



REPUBLIC OF KENYA



KENYA LAW
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OMR Medikal Turkish Limited v Asterisk (K) Limited; MSM Medical Equipments Limited (Objector); Icon Auctioneers (Third party) (Civil Case 104 of 2019) [2025] KEHC 10730 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10730 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 104 OF 2019**

F GIKONYO, J

JULY 3, 2025

BETWEEN

OMR MEDIKAL TURKISH LIMITED APPLICANT

AND

ASTERISK (K) LIMITED RESPONDENT

AND

MSM MEDICAL EQUIPMENTS LIMITED OBJECTOR

AND

ICON AUCTIONEERS THIRD PARTY

RULING

Introduction

1. On 15th January 2024, Icon Auctioneers, on the plaintiff's instructions, served the objector with a proclamation notice and warrants of attachment and sale of movable property in execution of a decree for money at the objector's registered office located in Safira Close, off-Road A, Kamoti Investment Building in Industrial Area.

Objector's Application

2. Aggrieved, the objector filed the notice of objection dated 17th January 2024. It also filed a chamber summons of the same date, under Order 22 Rule 51(2) of the Civil Procedure Rules, seeking orders:-



1. To raise the proclamation and/ or attachment dated 15th January 2024 of the assorted office tables, hospital beds, monitors, executive chairs, computers and rolling chairs proclaimed by Icon Auctioneers in execution of the decree dated 15th August 2023.
2. That the goods proclaimed as per the proclamation notice dated 15th January 2024 be released forthwith to the objector.

Grounds

3. The application is premised on the grounds set out in its body, the supporting affidavit sworn by the objector's authorised representative, Satishchandra Rameshbhai Patel and the written submissions dated 10th December 2024.
4. The specific grounds are that: -
 1. The proclaimed goods are and have been the property of the objector who is not a party to the suit.
 2. The defendant holds no interest and/ or claim whatsoever over the proclaimed property.
 3. The objector was not part of the proceedings that culminated in the Judgment and Decree issued herein and therefore cannot be made to pay the Defendant's debt.
 4. The proclamation of the objector's property is therefore unlawful.
 5. Notice of proclamation dated 15th January 2024 is legally flawed and incompetent for failure to state the actual value of items proclaimed contrary to the proclamation rules.
5. The objector submitted that it has proved its ownership of the proclaimed goods by showing that it imported them from Germany. It asserted that the 2nd respondent does not have any proprietary interest in the proclaimed goods.
6. Therefore, the objector argued that the goods should not be attached to satisfy a decree against the 2nd respondent. The goods do not belong to the 2nd respondent and there is no relationship of principal-subsidary between the 2nd respondent and the objector.
7. The objector relied on:-
 1. Stephen Kiprotich Koech v Edwin K. Barchilei: Joel Sitienei (Objector) [2019] eKLR
 2. Arun C. Sharma v Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others [2014] eKLR

Response by Icon Auctioneers

8. The auctioneer, Icon Auctioneers, responded to the objection proceedings through a replying affidavit sworn on 30th May 2024 by Jeremiah Kiarie Muchendu, its director.
9. The deponent stated that the auctioneer received instructions from the decree holder to proclaim against the 2nd respondent and proceeded to execute the instructions at its premises. Based on inquiries with neighbouring businesses, it was established that the judgment debtor had relocated from its previously known address on Kirinyaga Road to new offices in Industrial Area.
10. Upon arrival at the new location, the auctioneers were directed to premises known as "Asterisk," which, according to neighbouring businesses, operates under that name and receives guests accordingly.



11. The deponent indicated that they were unaware of any change in occupation or ownership until they were served with court orders staying the proclamation.
12. The deponent also indicated that subsequent inquiries revealed that Dipen Morarji Rajani is listed on the website of the objector as its Chief Executive Officer. That the same individual is a director of the judgment debtor, Asterisk.
13. It was contended that there is reason to believe that there has been collusion between the objector and the judgment debtor to frustrate the execution process by transferring assets and office premises from the judgment debtor to the objector and altering signage to conceal the identity of the actual occupant.
14. According to the deponent, a CR12 of the objector shows its registered physical address as Nairobi West District, Bukani Road Building, Plot 209, yet no change of address has been lodged to explain its occupation of the Industrial Area premises.
15. In light of the overlapping directorships, the auctioneer urged the court to summon the said director to explain the relationship between the two companies.
16. The auctioneer opposed the objection proceedings and urged the court to maintain the proclamation and attachment of office assets until the director demonstrates that there is no nexus between the judgment debtor and the objector.

