property on 21st January, 2025.
 - b. That on 6th February, 2025, the Plaintiff/Decree holder through Hegeons Auctioneers proclaimed and attached the Objector's properties being, assorted office chairs, assorted office tables, assorted office cabinets, assorted office printers, assorted photocopier machines and any other attachable assets belonging to the judgment debtor to satisfy the decree issued herein.
 - c. That all attached properties are wholly owned by the Objector herein, and the judgment Debtor has no interest and/or claim whatsoever over the same. The items proclaimed and attached are also tools of trade and therefore exempted from attachment in execution of decrees.
 - d. That unless the decree holder herein and Moran Auctioneers are restrained from auctioning the said properties, and the attachment herein raised, the objector is likely to suffer irreparable loss and damage as the attached property risks being sold.
 - e. That it is the interests of justice that the orders sought are granted.
3. The decree holder in response filed a Notice of Preliminary Objection dated 20th February, 2025 and averred largely that the application is incompetent, frivolous and without merit. He further filed a replying affidavit sworn on 26th February, 2025 in which he deposed as follows:
- a. That I am an advocate of the High of Kenya practicing as such in the name of Nyachiro Nyagaka and Company Advocates.
 - b. That in the cause of discharge of my legal responsibilities I have variously represented the Judgment debtor in respect of 3rd party insurance claim from time to time and more specifically the matters that am the subject of the proceedings before court and several others.



- c. That upon failure to settle legal fees my advocate on record instructed Hegeons Auctioneers to proclaim the judgment debtor's business.
- d. That upon proclamation of the movable items at the judgment debtor's business premises the purported objector filed an application for stay of attachment.
 - i. That the objector was obliged to move the court by filing a notice of objection.
 - ii. It is noteworthy that through an application for stay of proceedings was made no notice of objection was filed and by law required.
- e. That upon proclamation of the movable items at the decree holder's business premises the purported objector filed an application for stay of attachment.
 - i. That the objector was obliged to move the court by filing a notice of objection.
 - ii. It is noteworthy that through an application for stay of proceedings was made no notice of objection was filed and by law required.
- f. That it was incumbent on the objector to establish its legal and equitable interest in the suit property attached in execution of the decree.
- g. That that through the objector alleges ownership of the suit properties it has not established or provided as by law required that.
 - i. It owns the said property.
 - ii. That the proclaimed properties are identified.
- h. That the objector has attached purported movable assets operation agreement M/S monarch insurance Limited.
- i. Thus the application is not meritorious but meant to mislead the court and to delay payment for service rendered.
- j. That I have done due diligence and established the following;
 - i. That I have conducted a search and established that some of the directors of the Judgment debtor and the objector are the same
 - ii. That the Advocate who witnessed the assets operational lease agreement is both a shareholder of one company and a company secretary in the two companies.
 - iii. That no inventory of the movable items subject to the lease have been attached and as such the purported lease is a blanket of document meant to conceal several material facts.
 - iv. That the law firm of M/s Samsom Macharia Munene who practices as Samson Munene & Company Advocates in the said building (Chester House) prepared the application before the court.
 - v. That it is conflict of interest in that the witness who again serves as a shareholder in one of the company is a company secretary in another.
 - vi. That indeed the objection proceedings have concealed several material facts which if disclosed the court will not have granted the orders sought.



