



**Neomatech Limited v Seven Seas Technologies Limited; Rentworks East Africa Limited (Objector) (Commercial Miscellaneous Application E832 of 2023) [2024] KEHC 11438 (KLR) (Commercial and Tax) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11438 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E832 OF 2023**

**MN MWANGI, J  
SEPTEMBER 20, 2024**

**BETWEEN**

**NEOMATECH LIMITED ..... DECREE HOLDER**

**AND**

**SEVEN SEAS TECHNOLOGIES LIMITED ..... JUDGMENT DEBTOR**

**AND**

**RENTWORKS EAST AFRICA LIMITED ..... OBJECTOR**

**RULING**

1. The objector filed a Notice of Motion application dated 15<sup>th</sup> November, 2023 pursuant to the provisions of Order 22 Rules 51, 52 & 53 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B & 3A of the *Civil Procedure Act*, and all other enabling provisions of the law. The applicant seeks orders for this to vacate the proclamation and/or attachment of the objector's movable assets/goods enlisted in the proclamation Notice dated 14<sup>th</sup> November, 2023, that this Court permanently restrains the decree holder acting through its agents Tranzo Auctioneers or any other Auctioneers from proclaiming, attaching, and/or selling the objector's properties, and that this Court sets aside the warrants of attachment of movable property dated 10<sup>th</sup> November, 2023 and the Proclamation Notice dated 14<sup>th</sup> November, 2023 for listing goods that do not belong to the judgment debtor.
2. The application is supported by an affidavit sworn on 15<sup>th</sup> November, 2023 day by Sarah Nyamache, the objector's Finance and Administration Manager who averred that the objector entered into a Master Rental Agreement with the judgment debtor, allowing the judgment debtor to lease equipment or machinery by executing Rental Schedules. She contended that the movable property in question



belongs to the objector and is only held by the judgment debtor under rental terms. She indicated that she is aware that the decree holder through Tranzo Auctioneers, issued a Proclamation Notice dated 14<sup>th</sup> November, 2023, against the objector's movable assets in the judgment debtor's possession, purporting to execute warrants of attachment and sale from a decree issued in this suit against the judgment debtor on 7<sup>th</sup> November, 2023.

3. She averred that warrants of attachment and sale of movable properties dated 10<sup>th</sup> November, 2023 were issued to the judgment debtor by the decree holder. She argued that with the objector being the sole and exclusive owner of the proclaimed movable goods, the proclamation of these goods is unlawful. Ms. Nyamache emphasized that the objector is not a party to the suit and/or dispute between the decree holder and the judgment debtor, thus it is a stranger to the proceedings and the resultant judgment and decree issued against the judgment debtor in this suit.
4. In opposition thereto, the decree holder filed a replying affidavit sworn on 16<sup>th</sup> January, 2024 by Titus Mwaniki Kithana, a Director of the decree holder. He averred that the objector has not provided proof of ownership of the goods listed in the Proclamation Notice dated 10<sup>th</sup> November, 2023. He noted that the assets mentioned in the said Notice differ from those claimed to be rented by the objector to the judgment debtor under the Master Rental Agreement dated 5<sup>th</sup> December, 2012. He stated that according to the rental schedules, the equipment rented by the objector to the judgment debtor include Data Centre Hardware, IPCCTV Cameras, Access Control Equipment, Alarm System Equipment, Audio Visual Equipment, Electrical Equipment, Data Centre Electrical Equipment, Fire Detection Equipment, Fire Suppression Equipment, Electrical Equipment for Floors, Furniture, Kitchen Equipment, and various IT and network-related equipment.
5. Mr. Mwaniki argued that the proclaimed goods which include wooden tables, glass tables, wooden wall cabinets, executive office leather sofa sets, executive office chairs, several office ordinary chairs, several high chairs, several wooden cabinets, several high stools, reception desk and chairs, computer desks, television sets, complete office computers, and several coffee makers, do not match the items listed in the Rental Schedules provided by the objector. He noted that the objector has not provided evidence that the furniture or electronics in question were part of the Rental Agreement and/or that they belong to the objector.
6. He contended that all Rental Schedules had expired by 4<sup>th</sup> July, 2019, and no evidence of an extension beyond that date has been provided. He argued that even if there was an automatic extension, the judgment debtor should have returned the equipment by 4<sup>th</sup> July, 2020, well before the goods were proclaimed, but the objector has not shown that the equipment leased was not returned. Mr. Mwaniki asserted that the objector's claim of ownership is an attempt to scuttle the decree holder's efforts to realize the fruits of its judgment.
7. In a rejoinder, the objector filed a supplementary affidavit sworn on 22<sup>nd</sup> February, 2024 by Sarah Nyamache. She claimed that the equipment listed in the Proclamation Notice dated 10<sup>th</sup> November, 2023 fall under furniture, kitchen equipment, audio visual equipment, and internal IT equipment as indicated in Rental Schedules Nos. 01063SEV0002, 01063SEV0003 & 01063SEV0006. She averred that the contract terms between the objector and the judgment debtor had been subsequently renewed by the judgment debtor by retaining possession of the said equipment since the elapse of the term to date, as per the provisions of Clause 17 of the Master Rental Agreement. She argued that since the Rental Schedules and the Master Rental Agreement do not confer ownership rights of the leased goods to the judgment debtor, the objector remains the sole and exclusive owner of the attached goods.
8. The application herein was canvassed by way of written submissions. The objector's submissions were filed on 23<sup>rd</sup> February, 2024 by the law firm of Nyaanga & Mugisha Advocates, whereas the decree



