



Sokoni Mattress Ltd v Bellamy Milling Company Limited & another (Civil Appeal E093 of 2024) [2025] KEHC 6315 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E093 OF 2024
EM MURIITHI, J
MAY 15, 2025**

BETWEEN

SOKONI MATTRESS LTD APPELLANT

AND

BELLAMY MILLING COMPANY LIMITED 1ST RESPONDENT

CHADOR AUCTIONEERS 2ND RESPONDENT

*(Being an appeal from the Ruling of Hon. Kemuma Sara Manyura,
Adjudicator/Resident Magistrate dated 14th August 2024 in
Kerugoya Small Claims Court Case NO. SCCCOMM/E010/2024)*

JUDGMENT

1. The appellant filed an appeal dated 16 August, 2024, against the ruling delivered in Kerugoya Small Claims Case No. SCCCOMM/E010 of 2024 setting out the following grounds:
 1. That the learned trial Adjudicator/Magistrate erred in fact and in law in failing to find that the appellant was operating a supermarket business at the premises where the impugned proclamation and attachment took place and such premises were hence occupied by the appellant at the time of the impugned proclamation and attachment.
 2. That the learned trial Adjudicator/Magistrate erred in fact and in law in failing to find that the proclaimed and attached goods were in possession of the appellant at the time of the proclamation and attachment and hence owned by the appellant.
 3. That the learned trial Adjudicator/Magistrate erred in fact and in law in failing to find that the appellant was the owner of the proclaimed and attached goods.



4. That the learned trial Adjudicator/Magistrate erred in fact and in law in completely disregarding the evidence filed and presented by the appellant in respect to ownership of the proclaimed/attached goods.
5. That the learned trial Adjudicator/Magistrate erred in giving a decision of determination that was against the weight of evidence.
6. That the learned trial Adjudicator/Magistrate erred in fact and in law in finding that the appellant had not proved ownership of the proclaimed and attached goods.
7. That the learned trial Adjudicator/Magistrate erred in fact and in law in failing to find fact that there was an irregularity and abuse of the Court by the 2nd respondent in the execution of the trial Court's warrants of attachment and sale.
8. That the learned trial Adjudicator/Magistrate erred in fact and in law in dismissing of the Appellant's application dated 17th July, 2024.

Brief background

2. The Appellant herein Sokoni Mattress Limited was the Objector/Applicant in Kerugoya Small Claims Case No. SCCCOMM/E010 of 2024, whereby the Appellant filed an objection to attachment and an application dated 17th July, 2024 against the proclamation and attachment that was carried out by M/s Chador Auctioneers, the 2nd respondent, through a proclamation dated 15th July, 2024.
3. The 1st respondent herein, Bellamy Milling Company Limited, was the claimant/decreed-holder in the said suit and the said proclamation/attachment was carried out pursuant to warrants of attachment and sale issued against the respondent/judgement-debtor in the said suit, namely Spear Supermarket Limited alias Spear Mattress Limited.
4. The appellant's objection to the said proclamation/attachment was mainly based on the ground that the proclaimed goods were owned by the appellant and the appellant was not the judgement-debtor in the said suit and hence its goods were not amenable and open to attachment pursuant to the said warrants.
5. The appellant therefore objected to and opposed the said proclamation/attachment through the said application dated 17th July, 2024 and whereby the appellant sought in the main for orders that the Honourable Court be pleased to issue an order lifting the proclamation/attachment of the objector's/applicant's goods/movable properties in execution of the judgement/decreed in the said suit and or pursuant to the warrants of attachment and sale issued on 11th July, 2024 against Spear Supermarket Limited alias Spear Mattress Limited and the costs of the application and of the auctioneer's fees/charges (if any) be paid by the claimant/1st respondent.
6. The appellant's application dated 17th July, 2024 was filed under certificate of urgency but no interim orders were issued at the ex-parte hearing. During the pendency of the appellant's application dated 17th July, 2024, the 2nd respondent obtained an order for provision of security by the police from a different Court, vide Nairobi MC Milimani Commercial Court Misc. Application No. E1309 of 2024, whereby an order for provision of police assistance to the 2nd respondent was made and issued through an order dated 24th July, 2024, which is at page 65 of the record of appeal, to enable the 2nd respondent break into the premises and remove the proclaimed goods.
7. The 2nd respondent thereafter on 29th July, 2024 visited the premises where the proclamation had been carried out, broke into the premises and physically attached and removed and carted away assorted



