



Spinners and Spinners Limited v Kimilili Wholesalers Limited; Jayantil Uniforms Kenya Limited (Objector) (Civil Suit 7 of 2020) [2024] KEHC 12935 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT 7 OF 2020
RN NYAKUNDI, J
OCTOBER 25, 2024**

BETWEEN

SPINNERS AND SPINNERS LIMITED PLAINTIFF

AND

KIMILILI WHOLESALERS LIMITED DEFENDANT

AND

JAYANTILAL UNIFORMS KENYA LIMITED OBJECTOR

RULING

1. By a Notice of Motion dated 23/7/2024, the Objector/Applicant seeks orders that:
 1. Spent.
 2. Spent.
 3. Spent.
 4. The proclamation of the Objector's properties be set aside.
 5. Costs of this application be provided for.
2. The application is premised on the grounds therein and is further supported by the Affidavit sworn by Maniben Jayantilal Shah, on the same date.
3. He deposed that he is the Director of the Objector, that on 19/7/2024, Mamalo Auctioneers came to the Objector's business premises and proclaimed the Objector's properties, that the goods proclaimed do not belong to the Defendant/Judgment Debtor but to the Objector and that the auctioneers also proclaimed motor vehicle registration number KBQ 102.



4. He maintained that the Objector has never been a party to this suit and therefore there is no legal basis for proclaiming the Objector's properties. The Objector is apprehensive that the auctioneers are likely to come back anytime now and in the event that they collect the proclaimed properties, the Objector will suffer irreparable loss. The Objector maintains that it is therefore fair and just that the Court grants orders of stay of execution pending the hearing of the Objection proceedings. He further deposed that since the Objector is not a party to this suit, it is necessary that the proclamation be set aside.

The Response

5. The Application is opposed by the Plaintiff vide the Replying Affidavit sworn by Manthi Muendo on 17/9/2024.
6. According to the Plaintiff, the Application herein is frivolous, vexatious, misconceived, devoid of merit, baseless, inept, an afterthought and an otherwise an abuse of Court process and does not merit the reliefs sought therein as the Objector/Applicant is culpable of distortion, misrepresentation and/or non-disclosure of material facts with intent to mislead this Honourable Court into granting favourable orders which are clearly undeserving to the Objector and ought to be dismissed with costs to the Plaintiff as the said Application is merely intended at frustrating the Plaintiff's attempts to recover the decretal sum as shown herein below; that the Application as filed is also fatally defective as the Objector/Applicant herein, has no locus standi to challenge the said Proclamation in light of Jayantilal Uniforms Kenya Limited the provisions of Order 22 Rule 51 of the *Civil Procedure Rules* which provides that; 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, that upon perusal of the Application, it is clear beyond peradventure that the Objector has not produced any documentation whatsoever evincing the alleged ownership of the said proclaimed goods except ownership of Motor Vehicle Registration No. KBQ 102S.
7. The Plaintiff maintained that it is trite law that ownership of goods/property can only be proved by way of the respective title documents such as receipts evincing purchase of the said goods, that a perusal of the Application clearly evinces that the Objector has not provided any title documentation whatsoever in support of its allegation that the proclaimed goods are owned by it and that the only documentation produced by the Objector in its Application is a Registration Certificate for Motor Vehicle Registration No. KBQ 102S dated 8/5/2023, however, it is clear beyond peradventure that the Objector has not produced any documentation whatsoever evincing the alleged ownership of the proclaimed Blankets, Mattresses, School Uniforms and School Bags.
8. The Plaintiff maintained that ownership of the proclaimed goods has not been proved thus, the proceedings herein are improperly before Court and are a non-starter having been commenced by a party that has no locus standi of filing the said proceedings contrary to the clear provisions of the law which sets out the procedure and the appropriate party to challenge such attachment.
9. The Plaintiff further maintained that it is trite that whoever lays a claim before the Court against another has the burden to prove it, the Objector herein has also not tendered any evidence before this Court to prove the allegation that the Objector/Applicant was served by Mamalo Auctioneers with Warrants of Attachment and Proclamation Notice as alleged.
10. The Plaintiff further deposed that in exercise of its lawful right to enjoy fruits of the judgment, the Plaintiff has indeed lawfully proceeded to proclaim the Defendant's goods for purposes of selling them in execution of the Decree issued by this Honourable Court on 11/7/2023, that the said goods were