holder's submissions were filed by the law firm of Wanjohi Muli & Partners Advocates LLP on 14<sup>th</sup> March, 2024.

9. Ms. Kale, learned Counsel for the objector cited the provisions of Order 22 Rules 51(1) & (2) and Order 53 of the Civil Procedure Rules, 2010 and the case of Arun C. Sharma v Ashana Raikundalia T/A A. Raikundalia & Co Advocates & 4 others [2014] eKLR. She submitted that the burden of proof lies on the objector to prove that it has legal or equitable interest in whole or part of the attached movable goods. She submitted that the standard of proof in objection proceedings is on a balance of probabilities, and in this case, the objector has demonstrated that it leased equipment to the judgment debtor pursuant to a Master Rental Agreement dated 5<sup>th</sup> December, 2012 and the subsequent Rental Schedules. She asserted that all the equipment listed in the Proclamation Notice dated 10<sup>th</sup> November, 2023 being furniture, kitchen equipment, audio visual equipment, and internal IT equipment were leased to the judgment debtor by the objector.
10. Counsel referred to Clause 13 of the Master Rental Agreement and stated that it requires the judgment debtor to return the equipment upon expiry or termination of the said Agreement, thus the Master Rental Agreement and the subsequent Rental Schedules did not confer ownership rights over the leased goods to the judgment debtor. She relied on the case of Patrick Kingori Warungogo v James Nderitu & another [2014] eKLR, and argued that since the objector has established that it owns the attached goods, the burden of proof shifts to the decree holder to demonstrate that the attached goods belong to the judgment debtor, which burden the decree holder had not discharged. She contended that the decree holder has no authority to proclaim, attach and sell the movable assets in question.
11. Ms. Kale cited the case of Kenya Power & Lighting Company Limited v Sheriff Molana Habib [2018] , and urged this Court to issue the decree holder and/or its agent with a permanent injunction restraining it from proclaiming, attaching, and disposing of the movable goods in question in light of the reasons given by the objector.
12. Mr. Muli, learned Counsel for the decree holder relied on the decisions in Stephen Kiprotich Koech v Edwin K. Barchilei: Joel Sitienei (objector) [2019] eKLR and Precast Portal Structures v Kenya Pencil Company Limited & 2 others [1993] eKLR, and submitted that the burden of proving ownership in objection proceedings lies with the objector. He stated that in this case, the objector has not discharged this burden since the Master Rental Agreement cannot serve as prove of ownership for reasons that at the time of proclamation, it had already expired, and no proof of extension of the same beyond 4<sup>th</sup> July, 2019 was tendered by the objector. Counsel referred to Clause 17 of the Master Rental Agreement and stated that upon expiry of the term, the rentee was supposed to return the equipment to the rentor or request under Clause 22 for an extension of the term, and in either case, Notice was required to be given at least ninety (90) days prior to the expiry of the term, but no such notice has been produced before this Court by the objector.
13. Counsel further submitted that although the same clause provided that the rental term could be automatically extended for a further twelve (12) months where the rentee had not given the ninety (90) days' Notice, the same would have taken the contract up to 4<sup>th</sup> July, 2020. In the premise, Counsel argued that the proclamation herein was done three (3) years after expiry of the Master Rental Agreement and the subsequent Rental Schedules, as the proclamation in issue was done on 14<sup>th</sup> November, 2023. In addition, Counsel contended that whereas Rental Schedule No. 01063SEV0003 referred to furniture as one of the items leased to the judgment debtor, the subsequent Rental Schedule No. 01063SEV0006 shows that furniture was not leased again to the judgment debtor upon expiry of Rental Schedule No. 01063SEV0003.



