



**Kiai t/a High Flyer Services and Publishers & another v Peter Mwangi Gichuki
t/a High Flyer Services and Publishers & another (Civil Suit 45 of 2011)
[2024] KEHC 113 (KLR) (Commercial and Tax) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 113 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 45 OF 2011
A MABEYA, J
JANUARY 17, 2024**

BETWEEN

**ANTHONY KIAI T/A HIGH FLYER SERVICES AND
PUBLISHERS 1ST PLAINTIFF**

HIGH FLYER SERVICES & PUBLISHERS LIMITED 2ND PLAINTIFF

AND

**PETER MWANGI GICHUKI T/A HIGH FLYER SERVICES AND
PUBLISHERS 1ST DEFENDANT**

FORTUNE PRINTERS LIMITED 2ND DEFENDANT

RULING

1. There are two applications by the objectors for determination. The Motion dated 17/5/2023 and the one dated 20/11/2023. The Motion dated 17/5/2023 sought to lift the attachment of the assets of the objectors in particular those listed in the proclamation dated 5/5/2023. On the other hand, the Motion of 20/11/2023 sought the discharge of the orders of 11/8/2023 pending the determination of the Motion dated 17/5/2023.
2. In this regard, a determination of the motion dated 17/5/2023 in one way or the other will determine the motion of 20/11/2023. That Motion was brought under sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and order 22 rule 51 (1) of the *Civil Procedure Rules*. As already stated, it sought the lifting of the proclamation dated 5/5/2023 which had attached the movable assets allegedly belonging to the objectors.



3. The Motion was supported by the affidavit of Tabitha Wanjiru Njuguna, the 1st objector and a director of the 2nd objector, dated 17/5/2023. She swore that on 5/5/2023, Togan Dries Auctioneers visited her residence at House No. 212 in Dam Langata Estate and served her with Warrants of Attachment and Proclamation. That amongst the items proclaimed were Motor vehicle registration Nos. KCN 404 M, KCQ 188K and KCV 634 W and household items.
4. That the beneficial and/or legal interest in the vehicles and the household items was vested in her. She produced the log books for the vehicles. That she had insured all the household items to demonstrate her beneficial ownership in those properties. She produced a Domestic Insurance Cover note for the items. That in the premises, the proclamation of the aforesaid items was misconceived and should be set aside.
5. The application was opposed *vide* the affidavit of Peter Gichuki Mwangi sworn on 26/5/2023. He deposed that he had the right to attach Mv. Registration No. KCU 634 W belonging to the 1st objector as she is one of the directors of High Flyer Services and Publishers Ltd. That she was also the wife of the plaintiff Judgment/debtor, Antony Githiaka Kiai. That both the 1st objector and her husband were directors of High Flyer Series Ltd and High Flyer Services and Publishers Ltd. That in the premises, the attachment was proper.
6. On the household items, the deponent deposed that there was no document of ownership that had been produced to prove that they belonged to the 1st objector. That the property known as Dam Estate No. NBI Block 106/212 was registered in the name of the 1st Judgment debtor. That the Insurance Cover was not Proof of Ownership of the items attached.
7. The parties filed their respective submissions which the Court has considered alongside the authorities relied on.
8. This is an objection application. In such proceedings, the Court is called upon to investigate in whose possession and ownership, legal or beneficial, the proclaimed item was at the time of proclamation. All that the objector has to prove is that he/she either was in the possession of the proclaimed item by virtual of some legal or beneficial right. However, if possession is on account of or in trust for the judgment/debtor the application is for dismissal.
9. In *Choitabhae M. Patel v Chapraphi Patel* [1958] EA 743, the Court held:-

“

The objector shall adduce evidence to show that at the date of attachment he had some interests in the property attached. The question to be decided is, whether on the date of attachment, the judgment debtor or the objector was in possession, or where the court is satisfied that the property was in the possession of the objector, it must be found whether he held it on his own account or in trust for the judgment-debtor. The question to be investigated is, thus, one of possession of and some interest in the property.

.....”.
10. In *Kolaba Enterprises Ltd vs Shamsbudin Hussein Varrant & anor* [2014] eKLR, it was held:-

“Needless to say, that separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting of the corporate veil,



say when the directors or members of the company are using the company as a vehicle to commit a fraud or other criminal activities.”

11. In the present case, the 1st objector produced log books which show that the attached motor vehicles did not belong to the Judgment-debtor. One belonged to her, while two of the vehicles belonged to the 2nd objector. The Motor vehicles as were the other items attached from the house on nd objector was not disputed.

Dam Estate Langata 212, were in her possession. The fact of the vehicles being in her name and that of the 2

12. What the respondent sought to prove was that, the 1st objector was not only a wife of the 1st Judgment-debtor but was a Co-director of her husband in the 2nd Judgment-debtor. It was also contended that since the 1st objector and her husband were shareholders and co-directors in both the 2nd Judgment-debtor and 2nd Objector, the attachment was lawful.
13. With greatest respect, a spouse of another is not liable for the debts of that other. A wife is an independent and separate person from her husband. Her properties cannot be liable to be attached for the debts of her husband and vice versa.
14. Further, the fact that the objectors are related to the Judgment-debtors either by marriage or shareholding that does not give rise to liability for the debts of the Judgment-debtors. Unless the Corporate veil of the 2nd Judgment debtor is lifted, the 1st objector cannot be liable for the debts of the 2nd judgment debtor. Further, unless the shares of the 1st judgment debtor in the 2nd objector are attached and further lifting of the Corporate veil pursued the properties of the 2nd Objector cannot be liable to attachment for the debts of the judgment debtors.
15. As regards the household items, it was contended that the Domestic Insurance Cover note was not title to the items. That the items were attached at the house belonging to the 1st judgment-debtor.
16. Firstly, there was no evidence to show that the house No. 212, Dam Estate belonged to the 1st Judgment debtor. If it belonged to him, why was it not attached in execution of the decree rather than the household items which could only cater for a fraction of the decretal sum.
17. Secondly, the Domestic Insurance Cover note in my view is a *prima facie* evidence of a beneficial interest in the items set out therein. That debit note was dated 1/11/2021. It showed the insured as the 1st objector while the insurer was Metropolitan Cannon General Insurance Ltd. The location was Dam Estate 212, Nairobi. Obviously that pointed to the items found in the subject house where the items were proclaimed.
18. In view of the foregoing, I am satisfied that the objectors have established that the proclaimed items were in their possession and they have legal and beneficial interest in the same.
19. Accordingly, the application dated 17/5/2023 is found to be meritorious and is hereby allowed as prayed. There arises no need to determine the motion dated 20/11/2023. The same is marked as spent.
- It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY, 2024.

A. MABEYA, FCI Arb, EBS

JUDGE