- vii. That the applicant has deliberately decline to share the inventory of the movable assets.
 - viii. That the applicant deliberately fail to comply with mandatory procedure thus disadvantaging the decree holder failed.
 - ix. That Judgment debtor issues a cheque no 000282 drawn by monarch solutions limited which was unpaid upon presentation to the bank.
 - x. That upon us complaining they acknowledged that they are working on the payments once the transaction is completed
 - xi. That the applicant has not come in good faith and thus don't deserve the order sought.
4. In a further response, the applicant/judgment debtor filed a supplementary affidavit in which one Jackline Onsarigo deposed that:
- a. That I am the Finance Manager of the Objector/Applicant conversant with the facts of this case and duly authorized to swear this affidavit for and on behalf of the Objector.
 - b. That the Applicant/Objector was well guided by the Civil Procedure Rules Order 22 Rule 22 by moving the court under a certificate of urgency as soon as the Objector's property was proclaimed.
 - c. That the Applicant/Objector was well within the law to have sought interim orders of stay and only thereafter to have served the Respondents with the Orders granted.
 - d. That there is evidence of payment of leasing charges being Consideration for the contract of lease and thereby legally binding on the parties and against any third parties. This is sufficient proof of legal and equitable interest.
 - e. That the Objector establishes its legal & equitable interest in the suit property attached in execution of the decree through the Lease agreement and the evidence of payment of leasing.
 - f. That an Objector is only required to demonstrate an interest, legal or equitable in the attached property as stipulated in Order 22 rule 51 (1) of the Civil Procedure Rules.
 - g. That the sole purpose of the instant Application is to demonstrate that the attached property is wholly owned by the Objector, not the Judgement Debtor, thus protecting the interest of the Objector in the proclaimed assets. Therefore, Applicant/Objector is not in any way misleading the court.
 - h. That the Advocates' Act does not forbid a law firm or any Advocate to represent parties within an agreement. Additionally, clients have the freedom to be represented by Advocates of their own choice.
 - i. That there are various ways in which conflict of interest arises and the one where a witness who serves as shareholder in one company and company secretary to another both which are parties to a suit is not one of them. It is upon the Respondent to demonstrate how the same creates a conflict of interest.
 - j. That all that is required by law is for the Objector to prove equitable and legal interest and not an inventory of the moveable assets subject to lease.



Analysis and determination

5. Having carefully considered the application, the responses, and the evidence placed before this Court, I must now determine whether the Applicant has established a legal and equitable interest in the proclaimed properties sufficient to warrant the setting aside of the attachment. The central issues therefore for determination are: first, whether the Applicant/Objector has demonstrated ownership or legal interest in the proclaimed properties; and second, whether the lease agreement between the Judgment Debtor and the Applicant/Objector is a genuine transaction or a contrivance to defeat execution.
6. The law on objection proceedings is well established. Before delving into the merits of this particular case, it is important to reiterate that an objector bears the burden of proving their legal or equitable interest in the attached property. This principle is fundamental to execution proceedings and safeguards the integrity of the court process.
7. It was stated as follows in *Duncan Kabui v Samuel Bede Ogembo & another* [2014] eKLR:-

“the burden of proof in this regard is on the Objector to establish her legal or equitable interest in the property which is the subject matter of the execution objected to, and it is not for the decree holder to prove that the goods belong to the defendant. It was stated as follows in this regard by Hon Waki J (as he then was) in *Simba Colt Motors Limited v Lustman & Co (1990)* HCC No 729 of 2002:-“the purpose of Rule 57 is to provide the Objector with an opportunity to establish his claim to the attached movable property. The Rule casts the onus of proof on the Objector to prove that the property belonged to him and not, as submitted before me, for the Decree-holder to prove that the property belonged to the judgment debtor.”
8. Order 22 rule 51 provides as follows:

“51 (1) 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.
9. In the case of *Chotabhai M. Patel v Chaprabhi Patel* [1958] EA 743, it was stated that;
 - a) 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 party to the suit.
 - b) The Objector shall adduce evidence to show that at the date of attachment he had some interest in the property attached.
 - c) The question to be decided is, whether on the date of attachment, the Judgment Debtor or the Objector was in possession, or where the court is



satisfied that the property was in the possession of the Objector, it must be found whether he held it on his own account or in trust for the Judgment Debtor. The sole question to be investigated is, thus, one of possession of, and some interest in the property.

- d) Questions of legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment Debtor or some other person. To that extent the title may be part of the inquiry.”