14. Mr. Muli referred to the case of Paul M. Munyao & 2 others v Civicon Limited (Judgment Debtor); AEA Limited & another [2021] eKLR, and asserted that no hard evidence has been produced by the objector to prove ownership of any of the proclaimed goods. He stated that for the said reason, the objector had not discharged its burden of proof to warrant the evidential burden shifting to the decree holder to demonstrate that the proclaimed goods belong to the judgment debtor.

#### **ANALYSIS AND DETERMINATION.**

15. I have considered the application filed herein, the grounds on the face of it and the affidavits filed in support thereof. I have also considered the replying affidavit filed the decree holder and the written submissions by Counsel for the parties. The issue that arises for determination is whether the application herein is merited.

#### **Whether the application herein is merited.**

16. Order 22 Rule 51(1) of the Civil Procedure Rules, 2010 provides as follows -

Any person claiming to be entitled to or have a legal 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 attachment of such property.

17. In objection proceedings, the burden of proof lies with the objector to demonstrate the relevant facts supporting his/her/its objection. The objector must prove the disputed issues of fact for the Court to exercise its discretion in their favour. This was the Court's holding in the oft cited case of Arun C. Sharma v Ashana Raikundalia T/A A. Raikundalia & Co Advocates & 4 others (supra) where 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 or to have a legal or equitable interest in the whole or part of the property.”

18. There are certain aspects that an objector is expected to prove and demonstrate in order to discharge its burden of proof. These aspects were considered by the Court in the case of Grace Wanjiru Mbugua v Philip Karumi Matu [2009] eKLR, as hereunder -

“The burden is on the objector to prove and establish his right to have attached property released from attachment. On the evidential material before the court, a release from attachment may be made if the court is satisfied:

1. That the property was not when attached held by the judgement debtor for himself or by some other person in trust for the judgement debtor; or
2. That the objector holds that property on his own account. But where the court is satisfied that the property was, at the time of attachment, held by the judgement debtor, as his own and not on account of any other person, or that it was held by some other person in trust for the judgement debtor or that ownership has changed, whereby the judgement debtor has been divested of the property in order to evade execution, on the change is tainted with fraud, the court shall dismiss the objection.”