supermarket goods and other movable properties that were at the premises. All this was done in the presence of and with the assistance of police officers from Nyahururu Police Station. On 1st August, 2024, the trial Court made an order restraining the 2nd respondent from selling and disposing of the proclaimed goods pending the trial Court's ruling on 14th August, 2024.

8. The appellant's application dated 17th July, 2024 was heard both orally and through written submissions and a ruling was delivered on 14th August, 2024, whereby the appellant's objection and application dated 17th July, 2024 were dismissed with costs.

Appellant submissions

Operating a supermarket business at the premises of proclamation

9. The appellant's case before the trial court was that it was operating a supermarket business, under the name Sokoni Mattress Supermarket, at the premises where the impugned proclamation/attachment was carried out. The appellant filed three affidavits, all sworn by Grace Waiyego Kairu, a Director of the appellant, being the supporting affidavit sworn on 17th July, 2024, the further affidavit sworn on 29th July, 2024 and the supplementary affidavit sworn on 31st July, 2024, respectively.
10. The appellant demonstrated through the said affidavits that it was operating a supermarket business in the premises where the impugned proclamation and attachment took place. The appellant filed a business licence (single business permit) issued by the County Government of Laikipia over the said supermarket business, which is at page 77 of the record of appeal. The appellant also filed photographs showing the said business premises, branded with the appellant's business name "Sokoni" see pages 78 and 79 and pages 97 to 99 of the record of appeal. The appellant also filed cash sales receipts and invoices from its suppliers to show that the appellant was indeed operating a supermarket business which are at pages 80 to 96 of the record of appeal. All the documents and affidavit evidence filed by the appellant looked together and as a whole reasonably show that the appellant was operating a supermarket business at the premises where the impugned proclamation and attachment took place and the appellant was in occupation and possession of the said premises at the time that the impugned proclamation and attachment took place.
11. The 1st respondent did not adduce sufficient evidence before the trial court to disapprove ownership of the proclaimed and attached goods by the appellant.

Irregularity by the 2nd respondent in execution of the trial Court's Warrants of Attachment and Sale

12. The 2nd respondent went to a different court and obtained an ex-parte order for police assistance to break into the premises when the matter was pending execution before the trial court and when the appellant's objection to attachment and application dated 17th July, 2024 were still pending before the trial court. This was done in abuse of the court process.
13. The appellant submits that the 2nd respondent acted in abuse of the court process in physically attaching, removing and carting away goods whose value by far exceeds the decretal sum under the warrants of attachment and sale issued by the trial court.

1st Respondent submissions

Ownership of the premises

14. The Appellant in this case failed to discharge that burden. No lease agreement, payment receipts, tenancy documents, or utility bills were produced to prove lawful possession or ownership of the



premises. The absence of a lease or tenancy agreement/ documents, payments or utility bills suggested that the Appellant had not established a legitimate claim over the premises.

15. They rely on the case of *Kuria v Gachanjo & another; Gathara & another (Objector)* (Miscellaneous Civil Application 444 of 2017) [2023] KEHC 18476 (KLR) (Commercial and Tax) (12 June 2023) (Ruling)
16. Where the Honourable Judge J.W.W Mongare in dismissing the Objector’s application held as follows at page 3 paragraph 20;
 - a. “To prove that the said property had been leased out, the 2nd Objector annexed a copy of the lease between the 1st Objector and herself. I note however that neither of the objectors provided evidence of payment of rent”.
17. In the present case, the Appellant produced a business premise permit which indicated that the Appellant operates in a locality called Sokoni (‘Sokoni’ meaning the market place). The business permit does not specify the name of the building or the actual premises where the Appellant is situated. This lack of specificity of the Appellant’s location clearly indicates that the Appellant is located in a market place and not necessarily the Judgment Debtor’s premises.

