



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Harmo Engineering v Omwela; Mogege (Objector) (Civil Appeal E183 of 2023) [2025] KEHC 13188 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E183 OF 2023
RN NYAKUNDI, J
SEPTEMBER 25, 2025**

BETWEEN

HARMO ENGINEERING APPELLANT

AND

SAMWEL MAHONGA OMWELA RESPONDENT

AND

ALISON ZAPHANIAH MOGEGE OBJECTOR

RULING

1. What is pending before this Court for determination is a Notice of Motion Application dated 12th August 2025 in which the Applicant/Objector is seeking the following orders:
 - a. Spent
 - b. Spent
 - c. The attachment of motor vehicle registration number KBP 774E be lifted or set aside.
 - d. Costs of the application be provided for.
2. The Application is made on the following grounds: -
 - a. Motor vehicle registration number KBP 774E belongs to the Objector and it is charged to Eco bank Kenya Limited.
 - b. Motor vehicle registration number KBP 774E is jointly registered in the names of the Objector and the Eco bank Kenya Limited.
 - c. The Motor vehicle is not available for attachment.



- d. The proclamation of the motor vehicle is wrongful.
 - e. The proclamation of the motor vehicle is wrongful and illegal and ought to be lifted.
3. The application is supported by the annexed affidavit sworn by the Objector/Respondent who deponed as follows;
- a. That I am the registered owner of the motor vehicle registration number KBP 774E together with the financier Eco Bank Kenya Limited.
 - b. That the motor vehicle was proclaimed on 5/8/2025.
 - c. That the proclamation/attachment is wrongful and illegal since the motor vehicle does not belong to the Appellant.

Response to the Application

4. The Application is opposed by the Respondent vide a Replying Affidavit dated 21st August 2025 in which he deponed as follows:
- a. That the objector has not satisfied the required threshold to be granted the orders sought.
 - b. That the appellant was in possession of the motor vehicle Registration Number KBP 774E at the time of the proclamation on his own account.
 - c. That the attachment was done strictly in accordance with the decree and certificate of costs.
 - d. That the auctioneer's property identified and attached the motor vehicle at the judgement debtor's premises/control.
 - e. That the objector has not established any profound right or equitable interest in any part of the motor vehicle Registration Number KBP 774E.
 - f. That the Defendant was also in possession and full control of the Motor Vehicle Registration Number KBP 774E at the time of the attachment.
 - g. That the objection may be a play between the judgment debtor and the Objector to defeat execution.
 - h. That I am entitled to the fruits of the judgement.

Analysis and Determination

5. I have read and considered the Notice of motion application, the affidavit in support and the affidavit in opposition of the application. There are 2 issue for determination;
- a. Whether on the evidence placed before this Court, the Objector has established a legal or equitable interest in motor vehicle KBP 774E sufficient to justify lifting the attachment; and
 - b. Whether the proclamation/attachment was wrongful or procedurally defective in a manner that warrants setting it aside.
6. The statutory framework for the objection procedure is found in the Civil Procedure Rules. Any person claiming to be entitled to or to have a legal or equitable interest in property attached in execution may give notice in writing of objection to the attachment and must accompany that notice with an application supported by affidavit setting out briefly the nature of the claim. The Court may thereupon



order such inquiry, and may stay the execution pending determination of the objection. In particular, this is provided for in Order 22, Rule 51 of the Civil Procedure Rules which 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.

7. Court in the case of Stephen Kiprotich Koech v Edwin K Barchilei; Joel Sitienei(Objector) [2019] eKLR where the Court held that; -

“The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached.”

8. The law also enshrines the basic evidential principle that “he who alleges must prove.” The burden of proof lies on the person who asserts the existence of facts upon which he relies; accordingly, the Objector must prove his asserted legal or equitable interest in the attached property. specifically, section 107 of the Evidence Act provides as follows,

“107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence.”

9. The Objector’s case (as pleaded in the affidavit) rests on two propositions:

- (a) that he is the registered owner of KBP 774E jointly with Eco Bank Kenya Limited which holds a charge; and
- (b) that the proclamation/attachment effected on 5th August 2025 is therefore wrongful because the vehicle does not belong to the judgment-debtor alone.

10. The Respondent’s replying affidavit raises two main points in answer:

- (a) that the vehicle was in the possession and control of the judgment-debtor at the time of the proclamation and that the auctioneer identified and attached it lawfully at the judgment-debtor’s premises; and
- (b) that the Objector has not demonstrated any legal or equitable interest to displace the decree holder’s right to execution.