10. Applying these principles to the case at hand, I find that the Applicant/Objector has failed to discharge its burden of proof. While the Applicant has produced a lease agreement purporting to show its ownership of the proclaimed properties, several troubling aspects of this arrangement undermine its credibility. The decree holder has conducted due diligence and established that some directors of the Judgment Debtor also serve as directors of the Objector company. Furthermore, the advocate who witnessed the assets operational lease agreement appears to be both a shareholder in one of the companies and a company secretary in both entities. These interlocking relationships raise significant concerns about the independence of these entities and the genuineness of the lease agreement.
11. It is trite law as stated in the case of *Salomon v Salomon & Co. Limited* (1807) that a company is a different person in law distinct from its shareholder and Directors giving it the characteristics of a legal entity capable of being sued or suing within the terms of the memorandum and Articles of Association. Essentially from the affidavit of the decree holder respondent the two companies seems to share the same directorship and subscribers which material evidence has not been controverted. That means this is a case for lifting of the corporate of the two companies so that liability can shift from the companies as legal entities the individual Directors to show cause why they should not satisfy the decree passed against the judgement debtor. The most common grounds for judicial lifting or piercing of the corporate veil are fraud where the company has a sham or façade instrumentally rule, alter ego doctrine concealment and evasion. Gathered from the affidavit and submissions of a decree holder, there is prima facie evidence that the two companies are owned by co-subscribers by the same Directors raising suspicion whether the deed of objection proceedings is not an instrument for the judgement debtor herein Monarch Insurance Co. Limited to avoid proper discharge of its duties under the law. The other grounds advanced by the objector Applicant, is that of having a lien or right of ownership of movable Assets across the various offices which then are on leasehold with the Judgement Debtor and therefore incapable of being attached by the decree holder. In my considered view I agree with the decree holder that the Applicant has not even attempted to proof, leave alone succeeding to discharge the standard and burden of proof the nature, characteristics, date of purchase, and specific leases touching on different locations mentioned in the affidavit. One cannot avoid to conclude a manifestation of concealment of the judgement debtor’s Assets by the Applicant. The persuasive dicta in *Prest v Petrodel Resources Limited* (2013) UKSC 34. The court held “ The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity I legally relevant. I this case, the court is not disregarding the “façade” but only looking behind it to discover the facts which the corporate structure is concealing
12. The mere fact that the decree holder cannot trace the properties of the company may constitute exceptional circumstances that given the allegations leveled in his affidavit he may eventually end up with an empty decree in hands if the corporate veil is not lifted between the judgement debtor and the objector legal entities.



13. The documentary evidence produced by the decree holder is particularly compelling. Business registration records from the Companies Registry reveal that Samson Macharia Munene serves as both a shareholder in Monarch Insurance Company Limited and the company secretary for Anglo African Property Holdings Ltd. Similarly, both Biki Monyenye Kangwana and Jared Benson Kangwana serve as directors in both companies. This level of directorship overlap strongly suggests that the two entities are not dealing with each other at arm's length. The court cannot ignore such glaring interconnections when evaluating whether the objection is made in good faith. When the same individuals occupy positions of control and influence in both the judgment debtor and the entity claiming to own the attached assets, it raises serious doubts about the independence of the objector and the legitimacy of any transactions between them. This Court is not persuaded that these arrangements represent genuine separate legal interests rather than an attempt to place assets beyond the reach of legitimate creditors.
14. According to *Halsbury's Laws of England*, 4th edition, volume 13 at par 249 the learned authors rendered themselves as follows;

“The tools and instruments of a man's trade or profession and instruments of husbandry are distrainable only if there are no other goods on the premises sufficient to countervail the arrears of rent. The axe of a carpenter, the books of a scholar, the kneading-trough of a baker, the stocking-frame or loom of a weaver and even the cab of a cab driver have been held to be within this rule.”
15. The Applicant/Objector has argued that the proclaimed items are tools of trade and therefore exempt from attachment. While certain tools and instruments essential to one's trade are indeed protected from attachment under certain circumstances, this protection is not absolute and cannot be invoked where there appears to be a deliberate attempt to shield assets from legitimate creditors.
16. Having carefully weighed the evidence before me, I am not satisfied that the Applicant/Objector has demonstrated a genuine legal or equitable interest in the proclaimed properties. The close relationship between the Judgment Debtor and the Objector company, combined with the lack of specific documentation identifying the assets subject to the purported lease agreement, leads me to conclude that this objection is an attempt to frustrate the execution process rather than a legitimate claim of ownership. In such circumstances, the court must look beyond the form to the substance of the arrangement. I find that the proclaimed properties were, at the time of attachment, effectively in the possession of the Judgment Debtor and therefore properly subject to attachment in satisfaction of the decree.
17. The orders herein apply to Misc. 151, 152, 154, 156, 157, 159 & 160 of 2023.
18. All in all the objectors application is dismissed with costs.
19. It is so ordered.

SIGNED, DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF APRIL 2025.

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R. NYAKUNDI

JUDGE