Evidence of Tampering with Premises Branding

18. The 1st Respondent submitted photos taken during proclamation showing the branding “Spear Supermarket Sokoni,” which was subsequently altered to read “Sokoni” alone. The deliberate removal of the original signage suggests a fraudulent attempt to obstruct lawful execution. This conduct, together with the absence of tenancy or purchase documents, supports the inference that the Appellant was acting in collusion with the judgment debtor.
19. There are several supermarkets within the vicinity; therefore, for the 2nd Respondent to have identified and proclaimed the Judgment Debtor’s assets, there must have been distinguishing indicators. In this case, the signage at the supermarket premises called Spear Supermarket Sokoni, which matched the location where the 1st Respondent had previously supplied goods and the same name of the Judgment Debtor.

The proclaimed and attached goods

20. The proclaimed notices attached in the record of appeal listed the proclaimed items including the fridge, food warmer, single desk oven, sink, working table, super market shelves, water dispensers, burner cookers, petrol car wash machine, serving machine, fence trimmer, pool table, total gas cylinder among others.
21. The Appellant did not produce any receipts and/ or invoices to show purchase of the above listed items as per the proclamation notices.
22. The Appellant alleges to be a supermarket and we believe the Appellant ought to have purchased the proclaimed listed items from manufacturer or distributors and issued with receipts showing proof of purchase however, the said receipts were never produced.
23. The objector produced invoices from Gilanis Supermarket and the items allegedly bought from the distributor include tropical crisps, mama’s choice sauce, Ribena, baking flour among other items. The said items are not part of the items proclaimed by the Decree Holder and as per the proclamation notices before this Honourable court.



The Valuation Report

24. The 1st Respondent submitted a valuation report dated 14th October 2024, which assessed the value of the attached goods at Kshs. 852,100.00. To this report, the 2nd Respondent appended a breakdown of costs incurred during the proclamation and attachment process, amounting to Kshs. 498,893.00. Additionally, the said items have continued to accrue storage charges from the date of attachment at a rate of Kshs. 1,000 per day.

Issue

25. Whether the Appellant proved ownership or equitable interest in the attached goods.
26. Whether the Appellant is entitled to the orders sought in the appeal.

Analysis

27. Having looked at the Appellant's grounds of appeal and in particular to its written submissions, it was clear that there are two main issues in the appeal.

Whether the appellant was operating a supermarket business at the premises where the impugned proclamation and attachment took place

28. The appellant's case before the trial court was that it was operating a supermarket business, under the name Sokoni Mattress Supermarket, at the premises where the impugned proclamation/attachment was carried out. The appellant filed three affidavits, all sworn by Grace Waiyego Kairu, a Director of the appellant, being the supporting affidavit sworn on 17th July, 2024, the further affidavit sworn on 29th July, 2024 and the supplementary affidavit sworn on 31st July, 2024.
29. The appellant demonstrated through the said affidavits that it was operating a supermarket business in the premises where the impugned proclamation and attachment took place.
30. The 1st respondent on the other hand claims and maintains that the premises where the proclamation took place were in possession of Spear Supermarket Limited alias Spear ' Mattress Limited, being the Judgement-debtor in Kerugoya Small Claims Case No. SCCCOMM/E010 of 2024 and that the proclaimed goods were hence owned by the judgement-debtor in the said suit. The 1st respondent filed a photograph, which bears the name "Spear Sokoni."
31. Further, the 1st Respondent submitted photos taken during proclamation showing the branding "Spear Supermarket Sokoni," which was subsequently altered to read "Sokoni" alone. The deliberate removal of the original signage suggests a fraudulent attempt to obstruct lawful execution. This conduct, together with the absence of tenancy or purchase documents, supports the inference that the Appellant was acting in collusion with the judgment debtor.
32. The appellant, through the supplementary affidavit of Grace Waiyego Kairu sworn on 31st July, 2024 stated that the premises were previously occupied by the judgement-debtor who vacated from the premises in or around April, 2023 and the premises were subsequently occupied by the appellant and DTB Bank as shown by the photographs filed by the appellant.
33. Section 116 of the *Evidence Act*, Cap. 80 of the Laws of Kenya, which provides as follows:

i.