11. The first practical question is whether the Objector has put before the Court sufficient evidence to satisfy the burden of proof in his favour at this interlocutory stage. Order 22, rule 51 of the Civil Procedure Rules requires the notice of objection to be accompanied by an application supported by affidavit which sets out in brief the nature of the claim. The ordinary expectation and consistent judicial practice is that an objector who claims ownership or a proprietary right in an attached chattel adduces some tangible documentary proof of that interest for example, the vehicle logbook showing registration particulars and any entries of charge, the hire-purchase agreement or security instrument, correspondence from the financier confirming the charge, an extract from the NTSA register or other evidence that demonstrates a prima facie entitlement to the goods. The Court in the case of Arun C. Sharmav Ashana Rikundalia T/A A. Raikundalia & Co. Advocates and 4 others (2014) eKLR held that:-

“The objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The key words are; entitled to or to have a legal or equitable interest in the whole or part of the property. Has the objector proved it is entitled to or to have a legal or equitable interest in the whole of part of any property attached in execution of a decree?”

12. The Objector’s primary evidential material is the affidavit in support and the certificate of official search marked AZM 1. AZM 1 is relevant and carries some weight: an official search indicating registration particulars and a charge will ordinarily be accepted as prima facie evidence of the entries it contains. On its face AZM 1 supports the Objector’s assertion that the vehicle is recorded in her (joint) name and that Eco Bank Kenya Limited is recorded as financier/chargee.

13. However, AZM 1 alone without production of the original logbook (or verified copy of the logbook), the hire-purchase/security agreement or a letter/confirmation from Eco Bank evidencing the exact nature and extent of the bank’s charge is an incomplete evidential package. The law expects an objector who claims ownership or a proprietary right in attached chattels to place before the Court cogent documentary proof enabling the Court to form a prima facie view that the objector’s interest should trump or at least qualify the decree-holder’s right in execution.

14. The Respondent swears that at the time of proclamation the vehicle was in the possession and control of the judgment-debtor and that the auctioneer identified and attached the motor vehicle at the judgment-debtor’s premises in compliance with the decree and certificate of costs. If, as the Respondent avers, the vehicle was physically in the custody or control of the judgment-debtor at the time of attachment, that fact has significance: possession and control by the judgment-debtor are relevant to the question whether the attachment was properly made and whether the objector’s claim ought to prevail.

15. On the present record the Objector has not produced the original logbook or the hire-purchase/security agreement nor a formal confirmation from Eco Bank explaining the registered charge and whether it is extant and its priority. Nor has the Objector particularized with supporting evidence any procedural breach by the auctioneer for example failure to make proclamation in the manner required, or attachment at premises other than the judgment-debtor’s. In short, the Objector’s case presently rests primarily on the certificate of official search and the assertion of joint registration/financing.

16. The certificate AZM 1 gives rise to a prima facie case which requires careful consideration but it is not in the absence of the supplementary documents listed above, sufficient to displace the Respondent’s sworn account that the vehicle was in the judgment-debtor’s possession and was attached lawfully. The onus was on the Objector to adduce the standard documentary proof necessary at this interlocutory



stage to show a prima facie right. The Objector has not discharged that burden. I also note the Respondent's legitimate concern that the objection may be a tactical stratagem to frustrate execution. Where collusion is suspected, courts require the objector to produce compelling documentary proof. The Objector has not met that standard on the present material.

17. For the reasons given above, the Objector has not placed before the Court sufficient documentary or other prima facie evidence to establish a legal or equitable interest in motor vehicle KBP 774E which would justify lifting the attachment and the Objector has not particularized any procedural breach by the auctioneer of the nature and gravity required to vitiate the proclamation. In the absence of such proof, the Respondent's right to execute the decree must prevail. The following orders shall abide: -
- a. The Notice of Motion dated 12th August 2025 is dismissed. The Objector's application to have the attachment/proclamation of motor vehicle registration number KBP 774E lifted is declined.
 - b. The attachment/proclamation shall remain in force and the Respondent may proceed with execution in accordance with law.
 - c. The Objector shall pay the costs of this application to the Respondent.
 - d. It is so ordered.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 25TH DAY OF SEPTEMBER 2025

.....

R. NYAKUNDI

JUDGE

