



**Maisha Steel (E.A) Ltd v Mwaura & another (Civil Appeal
E401 of 2023) [2024] KEHC 9077 (KLR) (22 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E401 OF 2023
BM MUSYOKI, J
JULY 22, 2024**

BETWEEN

MAISHA STEEL (E.A) LTD APPELLANT

AND

TIMOTHY NJOGU MWAURA 1ST RESPONDENT

SUBURBAN ENTERPRISES LIMITED 2ND RESPONDENT

*(Being an appeal from the ruling and orders of Hon. Jacinta A. Orwa in Kikuyu
Chief Magistrate’s Court civil case number 172 of 2019 dated 25th October 2023)*

JUDGMENT

1. This appeal arises from ruling and orders dated 25-10-2023. The ruling of the Honourable Magistrate dismissed the appellant’s application dated 28-07-2023. The dismissed application was a notice of motion which was seeking lifting of attachment of goods carried out in execution of the decree issued by the same court.
2. The appellant’s claim in the said application was that the goods so attached belonged to it yet it was not a party to the proceedings. In a nutshell the application was taken out in objection proceedings brought pursuant to Order 22 Rule 51 of the Civil Procedure Rules although the appellant had cited Sections 5 & 6 of the Companies Act, Sections 1A, 1B, 3A of the Civil Procedure Act and Order 22, Order 40 and Order 51 Rule 1 of the Civil Procedure Rules.
3. It is not disputed that the appellant was not a party to the suit in the lower court. It is also not disputed that there exists judgement against the 2nd respondent which still remains unsatisfied. Having read through the record of appeal and the submissions by the parties, I have come to the conclusion that the only issue for determination in this appeal is whether the appellant proved on balance of probabilities



that the goods proclaimed by Petrified Auctioneers on 26th July 2023 belonged to it. The other issues raised about corporate veil of the appellant were extraneous to the matter before the court.

4. The proclamation notice dated 26-07-2023 listed the following goods;
 1. Motor vehicles (registration numbers were not indicated).
 2. Office furniture.
 3. Computer accessories.
 4. Any other attachable assets herein to satisfy the decretal amount plus auctioneer's fees and costs.
6. In my view, proving ownership of the proclaimed goods was a very simple task for the appellant. The honourable magistrate found that the appellant had not discharged its burden of proof and proceeded to dismiss the application. In the support of the application, the appellant attached only three annexures viz;
 - a. warrants of sale dated 20-07-2023 and the proclamation notice dated 26-07-2023 as annexure KCK001; and
 - b. And a letter dated 2-05-2023 from Business Registration Services as annexure KCK002.
7. All that the appellant was required to prove was that the proclaimed assets belonged to it. The question here is, did the supporting affidavit and the annexures mentioned above satisfactorily prove that the attached assets belonged to the appellant?
8. It obvious to me and I believe to both parties that the warrants and the proclamation notice do not prove anything in respect of ownership. The warrants simply commanded the auctioneer to attach and sale property belonging to the 2nd respondent. The warrants did not identify any property neither did it mention the appellant.
9. The other document the appellant sought to rely on is the letter from the Business Registration Service. The letter is addressing investigations as to directorship of the 2nd respondent and the appellant. It doesn't mention any assets belonging to either of the companies. It does not even show who are the directors of either of the companies. The letter was done on 2-05-2023 which is over a year ago and the appellant has not made any attempt to update the court about the investigations. Either way, I find that none of the documents presented to the honourable magistrate proves ownership of the proclaimed property.
10. The respondent has submitted that the appellant has concentrated in arguing on ownership and extent of liability of a company instead of showing it owned or had interest in the assets. I cannot agree more. There was no issue before the magistrate neither is there an issue before this court on whether goods belonging to a director can be attached in execution of a decree against the company. There is no issue before the court about lifting or sustaining the veil of the appellant.
11. I notice that the cause of action in the lower court was about hire of trappers which obviously are used for construction. Obviously, the 2nd respondent deals with hardware goods and it is likely that the hardware goods listed in the proclamation notice were its stock. Further, purchase receipts, invoices or recertificates would have shown that the computer accessories belonged to the appellant. The appellant did not exhibit a lease or title document to prove that the premises at which the proclamation was done was occupied or owned by it.



12. The appellant did not mention the registration numbers of the motor vehicles found in their alleged premises. A simple task of listing the motor vehicles and exhibiting copy of records would have been enough to convince the court that the auctioneers attached goods belonging to the appellant.
13. In view of the above analysis, I hold and find that the magistrate did not err in holding that the appellant did not discharge its burden of proof. This appeal lacks merits and it is hereby dismissed with costs to the 1st respondent.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT

