



REPUBLIC OF KENYA



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**Nyoko & another v Bapa Limited & 3 others (Civil Appeal E002 of 2023)
[2024] KEHC 11083 (KLR) (Commercial and Tax) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11083 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E002 OF 2023
FG MUGAMBI, J
SEPTEMBER 20, 2024**

BETWEEN

PATRICK MWANIKI NYOKO 1ST APPELLANT

PAUL GITHINDI MATERE 2ND APPELLANT

AND

BAPA LIMITED 1ST RESPONDENT

BEALINE KENYA AUCTIONEERS 2ND RESPONDENT

CP HARDWARE LIMITED 3RD RESPONDENT

CATHERINE NJOKI NJIRIANI 4TH RESPONDENT

(Being an appeal against the Ruling of 18th November 2022 by Hon. Martin Mutua, RM/Adjudicator in Nairobi Small Claims in SCCCOM No. 551 of 2021)

RULING

Background

1. The appellants instituted this appeal through a Memorandum of Appeal dated 5/1/2023, on seven (7) grounds as more specifically laid out therein. The appeal arises from a ruling delivered by the Learned Adjudicator dismissing an objection application that had been filed by the appellants.
2. The said application, dated 26/9/2022, confirmed that judgment had been delivered in the suit before the lower court on 19/11/2021 against the 3rd and 4th respondents. As a result of the judgment the 2nd respondent had proclaimed household goods which the 1st appellant objected to as they were jointly owned with his wife, the 4th respondent.



3. The 1st appellant challenged the proclamation on grounds that he was not a party in the said suit and that the items had been bought by him. The 1st appellant took issue with the standard of proof applied by the lower court, which he contends was not on a balance of probabilities.
4. The appellants further took issue with the dismissal of the 2nd appellant's objection on grounds that there was no evidence that the proclamation was done at Classic Hardware, whose proprietor is the 2nd appellant.
5. Following directions issued by this court the appeal was canvassed by way of written submissions. The appellants filed written submissions dated 3/8/2023. In opposing the appeal, the 1st respondent filed written submissions dated 14/9/2023.

Analysis and Determination

6. I have carefully considered the record of appeal, the submissions and authorities cited by the respective parties. The single issue for determination is whether the trial court erred by dismissing the appellants' objection application.
7. The central principle established by the body of jurisprudence on this subject is that an objector must provide evidence of a legal or equitable interest in the goods seized during the execution of a decree. This evidence must meet the standard of a balance of probabilities. (See *Akiba Bank Ltd v Jetha & Sons Ltd*, [2005] eKLR) and *Dubai Bank (K) Ltd v Come- Cons Africa Ltd and Impak Holdings Co Ltd*, [2012] eKLR.
8. Regarding the 1st appellant, the trial court dismissed the objection, finding that the list of proclaimed goods "do not form or are not personal effects" and that there was insufficient proof that they were his sole property (see pg. 2 of the ruling).
9. The 1st appellant submitted a copy of his marriage certificate to the court, confirming his marriage to the 4th respondent on 9/8/2014. His objection pertained to specific items listed in the proclamation, including a TV set, sofa set, fridge, microwave, gas cooker, and gas cylinder, which he claimed to have purchased as the head of the household.
10. Given the marital relationship between the 1st appellant and the 4th respondent, it is crucial to refer to the *Matrimonial Property Act*. Section 6 of the Act defines matrimonial property to include household goods within the matrimonial home, while Section 7 stipulates that ownership of such property is vested on the spouses according to the spouses' respective contributions.
11. Building on this, the jurisprudence regarding household goods in a matrimonial home is well-established. It is generally recognizable that, due to the shared responsibilities and property rights within a marriage, contributions - whether direct or indirect - are almost indisputable. Moreover, under family law, household goods are presumed to serve the family's daily needs, making it difficult to draw a clear distinction between what belongs to the husband and what belongs to the wife.
12. The 1st appellant referred to the case of *Transnational Bank Limited v Florence Odhiambo & 2 Others*, [2005] eKLR in which the court stated under similar circumstances as follows:

“... being ordinary household items, which were found in her own matrimonial home where she lives, she obviously has an equitable interest in them, and I so find. It seems to me that a spouse will always have an equitable interest in all the household goods in his/her



matrimonial home where she/he lives unless it can be shown that any particular item is legally and exclusively owned by the other spouse. ...”

13. Despite the established jurisprudence, the 1st appellant went a step further in this case by providing receipts from Naivas and Timeless Textiles to prove that he had indeed purchased the household items in question.
14. Had the trial court considered all these elements, I am confident it would have reached a different conclusion, finding that the 1st appellant had demonstrated, on a balance of probabilities, a legal and equitable interest in the proclaimed household goods, as I now find.
15. The 2nd appellant, for his part, objected to the inclusion of hardware materials such as steel bars, cement, barbed wire, tiles, pipes, and iron sheets, located at Classic Hardware, his business premises. He criticized the trial court for dismissing his objection due to a lack of proof that the proclamation occurred at Classic Hardware, despite the fact that the 1st and 2nd respondents did not dispute that Classic Hardware was the intended site of attachment.
16. Regarding goods attached from business premises, the Court of Appeal in *Zingo Investment Limited v Miema Enterprises Limited*, [2015] eKLR held that:

“Title documents or ownership of premises is not by itself sufficient in objection proceedings; there must be ample documentation of ownership of attached items. The issue is not ownership of premises but proprietary interest in the attached goods. If this were not the case landlords may well become objectors whenever a tenant’s goods are proclaimed and this cannot be the law.”
17. The implication of the above finding is that the key issue is not the ownership of the premises, but rather the legal or equitable interest in the attached items. The 2nd appellant submitted a tenancy agreement dated 1/3/2022, as evidence that he had rented Classic Hardware, the premises where the proclamation occurred. Additionally, he provided a trading license issued in the name of Classic Hardware, dated 5/3/ 2022.
18. While these documents establish that the 2nd appellant occupied and conducted business at Classic Hardware, they do not sufficiently demonstrate his ownership or legal interest in the specific goods that were attached. The mere existence of a tenancy agreement and trading license, although relevant, does not establish a direct link between the 2nd appellant and the ownership of the attached items.
19. I am bound by the decision of the Court of Appeal and similarly find that even if the proclamation occurred at Classic Hardware, the critical issue is proving a proprietary interest in the specific goods seized. No evidence was presented to the trial court to establish the 2nd appellant’s ownership or legal interest in the attached goods. I concur with the respondents’ argument that there was a need for clear evidence demonstrating the connection between the 2nd appellant’s business and the seized items. Without such evidence, the objection lacks the necessary foundation.

Disposition:

20. Accordingly, and for reasons as stated, this appeal succeeds in part, only with respect to the 1st appellant. The part of the impugned ruling that dismissed his objection is set aside. The 1st appellant shall therefore have the costs of this appeal.
21. I uphold the decision of the trial court dismissing the objection by the 2nd appellant and hold that the same is unfounded. The 2nd appellant’s appeal is therefore dismissed with costs.



DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 20TH DAY OF SEPTEMBER 2024.

F. MUGAMBI

JUDGE

