



REPUBLIC OF KENYA



**Bevaj Furniture Limited v Gulf African Bank Limited; Armick Limited
(Objector) (Commercial Case E899 of 2021) [2025] KEHC 13237 (KLR)
(Commercial and Tax) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E899 OF 2021
JWW MONG'ARE, J
SEPTEMBER 19, 2025**

BETWEEN

BEVAJ FURNITURE LIMITED PLAINTIFF

AND

GULF AFRICAN BANK LIMITED DEFENDANT

AND

ARMICK LIMITED OBJECTOR

RULING

1. There are two applications before this Honourable Court for determination. The first application is dated 5th May 2025 and the second application is dated 10th May 2025. The Application filed on 5th May 2025 is by the Plaintiff. The same was brought under a certificate of urgency and was brought under Sections 1A, 3, 3A, 63 (c) & (e) of the [Civil Procedure Act](#), Order 2 Rule 22(1), Order 51 Rules 1 & 3 of the Civil Procedure Rules and it seeks the following reliefs: -
 1. Spent
 2. Spent
 3. Spent
 4. That this Honourable Court be pleased to issue an order for stay of execution of any decree and /or warrants issued herein and all consequences thereof.
 5. That this Honourable Court be pleased to declare null and void and immediately lift the warrants issued herein on 2nd May 2025 and stop all consequences arising therefrom.



6. That this Honourable Court be pleased to issue such other equitable orders as it may deem fit
 7. That cost of this application be borne by the Defendant and or their advocates.
2. The Application dated 9th May 2025 sought to have the above application heard on priority. On 10th May 2025, an application by an Objector- ARMICK LIMITED was also filed under a certificate of urgency. The said application was brought under Order 22 Rule 51 and 52 of the Civil Procedure Rules and Sections 1A,1B& 3A of the [Civil Procedure Act](#) and it seeks the following reliefs:-
1. Spent
 2. Spent
 3. That at interparte hearing of this application, an order for stay of execution of the warrants issued on 2nd May 2025 and or proclamation Notice dated 5th May, 2025 do issue in favour of the Objector.
 4. That this Honourable Court be pleased to set aside and lift the proclamation Notice dated 5th May 2025 and/ or warrants of attachment of moveable property by Moran Auctioneers.
 5. That this Honourable Court be pleased to order that;-
 - i. 1B office desks
 - ii. 3 commercial photocopy papers
 - iii. 5b Office Chairs
 - iv. 1b wooden Cabinet
 - v. 4 metal cabinet
 - vi. Complete Computers
 - vii. Leather seats
 - viii. Pedestal desks/cabinet

Are owned by the objector herein and listed in the proclamation notice of 5th May 2025 by Moran Auctioneers be excluded from any attachment in satisfaction of any decree or other orders issued in this court.
 6. That Costs of this application be borne by the Defendant.
 3. Both applications are supported by the grounds set out on their face. The Application by the Plaintiff of 5th May 2025 is further supported by the supporting affidavit of Rosaline Wambui sworn on 5th May 2025 while the application of 10th May 2025 is further supported b the supporting affidavit of Evalyne Murugi sworn on 10th May 2025.
 4. The application by the Plaintiff of 5th May 2025 is opposed and the Plaintiff filed a replying affidavit sworn by Rashid Chidzangi sworn on 15th May 2025 while the application of 10th May 2025 was opposed by a replying affidavit sworn by the said Rashid Chidzangi sworn on 15th May 2025 as well. Parties, at the direction of the court, filed written submissions which I have carefully considered.
 5. What emerges from the application by the Plaintiff is that the Plaintiff is opposed to the manner in which the Defendants have proceeded to obtain warrants of execution. The Plaintiff



argues that under the terms of the consent judgment of 15th May 2003, there was no automatic default clause through which the Defendant could automatically, without moving the court for orders appropriately, could proceed with execution. The Plaintiff accuses the Defendant of failure to obtain a decree before proceeding to obtain warrants of attachment of the Plaintiff's property and claims that the amount being claimed is secured by a charge over Title No. CISMARA/EWASO NYIRO/63 which is still held by the Bank, to secure the balance of Kshs.21,648,603.00/=. The Plaintiff urges the Court to set aside the Proclamation Notices and stay the execution commenced by the Defendants herein.