19. The decree holder obtained warrants of attachment and sale of movable properties dated 10<sup>th</sup> November, 2023. Subsequently, vide a Proclamation Notice dated 14<sup>th</sup> November, 2023 it proclaimed through Tranzo Auctioneers assorted furniture and assorted electronics which were in the possession of the judgment debtor and which the decree holder believes belong to the judgment debtor. Thereafter, the objector filed the instant application challenging the proclamation and attachment of the said goods on grounds that it is the sole and exclusive owner of the proclaimed movable goods, thus the proclamation of the said goods is unlawful.
20. The objector claimed to have leased the said goods to the judgment debtor pursuant to a Master Rental Agreement dated 5<sup>th</sup> December, 2012 and t Rental Schedules. It is contended that the said Agreement and subsequent Rental Schedules do not confer ownership rights of the goods to the judgment debtor, since the said judgment debtor was required to return the goods in question to the objector upon expiry and/or termination of the aforesaid Agreement and Rental Schedules. In a bid to prove ownership of the said goods, the objector produced a Master Rental Agreement dated 5<sup>th</sup> December, 2012 and the Rental Schedules.
21. On perusal of the Rental Schedules, it is evident that in as much as they include items like furniture, kitchen items, audio visual equipment, and internal IT equipment, it is not specific on the items that were actually leased and delivered to the judgment debtor. It is therefore impossible to tell from a perusal of the Master Rental Agreement dated 5<sup>th</sup> December, 2012 and the Rental Schedules, as compared to the items/goods captured on the Proclamation Notice, whether indeed the items proclaimed by the decree holder form part of the items and/or equipment leased to the judgment debtor by the objector. As stated before in this ruling, in objection proceedings, the objector bears the burden of proving ownership of the disputed items and/or goods. In the case of Paul M. Munyao & 2 others v Civicon Limited (Judgment Debtor); AEA Limited & another (supra) the Court held that -
- “An objector who commences objection proceedings will produce strong evidence of ownership of the subject goods to rebut the prima facie presumption of the ownership of the goods by the judgment debtor. It is therefore expected that an objector will produce title documents or evidence that go towards establishing the objector’s claim to ownership of the subject goods. The issue of title to the goods cannot be left to speculation. In my view therefore, it is only after such strong evidence has been produced by an objector that the evidentiary burden shifts to the decree holder to show otherwise.” (Emphasis added).
22. I agree with the above holding, and in this instance, it is my finding that the evidence adduced by the objector as proof of ownership of the proclaimed and attached goods leaves a lot to be desired as it gives room for speculation, which is discouraged when it comes to objection proceedings. It is my finding that the objector ought to have produced more detailed documentation, in addition to the documents already produced, to clearly show precisely what and/or which items/goods were leased and/or delivered to the judgment debtor pursuant to the Master Rental Agreement dated 5<sup>th</sup> December, 2012 and the Rental Schedules, in order to discharge its burden of proving ownership of the proclaimed goods.
23. It is not disputed that the Master Rental Agreement dated 5<sup>th</sup> December, 2012 and the Rental Schedules expired on 4<sup>th</sup> July, 2019, but no evidence has been tendered by the objector of extension and/or renewal of the Master Rental Agreement dated 5<sup>th</sup> December, 2012, and the Rental Schedules. The objector however referred to Clause 17 of the Master Rental Agreement dated 5<sup>th</sup> December, 2012, and argued that the Agreement was renewed and/or extended by the judgment debtor by retaining possession of the said equipment after the lapse of the term, to date.



24. I have perused Clause 17 of the Master Rental Agreement dated 5<sup>th</sup> December, 2012 and I note that it provides for automatic extension of the Agreement for a further twelve (12) months in the absence of a ninety (90) days' Notice in writing extending the term or varying the equipment rented, when the judgment debtor fails to return the leased equipment. If that then is the case, the Master Rental Agreement and the Rental Schedules expired on 4<sup>th</sup> July, 2020, three (3) years before the decree holder proclaimed the judgment debtor's goods.
25. It is rather questionable that in as much as the objector claims that the Master Rental Agreement and Rental Schedules were renewed by virtue of the judgment debtor retaining the leased goods and/or equipment beyond 4<sup>th</sup> July, 2019, no evidence such as payments made for the leased items, communication between the objector and the judgment debtor on the state of the equipment and acknowledging receipt of payment for the equipment, has been tendered by the objector, so as to give credence to the objector's allegations of extension of the lease term.
26. In view of the said position, this Court finds that the objector has not discharged its burden of proving ownership of the proclaimed goods and/or equipment, to warrant being granted the orders sought in the application herein. In the absence of proof of ownership, this Court finds that the objector does not stand to suffer any loss and/or damage if the instant application not allowed, and if the decree holder is allowed to proceed with the attachment and sale of the proclaimed goods in realization and enjoyment of the fruits of its judgment.
27. In the end, I find that the objector has not established legal or equitable rights in the proclaimed goods to warrant being granted the orders sought herein.
28. The upshot is that the application dated 15th November, 2023 is devoid of merits. It is hereby dismissed with costs to the decree holder.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:**

Ms Kale for the objector/applicant

Mr. Muli for the decree holder/respondent

Ms B. Wokabi - Court Assistant.

