



Kiambu Unity Finance Co-operation Union v Onduma & 2 others (Civil Appeal E249 of 2023) [2025] KEHC 10054 (KLR) (9 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10054 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E249 OF 2023
JM NANG'EA, J
JULY 9, 2025**

BETWEEN

KIAMBU UNITY FINANCE CO-OPERATION UNION APPELLANT

AND

ZEDEKIAH MIKIRO ONDUMA 1ST RESPONDENT

JOHN GITHAKA KIMANI 2ND RESPONDENT

JOSEPH MUHIA KINYANJUI 3RD RESPONDENT

JUDGMENT

1. The appeal arises from the lower court's decision dated 4th September 2023 by which the Appellant's Objection to attachment and sale of a motor vehicle registration number KCV 2X9 N in satisfaction of a decree of that court was dismissed with costs. The Appellant claimed to be the beneficial/equitable owner of the vehicle having advanced a loan to the judgement debtor with the vehicle as collateral. In dismissing the Objection, the trial magistrate observed that the Appellant had failed to prove its interest in the subject vehicle, as by showing that the judgement debtor, the 3rd Respondent herein, failed to repay the loan in full.
2. The Appellant's Grounds of Appeal are as hereunder;-
 1. That the Learned Trial Magistrate grossly erred in Law and in fact in disregarding all evidence on record and finding that the Objector did not fully prove ownership of motor vehicle registration number KCV 2X9N Toyota Hiace.
 2. That the Learned Trial Magistrate misdirected herself and erred in Law and in fact in finding that the Objector did not prove that the 2nd Defendant was still servicing the loan.



3. That the Learned Trial Magistrate grossly erred in Law and in fact by failing to consider the Appellant's submissions and judicial authorities on the legal threshold to be met in Objector proceedings thereby arriving at an erroneous decision.
4. That the Learned Magistrate erred in law and in fact in disregarding the entire Objector's application and evidence annexed in the affidavit thereon in arriving at her decision.
3. The following reliefs are sought;
 - a. This appeal be allowed with costs to the Appellant.
 - b. The Judgement of the Honourable M. W. Kamau delivered on the 4th September, 2023 at Molo in Molo CMCC No. E417 of 2021 be set aside and the Court herein be pleased to allow the Objector's application.
4. Learned Counsel for the Appellant and the 3rd Respondent filed written submissions which I have perused against the record. The other Respondents have not replied to the appeal.
5. The principles guiding a first appellate court in determination of an appeal before it are now settled. The court is required to re-assess or re-evaluate the evidence adduced before the lower court with a view to reaching its own conclusions on both matters of fact and law (see Case Law in *Selle Motor Boat Company Limited & Others* (1968) EA 123 among many other decided cases).
6. The Appellant lodged its objection to attachment of the vehicle in question vide a Notice of Motion dated 4/7/2023. It is averred through affidavit evidence in support of the application that the Appellant financed purchase of the vehicle which was thereafter registered jointly in its name and that of the 3rd Respondent, as the borrower. In proof of the transaction, the vehicle's registration records and loan documents were exhibited by the Appellant.
7. The Judgement Creditor, who is the 1st Respondent to the appeal, opposed the application through his affidavit in reply. He contended that the Appellant had no proprietary interest in the subject vehicle and was only registered as joint owner thereof to secure its interest as financier.
8. The 1st Respondent therefore inter alia laments that the Appellant could not be heard in those proceedings, not being a necessary party thereto. The application was in the circumstances attacked as incompetent and bad in law.
9. Order 22 Rule 51(1) of the *Civil Procedure Rules* 2010 provides;

“ Any person claiming to be entitled to or to have a legal or equitable interest in the whole 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 parties and to the decree holder of his objection to attachment of such property.”
10. Order 22 Rule 41 enacts;

“ Where the property to be attached consists of the share or interest of the judgement debtor in movable property belonging to him and another as co-owners, the attachment shall be made by notice to the judgement debtor prohibiting him from transferring, the share or interest or charging it in any way.”
11. The court shall then proceed to dispose the objection as per the provisions of Order 22 Rules 52, 53, 54 and 55 of the *Civil Rules* 2010.



12. The 1st Respondent concedes that the Appellant was registered as joint owner of the vehicle to secure its interest as financier of purchase thereof. The vehicle registration records as well as documents evidencing the loan advanced to the judgement debtor were exhibited before the lower court. In law, this is the equitable interest of the Applicant in the vehicle as Chattels Mortgage which ranks in priority to any other liability. This is therefore the legal or equitable interest contemplated in Order 22 Rule 51 (1) of the *Civil Procedure Rules supra* and which entitles the Appellant to the relief it craved.
13. The Appeal is accordingly allowed. Consequently, the lower court's Ruling dated 4th September 2023 and resultant order are set aside and substituted with the court's order allowing the Appellant's Notice of Motion dated 4th July 2023 with costs.
14. The costs of this appeal are granted to the Appellant.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY 9TH DAY OF JULY, 2025.

J. M. NANG'EA , JUDGE.

In the presence of:

Mr. Muranda Advocate for Mr. Mbigi Advocate for the Appellant

Ms Kagira Advocate for Ms Mwira Advocate for the 3rd Respondent

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