6. On its part the Defendant argues that the execution process is proper and legal as under the terms of the consent judgment the balance of Kshs.21,648,603.00/= should have been paid by 31st July 2024 irrespective of whether or not there was a Qard facility to be registered against the land Title Number Cismara/Ewaso Nyiro/63. The Defendant avers that failure by the Plaintiff to honour the two conditions of the consent judgment left the Defendant with no alternative but to proceed with execution process which process was commenced through the Proclamation Notices of the Plaintiff's assets to settle the debt due to it.
7. The Defendant argues that there is no requirement to institute a fresh suit for its recovery despite the averments put forward by the Plaintiff and urges the court to allow the execution process to go on as already commenced.
8. I have looked at the pleadings filed before me. I note that parties in settling this suit by consent agreed to the following terms in the said consent order; - "Consent;
 1. The Plaintiff to pay Kenya Shillings One Hundred and Sixty -six Million, Six hundred Forty-Eight Thousand, Six Hundred & Three (Kshs.166,648,603.00/=) only in full and final settlement of the debt owed to the Defendant, on the terms that follow below.
 2. The Plaintiff will sell by private treaty, Title Number 12672, L.R. No. 7785/951(Original 7785/10/689) a.k.a Nairobi/Block 196/921, on terms as may be agreed between the Plaintiff and the Purchaser. An agreement for sale, approved by the Defendant, must be concluded within fourteen (14) days from 13th March 2023 or the date of filing this consent whichever date is later.
 3. The Plaintiff will pay to the Defendant Kenya Shillings One Hundred & Forty-Five Million (Kshs.145,000,000/=) only within Ninety (90) days from the date off signing the agreement referred to above.
 4. If there is default in complying with clause 2 or above, the Defendant's consent above, the Defendant's consent aforesaid sale will stand automatically revoked, whether or not a notice of such revocation has been issued.
 5. Further to clause (4) above, the Defendant will be at liberty to sell by public auction or private treaty, Title Number 12672, L.R. No. 7785/951(Original No. 7785/10/689) a.k.a Nairobi/Block 196/921, upon the Defendant or its agent issuing a forty- five days' redemption notice.



6. The balance of Kenya Shillings Twenty-One Million, Six Hundred Forty- Eight Thousand, Six Hundred and Three(Kshs.21,648,603.00/=) only will be converted to a Qard facility payable on or before 31st July 2024 and attracting no interest at all,
7. The Plaintiff will, within a reasonable period but not later than ninety(90) days from 13th March 2023 or the date of filing this consent, whichever is later , cause Jane Somoina Tameno and Roseline W. Mbugi to sign any necessary documents to secure repayment of the Qard Facility using title No. Cismara/Ewasonyiro/63 NAROK, in the name of Jane Somoina Temeno and Roseline. W. Mbugi.
8. The Defendant will, in addition to clause 7 above, continue to hold as security for the Qard Facility, a fixed and floating Debenture dated 7th February 2018 over the Plaintiff's assets, and the Plaintiff's Directors Personal Guarantees dated 1st November 2018.
9. If there is default on clause 7 above, the Defendant may proceed with recovery of the sum stated in clause 6.
10. The Plaintiff's suit be marked as fully settled with no orders on costs.”

9. My understanding of clause 8 in the above consent judgment is that if the funds at clause 6 remained unpaid after the 31st July 2024, the Defendant was at liberty to proceed with recovery. I note from the pleadings filed herein that the Plaintiff does not contend that the said sum of Kshs. Kenya Shillings Twenty-One Million, Six Hundred Forty- Eight Thousand, Six Hundred and Three (Kshs.21,648,603.00/=) has been paid as per the consent judgment herein, or in one way or the other the settled, and I find no evidence that indeed a charge to secure the same was registered as provided in the said consent. What can be gleaned from these pleadings and the record is that to date, the amount of Kshs.21,648,603.00/= remains unpaid.