116. Disproving ownership.



- ii. When the question is whether any person is owner of anything of which he is Shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner,”
34. In the case of Equitorial Commercial Bank Ltd. V Rubacon Agencies Ltd. & 3 others (2065) eKLR, the Court cited the case of Akiba Bank Ltd. V Jetha & sons Ltd (2005) eKLR and said as follows:
- “8. Such would be along the lines of the observations of my learned brother Waweru J. in the case of Akiba Bank Ltd v. Jetha & Sons Ltd (2005) eKLR when he detailed as follows:
- for an objector to succeed in his objection he must exhibit evidence of his legal or equitable interest in the whole or part of any property attached in execution of a decree.”
35. The respondent submits that the Appellant in this case failed to discharge that burden. No lease agreement, payment receipts, tenancy documents, or utility bills were produced to prove lawful possession or ownership of the premises. The absence of a lease or tenancy agreement/ documents, payments or utility bills suggested that the Appellant had not established a legitimate claim over the premises.
36. The business permit produced by the appellant does not specify the name of the building or the actual premises where the Appellant is situated. This lack of specificity of the Appellant’s location clearly indicates that the Appellant is located in a market place and not necessarily the Judgment Debtor’s premises.

Whether the proclaimed and attached goods were in possession of the appellant at the time of the impugned proclamation and attachment

37. The appellant submit that prove of legal or equitable ownership of the proclaimed and attached goods is not limited or restricted to production of receipts. The proclaimed and attached goods were assorted supermarket goods and other movable properties and it was unreasonable for the trial court to require and expect the appellant to produce receipts for each and every item, good and commodity that was attached so as to prove ownership of the attached goods.
38. In the case Equatorial Commercial Bank Ltd. V Rubacon Agencies Ltd & 3 others (2005) eK LR (supra) the Court held that:
- “...in these circumstances, I would tend to agree with the Objector that it is unreasonable for her to be expected to produce receipts etc. going back several years, so as to prove that she is the owner of the attached household goods.”
39. The 1st respondent submits that the appellant produced invoices from Gilanis Supermarket and the items allegedly bought from the distributor include tropical crisps, mama’s choice sauce, Ribena, baking flour among other items. It is submitted that the said items are not part of the items proclaimed by the Decree Holder and as per the proclamation notices before this court.
40. In the application for stay of execution pending appeal before this Court, the appellant’s valuers filed a valuation report dated 7th October, 2024, whereby attached goods were valued at Ksh.9,611,100/= . The value of the attached goods by far exceeds the decretal sum of Kshs.644,360.35 in Kerugoya Small Claims Court No. SCCCOMM/E010 of 2024. The 1st Respondent submitted a valuation report



dated 14th October 2024, which assessed the value of the attached goods at Kshs.852,100.00. To this report, the 2nd Respondent appended a breakdown of costs incurred during the proclamation and attachment process, amounting to Kshs.498,893.00. Additionally, the said items have continued to accrue storage charges from the date of attachment at a rate of Kshs.1,000 per day. However, the value of the goods is not in issue before this Court on the hearing of the appeal from the decision of the trial court declining to lift the attachment of the goods claimed by the appellant.

