



**Mao Advocates LLP v Zadok Furniture Systems Limited; Swanya And Company
Advocates (Objector) (Commercial Miscellaneous Application 678 of 2022)
[2023] KEHC 18942 (KLR) (Commercial and Tax) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18942 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION 678 OF 2022**

**DAS MAJANJA, J
JUNE 16, 2023**

BETWEEN

MAO ADVOCATES LLP ADVOCATE

AND

ZADOK FURNITURE SYSTEMS LIMITED CLIENT

AND

SWANYA AND COMPANY ADVOCATES OBJECTOR

RULING

1. Before the court for consideration is the application dated May 30, 2023 made under Order 22 rule 51 of the *Civil Procedure Rules*. The application arises out of execution of the judgment entered in favour of the Advocates against the Client following taxation of the Advocate/Client Bill of Costs for Kshs. 422,407.50 together with interest thereon. The Advocates then instructed the Vetrans Investment Auctioneers to attach and sell the Client's moveable assets.
2. The attachment is resisted by the objector, a firm of Advocates, who have lodged these proceedings. The application is supported by the affidavit of its proprietor, Victor Swanya Ogeto, sworn on May 30, 2023. He claims that furniture set out in the proclamation dated May 25, 2023 being assorted office reception desks, assorted office chairs and assorted office tables all belong to the objector and not the Client. In his deposition, he has annexed the Certificate of Registration of Business showing that it is registered as a law firm, a photograph of the office premises and furniture. He has also produced invoices and receipts showing that the firm purchased the furniture from Eastern Africa Trading Company.



3. The Objection is opposed by the Advocates through the affidavit of its partner, Abdirazak Roba, sworn on June 9, 2023. He states that he represented the Client in certain proceedings; HC MISC. Appl. No. E082 of 2023, Lubullellah and Associates Advocates v Zadok Furniture Systems Ltd. Thereafter he filed his bill of costs for taxation after successfully defending the Client in that matter. He avers during the time he was representing the Client, its address of service was Muringa Court, Suite 4B, Kirichwa Road, Off Ngong Road, P O Box 55800-00200, Nairobi which is the objector's address of service as evidenced by the Notice of Change filed in the matter the Advocates were representing. In his view, Client and objector are one and the same and it urges the court to lift the corporate veil as the Client's director is also the proprietor of the objector.
4. The application before the court is made under Order 22 Rule 51 of the Rules which states that:

Objection to attachment 51.

 - (1). Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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 the parties and to the decree-holder of his objection to the attachment of such property.
 - (2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.
 - (3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.
5. The onus is on the objector to demonstrate a legal or equitable interest in the whole or part of any of the attached property and it is not for the decree-holder to prove that the goods belong to the judgement debtor. In *Simba Colt Motors Ltd v Lustman & Co.* (1990) MSA HCCC No. 729 of 2002 (UR) Waki J. (as he then was) observed that, "The purpose of Rule 57 is to provide the objector with an opportunity to establish his claim to the attached moveable property. The rule casts the onus of proof on the objector to prove that the property belonged to him and not, as submitted before me, for the Decree-holder to prove that the property belonged to the Judgement-Debtor."
6. The objector has shown that it is a law firm with offices and the furniture therein and which furniture it purchased as evidenced by invoices and receipts. To my mind, this is sufficient evidence to discharge the burden. The Advocates contend that the objector ought to have produced the lease but in my view this is unnecessary as the issue is the owner of the goods and not the premises. The objector need only prove its case on a balance of probabilities hence the evidence of ownership of the property attached is sufficient (see *Clearspan Construction Co., Ltd v East Africa Gas Limited and another* MSA HCCC No. 1 of 2004 [2015] eKLR). The fact that the premises are occupied by the objector only buttresses its case.
7. The Advocates case is that this is an issue of fraud since the Client's shareholder and the proprietor of the objector are related. The mere fact that the shareholders or directors of an objector are related, or operated from the same premises as the judgement-debtor, is not reason enough to justify the attachment of an objector's goods, property or assets as the matter to be resolved is the ownership of the attached goods. Even if the objector is a relative to the proprietor of a judgment-debtor, if the objector proves ownership to the attached property, to the exclusion of the judgment-debtor, the



attachment would be lifted (see [Cyprian Masafu Wanyonyi Wekesa v Jaswinder Singh Enterprises Ltd](#) [2006] eKLR).

8. Having considered the evidence and the submissions by counsel for the parties, I find and hold that the objector has established a legal and equitable interest in the moveable properties, that is the assorted furniture attached by the auctioneers.
9. For the reasons I have set out above, I now make the following dispositive orders:
 - a. The objector's Notice of Motion dated May 30, 2023 is allowed and the attachment contained in the Proclamation dated May 25, 2023 by Vetrunk Investments Auctioneers be and is hereby raised. The Advocates shall bear the objector's costs assessed at Kshs. 15,000.00 only.
 - b. This ruling shall apply to the objectors application dated May 30, 2023 filed in HC COMM No. E384 of 2022, Mao Advocates Llp v Zadok Furniture Systems Limited And Swanta And Co., Advocates (objector).

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JUNE 2023.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Abdirazak instructed by MAO Advocates LLP for the Advocates/Applicant.

Mr Kuria instructed by Wilfred K. Babu and Company Advocates for the objector

