



**Kountable Trading Limited v Cresta Investments Limited & another;
Carrollton Trading Limited (Objector) (Civil Suit E187 of 2020)
[2024] KEHC 8726 (KLR) (Commercial and Tax) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E187 OF 2020**

PM MULWA, J

JULY 18, 2024

BETWEEN

KOUNTABLE TRADING LIMITED APPLICANT

AND

CRESTA INVESTMENTS LIMITED 1ST RESPONDENT

ALFRED OMWANZA MOMANYI 2ND RESPONDENT

AND

CARROLLTON TRADING LIMITED OBJECTOR

RULING

1. By a Notice of Motion dated 12th June 2023 brought under Order 22, Rule 51 and 52 of the [Civil Procedure Rules](#) 2010 and Sections 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#), the Objector has sought orders to stay the attachment, raise the proclamation and attachment and the unconditional release of motor vehicle registration number KAM 017X and trailer registration number ZC 1876. It also sought that the proclamation notice dated 17th April 2023 by Direct ‘O’ Auctioneers be deemed unlawful.
2. The grounds for the application are set out in the body of the motion and the supporting affidavit sworn on 12th June 2023 by Josiah Muoka, a Director of the objector. These are that; the motor vehicle registration number KAM 017X and trailer registration number ZC 1876 (hereinafter ‘the subject vehicles’) do not belong to the judgment debtors, but to the objector herein, and that the judgment debtors do not have any legal or equitable interest in the subject vehicles as proclaimed.



3. The applicant contends that the subject motor vehicles were purchased in cash in the year 2021 and that it has no relationship at all with the judgment debtors as they are distinct companies with different ownership. And further that the auctioneers wrongfully proclaimed the objector's property in satisfaction of a decree against the judgment debtors. That the objector has legal title to the subject vehicles and the same ought to be released to it.
4. The application was opposed by the decree holder through the replying affidavit of Peter Githongo sworn on 6th July 2023. It is contended that the judgment debtors' movable properties were proclaimed on 17th April 2023 in execution of warrants and attachment for recovery of outstanding decretal amount in the sum of USD \$ 414,592.01 due and owing to the decree-holder. That an official search undertaken by the auctioneers on 27th May 2023 indicated that the subject motor vehicle and trailer belonged to the 1st judgment debtor.
5. The decree holder contends that in a surprise turn of events another official search done on 16th June 2023, after proclamation, showed the subject motor vehicle and trailer as belonging to the objector. And further that, the subsequent transfer of the subject motor vehicles in favour of the objector, and only after the proclamation, was effected to frustrate and defeat the decree holder's right to realize any part of the decretal sum. That it was illegal and in bad faith.
6. Mr. Walela, counsel for the objector argued that according to the provisions of the [Traffic Act](#), the registration of a motor vehicle as per the logbook, is deemed to be *prima facie* evidence of ownership unless the contrary is proved. That the documentation availed is clear that the objector is the owner of the subject motor vehicles.
7. According to Mr. Marwah, counsel for the decree holder, the issue was whether as at the date of attachment the objector had any interest in the subject motor vehicles. That there was clear evidence of collusion between the objector and the 1st judgment debtor, two companies which were connected, to defeat the realization of the decree herein by the decree holder.
8. The Court has considered the application, the reply thereto, annexed documents including copies of logbook, cash receipt, official searches and CR12s, as well as the arguments by learned counsel for both parties.
9. These are objection proceedings. Order 22 Rule 51(1) of the [Civil Procedure Rules](#) 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 to the decree-holder, of his objection to the attachment of such property.”
10. In [Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei](#) (Objector) [2019] eKLR, the court held:

“ 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.”



11. Further, in *Arun C. Sharma versus Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] eKLR, it was 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 or part of any property attached in execution of a decree?”

12. From the foregoing, it is clear that in objection proceedings, all that an objector has to establish is that, he/she has a legal or equitable interest in the goods attached.

13. In the instant case, the objector stated that the attached motor vehicle and trailer registration nos. KAM 017X/ZC 1876 belonged to it. It attached copies of logbooks and a cash bank deposit receipt as proof of having purchased the same in 2021.

14. It was further stated that the objector has no relationship at all with the judgment debtors herein and the objector has a legal title to the proclaimed subject vehicles.

15. On the other hand, the decree holder relied on the case of *Invesco Assurance Company Limited v Kinyanjui Njuguna & Co. Advocates & another* [2020] eKLR to submit that the objector ought to adduce evidence that at the time of the attachment it had interest in the subject motor vehicles. That this was not done in the circumstances herein.

16. I have carefully scrutinized all the documents respectively attached to the supporting and replying affidavits. The proclamation herein was done on 17th April 2023. A search conducted on 25th May 2023 shows that at the time, both the motor vehicle and the trailer registration nos. KAM 017X/ZC 1876 belonged to the 1st judgment debtor Cresta Investments Limited. Less than a month later on 16th June 2023, the ownership of the subject motor vehicles had changed to the objector Carrollton Trading Limited. The instant application was filed on 14th June 2023. Yet again, the objector contends that it purchased the subject vehicles in cash in 2021. A bank deposit receipt of Kshs. 980,500/- is not conclusive evidence of a motor vehicle purchase transaction, hence proof of ownership. It just shows some money was transacted, but for what and to whom, it is not clear.

17. In my view, and with respect, I agree with the decree holder that the log books and the conduct leading to their generation was only for purposes of this application and meant to defeat the decree holders claim of the decretal amount. It is apparent that the transfers of the subject motor vehicle and trailer were processed on 5th June 2023 and 9th June 2023 respectively. To this end, as at the time of proclamation the objector had no legal or equitable interest in the subject motor vehicles.

18. Accordingly, I find that the motion dated 12th June 2023 is unmeritorious and is dismissed with costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 18TH DAY OF JULY 2024.

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P. MULWA

JUDGE