Burden of proof

41. Photographs of the building by the Auctioneer at attachment and those presented by the Objector appellant are different. The former's
42. With respect, this court does not agree that an objector is entitled to rely on possession to prove ownership of the attached goods. The burden of proof does not shift at the outset only on allegation of possession. In objection proceedings on the ground that the applicant is the owner of the goods attached by the respondent, proof of ownership is crucial to the success of the application.
43. The burden of proof is on the Objector, under section 107 of the *Evidence Act*, as the person who desires the court to give judgment as to its ownership of the attached goods which is dependent on the existence of fact of ownership which it asserts and, in terms of section 108 of the Act, as the "person who would fail if no evidence at all were given on either side."
44. I respectfully agree with the decision of Kuloba, J. in *Precast Portal Structures v Kenya Pencil Company Ltd & 2 others* [1993] KEHC 100 (KLR) relied on by the trial court in which remains salutary as follows:

“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.”

45. The standard of proof in civil cases is on a balance of probabilities and cogent evidence is required the more serious the allegation. See *Re H (minors)* [1996] A.C. 563.

Proof of ownership

46. On question of ownership of the attached good in this case, there is need for cogent evidence in the circumstances where the goods are attached in a building labelled with the name of the judgment debtor, and wherein the same business of supermarket as the judgment debtor's is carried. The allegation that the judgment debtor had vacated the premises in April 2023 and the Objector taking the tenancy thereafter must be proved with cogent evidence, say of a lease or tenancy agreement or landlord's statement.



Presumption of ownership by possession

47. The Objector/appellant and the Decree-holder both rely on presumption of ownership possession as set out in section 116 of the *Evidence Act* which provides as follows:

“ 116. Disproving ownership.

When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.”

48. The Respondent decree-holder exhibits a photograph showing allegedly at the time of attachment the name Spear Sokoni on the face of the shop where attachment was levied. The Respondent considers that the presence of Spear indicates the premises is in possession of and operation by the Judgment debtor Spear Supermarket Limited alias Spear Mattress Limited.

49. However, in photographs presented by the Objector/Appellant as GWK10 in the Supplementary Affidavit of 31/7/2024, the shop is shown as having one name Sokoni only.

50. If it is true that as deponed to by the Appellant’s director that the at paragraph 6 of the Supplementary Affidavit that the judgment debtor had long vacated the premises over a year before the attachment and renovations and partition done to accommodate two new businesses that of the Appellant Sokoni and Diamond Trust Bank (DTB), the name Spear representing the judgment debtor Spear Supermarket Limited would have been removed during the renovations and partitioning! Or there should be an explanation therefor as suggested by the Respondent’s submissions that the debtor and the objector are related. Indeed, the Court notes that the Postal address for the two companies Spear Supermarkets Limited registered on 23rd December 2005 and Sokoni Mattresses Ltd registered on 14/9/2023 is the same P.O. Box 1295 Nyahururu.

51. What does the removal of the name Spear Supermarket between the time of the attachment and the objector’s case, as shown in the photographs, mean? It would appear that all the Objector did was to remove the word “Spear” from the previous “Spear Sokoni” to retain Sokoni as showing possession by the Objector. The Objector does not explain this event.

52. The Objector appellant failed to produce any lease or tenancy agreement as would put it in possession of the shop as alleged. Or call the landlord as a witness by a suitable affidavit in support.

53. The Court does not accept that the Appellant was in possession of the shop and the goods on which the attachment was levied. Accordingly, the presumption of section 116 of the Evidence does not operate in favour of the Appellant.

Proof of ownership by production of receipts, invoices etc.

54. The reasoning about the cumbersomeness of production of computer information as to purchases and sale of the applicant is not well taken. If the applicant must prove ownership of the goods, it should give the best evidence to prove its case. In addition, delivery notes are physical as the goods have to be signed for on receipt; invoices may be sent by email or physical copies both of which maybe produced.

55. As regards the receipts for purchases the goods, what is proceed are invoices not receipts with fixed stamps in the name of the Objector. There are no official receipts for the payment of the goods by the Objector but the delivery notes and invoices may show that the goods were delivered to the applicant supermarket which would be a sufficient interest in the goods.