Response by the 1st respondent

17. The plaintiff/decreed holder who is the 1st respondent opposed the application through written submissions dated 6th March 2025. It submitted that the property proclaimed by the auctioneers includes assorted varieties of hospital beds, monitors, computers, executive office chairs and rolling chairs. It pointed out that the objector has only provided importation documents listing assorted varieties of hospital beds.
18. The decreed holder asserted that both the objector and judgment debtor deal in hospital and medical equipment. It submitted that the documents produced by the objector do not necessarily speak to the ownership of the goods proclaimed by the auctioneers. That no evidence has been produced by the objector confirming that the property captured in the alleged importation documents are the exact ones that have been proclaimed.
19. The decreed holder urged the court to dismiss the objector's application because the objector has not rebutted the claim that there was connivance between it and the judgment debtor. It contended that the objector has not explained how it came to occupy the same premises previously associated with the judgment debtor, especially without a notice of change of address or evidence of transfer. It also contended that it would be unfair for the goods proclaimed to be released without the objector explaining to the court the nexus between it and the judgment debtor.

Analysis and Determination

20. The issue for determination is whether the objector has established legal and/ or equitable interests over the proclaimed goods.



21. The burden is on the objector to establish that it has title to or an equitable interest in the proclaimed goods. In *Precast Portal Structures v Kenya Pencil Company Ltd & 2 others* [1993] KEHC 100 (KLR), 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.

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.

The Court takes into account the grounds of objections raised, and the contentions of the respective parties to the objection proceedings. Any special features evident in the proceedings which throw light on the controversy must be regarded.”

22. Guided by the above, I have carefully considered the evidence exhibited by the objector. It produced a copy of its certificate of incorporation. It also produced copies of import declaration forms and invoices for assorted varieties of hospital beds. I note that in the impugned proclamation, the auctioneer listed the property proclaimed to include assorted varieties of hospital beds, monitors, computers, executive chairs and rolling chairs. The objector only produced import declaration forms and invoices for assorted varieties of hospital beds without showing with specificity that the import declaration and invoices relate to the particular goods- assorted varieties of hospital beds- listed in the proclamation. In addition, the objector did not produce evidence to show ownership or equitable interest in any of the other goods listed in the proclamation.
23. Thus, nothing shows that the objector is the legal or equitable owner or holder of legal or equitable interest in any of the goods in the proclamation. The objector did not discharge its onus of proof. produce conclusive proof of ownership.
24. Questions of possible collusion to evade or defeat execution of lawful court decree have also arisen.
25. The objector claimed that the auctioneer was mistaken as to the identity of the defendant/ 2nd respondent and its place of business. It also claimed that the defendant was an absolute stranger to it and that the premises upon which the auctioneer issued the proclamation notice were owned by it.
26. On the other hand, the auctioneer contended that it established that the judgment debtor had relocated from its previously known address on Kirinyaga Road to new offices in Industrial Area. That, at the new location, it was directed to premises known as “Asterisk,” which, according to neighbouring businesses, operates under that name and receives guests accordingly. That upon an online search, it was noted that Dipen Morarji Rajani, a director of the 2nd respondent, is listed on the website of the objector as its Chief Executive Officer. The auctioneer, therefore, contended that the said director ought to explain the relationship between the two companies.



27. From the foregoing, the objector's contention that the auctioneer mistook its identity with that of the 2nd respondent and its place of business is doubtful. In addition, the claim that it does not know the 2nd defendant is also doubtful.
28. There is high likelihood of possible collusion to evade or defeat execution of lawful court decree. The red flags are; the common directorship of business of the objector and the judgment-debtor as well as the objector's occupation of the registered office of the judgment-debtor. This alone may also be a ground to decline objection proceedings.
29. Accordingly, the objection fails.

Disposal

30. In the upshot, I find that the objector's application dated 17th January 2024 is not merited. It is dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 3RD DAY OF JULY, 2025

F. GIKONYO M.

JUDGE

In the presence of: -

Oduor for Ms. Akoko for Decree Holder

Ms. Mwaniki for defendant

Anyona for Manwa for Objector

Kinyua C/A