10. I find therefore that there is no justification to quash the proclamation notices by Moran Auctioneers as suggested by the Plaintiff herein. The consent judgment is clear and unambiguous. The Plaintiff in the consent agreement committed itself to pay the balance by 31st July 2024. The Plaintiff also committed itself to allow the Defendant to proceed with recovery in the manner set out by law if no payment was forthcoming. Order 22 of the Civil procedure Rules sets out various methods through which a decretal amount can be recovered and attachment warrants are one such means. I am therefore satisfied that the Defendant is within their rights to proceed with execution in the manner they have chosen to so do. I find therefore that the present application of 5th May 2025 is without merit. The same is dismissed forthwith and all interim orders issued thereto are forthwith vacated.

11. The Application of 10th May 2025 has been filed by the Objector, ARMIC in which they claim ownership of the goods proclaimed and attached by Auctioneers vide warrants issued on 5th May 2025 by the court. In laying claim to these good the Objector's attach to their application a lease document for premises from which these goods were proclaimed and in addition they have annexed an import declaration form containing various chairs and tables declared for use as auditorium furniture. Order 22 Rules 51 and 52 under which this application is brought provides as follows:-

“ 51. Objection to attachment [Order 22, rule 51]



(1)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.(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.(3)Such notice of objection and application shall be served within seven days from the date of filing on all the parties.

52. Stay of execution [Order 22, rule 52]

Upon receipt of a valid notice and application as provided under rule 51, the court may order a stay of the execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.”

12. This means that an objector may lay a proper foundation in its claim of attached goods to persuade the court that the attached goods belong to the objector and not the judgment debtor. To persuade the court, the objector has annexed the two documents cited above; i.e the lease agreement for unit C5 between Benson Wairegi and the Objector and the proforma invoice and bill of lading for import of 392 auditorium Chairs and 12 filing cabinets. In addition, the objector has also exhibited a single business permit for Unit C5 by the Objector.
13. I note from the replying affidavit of the Plaintiff sworn by Mr. Rashid Chidzangi, the deponent claims to have met on several occasion with the director of the judgment debtor, Ms. Rosemary Mbugi, in the same premises. I also note that this fact was not contested or rebutted by the judgment debtor.
14. As held by the Court in Zingo Investments Limited v Miema Enterprises Limited (2015) KECA the Court of Appeal held as follows “title documents or ownership of premises is not by itself sufficient in objection proceedings; there must be ample documentation of ownership of attached items. The issue is not ownership of premises but proprietary interest in the attached goods.” In the case before this court, it is my considered view that the objector needed to avail more documentation to prove ownership of the attached goods in addition to the lease agreement, trade license and the import declaration.
15. Turning the import document, the court notes that what was imported in 2023 was furniture for use in an auditorium and that the same contained 392 chairs and 12 filing cabinets. From the proclamation notice, the court notes that what the auction proclaimed includes assorted office furniture. The same are listed as follows; -
 - i. 1B office desks
 - ii. 3 commercial photocopy papers
 - iii. 5b Office Chairs
 - iv. 1b wooden Cabinet
 - v. 4 metal cabinet
 - vi. Complete Computers



- vii. Leather seats
 - viii. Pedestal desks/cabinet
16. It is quite obvious therefore what was proclaimed is different from what the objector imported in 2023 and therefore this amount of evidence as proof of ownership does not in my view aid the objector.
17. In conclusion therefore I find that the objector has not established a claim to the attached goods to warrant this court to allow the application. As noted by Justice Warsame (as he then was) in Zingo Investment(supra), “I am satisfied that the goods attached are the property of the defendant disguised in a manner to defeat the claim by the Plaintiff”. I therefore hold and find that the application by the objector is without merit and I dismiss the same with costs to the Plaintiff. Any interim orders issued by this court are discharged and vacated. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025

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J.W.W. MONGARE

JUDGE

In the presence of

1. N/A for the Plaintiff.
2. Ms. Cheruiyot holding brief for Mr. Kongere for the Defendant.
3. Mr. Kithure holding brief for Ms. Gaceri for the Objector.
4. Amos- Court Assistant