56. The Documents produced as exhibit “GWK 9” in the Supplementary Affidavit of the Applicant’s director of 31/7/2024 are as follows:

1. Invoice by Gilanis Distributors Limited dated 9/6/2024 for Tropical crisps valued at Ksh.7,925/- inclusive of VAT.
2. Invoice by Gilanis Distributors Limited dated 8/6/2024 for Mama Choice sauce valued at 2,400/- inclusive of VAT.
3. Cash Sale receipts from Kanini Haraka Enterprises Limited dated 12/6/2024 for Indomie, Ujimmy, Wimbi and assorted goods at Ksh.15,490/- inclusive of taxes.
4. Cash Sale receipts from Kanini Haraka Enterprises Limited dated 11/6/2024 for sugar, salt tissue, rice and Drinking Chocolate at Ksh.25,825/- inclusive of taxes.
5. Cash Sale receipts from Kanini Haraka Enterprises Limited dated 10/6/2024 for baking flour, maize meal, vegetable oil, Afya juice and assorted goods at Ksh.18,345/- inclusive of taxes.
6. Cash Sale receipts from Kuweka Trading dated 6/6/2024 for Bathing soap, Toss, Jamaa soap, Rina Vegetable Oil and assorted goods at Ksh.78,565/- inclusive of taxes.
7. Cash sale for purchase from Medipoint Pharmaceutical Limited for Ribena and Lucozade Ksh.8,140/-.
8. Invoice from Latest Trading Limited dated 8/3/2024 for methylated spirit, surgical spirit, home drycleaner and assorted goods Ksh.23,015/- including VAT.
9. Cash Sale receipts from Kanini Haraka Enterprises Limited dated 5/6/2024 for Sugar, Baking Flour and Colgate Tooth paste at Ksh.14,300/- inclusive of taxes.
10. Invoice from Gilanis Supermarket dated 4/6/2024 for Ksh.1,070/- with VAT.
11. Cash Sale receipts from Kanini Haraka Enterprises Limited dated 31/5/2024 for Sugar at Ksh.5,950/- inclusive of taxes.
12. Cash Sale receipts from Kanini Haraka Enterprises Limited dated 31/5/2024 for Baking Flour, Maize Meal, Rice and assorted goods at Ksh.14,110/- inclusive of taxes.
13. Invoice from Gilanis Distributors dated 27/2/2024 for Tropical Crisps.
14. Duplicate Receipts issued by Sokoni Mattress Limited for the months of March, April and July 2024 for sale of assorted supermarket items such as sugar, maize meal, bread, milk, tea leaves etc.

Delivery Notes/invoices, cash sales and duplicate Receipts for sales

57. The Delivery Notes/invoices, Cash sales, Duplicate Receipts issued by the Objector for purchases made in the Supermarket show delivery and sales of such goods in the period March -July 2024. They are evidence of ownership of the attached goods and of the sale of such goods by the Super market Sokoni Mattress Limited. On a balance of probabilities, the Court would find the issue of ownership of the assorted supermarket items proved by the Objector Appellant.

Other Attached Items

58. The list of attached goods according to the Notification of Sale dated 29/7/2024 attached in the Appellant Director’s Further Affidavit of 29/7/2024, has the following items:



1. Assorted supermarket goods, fair condition, valued at Ksh.50,000/-.
 2. New 4-Burner cooker at Ksh.10,000/-
 3. New 4 Dispensers at Ksh.12,000/-
 4. New Pool Table at Ksh.20,000/-
 5. Old Microwave at Ksh.1,500/-
 6. Old metallic kettles at Ksh.5,000/-
 7. Old meat displays at Ksh.40,000/-
 8. Old 13kg Gas at Ksh.3,000/-
 9. New Plastic Chairs at Ksh.1,000/-
 10. Old 50kg Gas at Ksh.10,000/-
 11. Old display fridges at Ksh.15,000/-
 12. Food Displays in fair condition, at Ksh.20,000/-
 13. 6-Burner Cooker, not tested, at Ksh.60,000/-
 14. Supermarket Shelves in fair Condition at Ksh.40,000/-
 15. Generator, not tested, at Ksh.500,000/-
 16. Double Deep Fryer, not tested, Ksh.35,000/-
59. Other than the item No. 1 on Assorted supermarket goods, there are no receipts or other evidence of ownership of the goods and equipment attached. The generator, display shelves etc. No order for release could follow in the absence of proof of ownership by the Objector, and the Decree-holder cannot be asked to prove the goods belong to the judgment debtor. That would be an inversion of the burden of proof in section 107 and 108 of the *evidence Act*.
60. In the circumstances of this case, where the name of the Judgment debtor SPEAR is shown to have been on the face of the shop from where the goods were attached, and in the absence of a tenancy agreement in favour of the Objector/Appellant, it is not possible to hold despite the invoices and cash sale receipts of purchases and sale of assorted supermarket goods, that the objector was in possession of the shop, so as call into aid the presumption of ownership under section 116 of the *Evidence Act*.
61. The objector/appellant is obliged to produce evidence of the ownership of the other property attached. The Objector/Appellant was, according to its director, a new supermarket operating at the shop. There should have been no problem to produce receipts/invoices for the purchase of the shop meat/food display units, fridge, dispensers, cookers, Deep fryer, pool-table and generator.
62. While this Court respectfully notes the decision cited by the Objector in *Equitorial Commercial Bank v. Rubacon Agencies Ltd & 3 Ors* that it might be unreasonable for an objector “to be expected to produce receipts going back several years, so as to prove that she is the owner of the attached household goods”, but these goods attached herein are not household goods, and the attachment was done in 15th July 2024 while the company Sokoni Mattresses the Objector herein is shown to have been registered on in 14th September 2023, some 10 months of operations for the new company!



63. On a balance of probabilities, it is more likely than not that most of the the goods attached in the property labelled Spear Supermarket Sokoni belonged to the judgment debtor as the objector has not been able to present evidence of ownership. However, the Objector was able to show by delivery notes/ invoices the delivery of some goods to the Objector and the Court will find their ownership proved and order release of the assorted supermarket goods only.

Irregularity by the 2nd respondent in execution of the trial Court’s Warrants of Attachment and Sale

64. There was no stay orders obtained by the Appellant following the filing of the Objection application before the trial court dated 17/7/2024.

65. The 2nd Respondent had the recourse to seeking a break-in order where a judgment debtor locked up proclaimed goods after the proclamation on 15/7/2024.

66. An Auctioneer has under Rule 9 of the Auctioneers Rules 1997 the right to seek police assistance in execution in proceedings in that behalf as happened here by the application of 24/7/2024, as follows:

“9. Police assistance

(1) Where an auctioneer has reasonable cause to believe that—

(a) he may have to break the door of any premises where goods may be seized or repossessed; or

(b) he may be subject to resistance or intimidation by the debtor or other person; or

(c) a breach of the peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property, the auctioneer shall request for police escort from the nearest police station in order to carry out his duties peacefully.

(2) An application under this rule shall be by motion by way of a miscellaneous application support by an affidavit and may be heard ex parte.

[L.N. 144/2009, r. 3.”

67. Consequently, the Auctioneer proceedings for a break-in order could have been filed in any court with jurisdiction, and in the absence of a stay order, even if the application was filed before the present trial court, there is no reason to think that it would have been refused. This Court does not find any merit in the submission of abuse of the process of the Court in this regard.

Orders

68. Accordingly, for the reasons set out above, the Courts finds merit in the appeal only partially and to the extent of the proof of ownership of the Assorted supermarket goods as shown on the Proclamation and Notification of Sale.

69. The remainder of the Appeal is dismissed.

70. The Appellant shall pay two thirds (2/3) of the party and party costs of the Appeal to the Respondent, to be agreed or taxed in default of agreement.



Order accordingly.

DATED AND DELIVERED THIS 15TH DAY OF MAY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kinyua Njogu for Applicant.

Ms. Achieng for Ms. Wenene for the Respondent.