proclaimed at the Defendant's offices, which goods are deemed to be owned by the Defendant unless proved otherwise, which fact the Objector has not disproved by any title documentation whatsoever.

11. According to the Plaintiff, the Application herein is an afterthought and absolutely devoid of merit, whose aim is only to deny and delay the Plaintiff's attempt to enjoy fruits of its judgment as per the Decree issued by this Honourable Court on 11/7/2023.
12. The Application was canvassed vide written submissions. Parties filed their respective submissions as reproduced hereinunder.

The Objector's/Applicant's Submissions

13. In regard to whether the proclamation of the Objector's Properties should be set aside, Counsel for the Objector cited Order 22 Rule 51 and 55 of the Civil Procedure Rules and submitted that judgment in this suit was entered against the Defendant and in favour of the Plaintiff, the Plaintiff herein then obtained decree to execute against the Defendant and on instructing Messrs. Mamalo Auctioneers, the auctioneers proceeded to proclaim properties belonging to the objector. This prompted the filing of the instant application.
14. Counsel further submitted that the Objector herein filed a notice of objection to attachment in Court and served it upon all the parties including the decree-holder which notice is dated 23/7/2024 and the Objector/Applicant filed an Affidavit of Service sworn on 16/9/2024 confirming the same, that a notice was also issued by Court upon the attaching creditor (the Plaintiff herein) pursuant to Order 22 rule 52 of the Civil Procedure Rules and no response to the said notice was made by the attaching creditor and filed and/or served upon all the parties. Counsel added that pursuant to the warrants of attachment issued by the court, the Plaintiff through the auctioneers were to execute against the Defendant. The auctioneers, however, visited the Objector's premises on 20/6/2024 and proclaimed the following items:-motor vehicle registration number KBQ 102S; Blankets; Mattresses; School uniforms; and School bags.
15. Counsel contended that the goods proclaimed do not belong to the Defendant/Judgment debtor but are owned by the Objector and annexed to the supporting affidavit is a copy of logbook for motor vehicle registration number KBQ 102S which annexure is marked- 'MJS 5', that the logbook confirms that Maniben Jayantilal Shah is the registered owner of the said motor vehicle as at 8th August, 2023. Counsel relied on the proviso of Section 8 of the [Traffic Act](#).
16. Counsel maintained that all properties attached were also found at the premises of the objector. This is evidenced by the Single business permit annexed to the supporting affidavit as 'MJS4', that the blankets, mattresses, school uniforms and school bags are retained within the Objector's premises and amount to the objector's tools of trade. It is trite law that a person's tools of trade are exempted from execution as per Section 44(1) of the [Civil Procedure Act](#). Therefore, it was unlawful and improper for the auctioneers to proclaim the Objector's tools of trade as they are insulated against execution bearing in mind that the proclaimed goods were also not the Defendant's property.
17. Counsel further submitted that the Objector/Applicant also produced a Certificate of incorporation ('MJS1') and CR-12 ('MJS2') showing ownership of the company and the Directors therein and that it is clear that the Defendant is neither director or a shareholder of the Objector. The Defendant also does not have any interest in the proclaimed assets or are they being held in trust for it.
18. Counsel urged that the said proclamation was done improperly and with malice as it also did not follow prescribed rules and procedure. Rule 12 (1) (b) of the [Auctioneers Rules \(LN 120/1977\)](#). Counsel contended that the proclamation dated 20/6/2024 as annexed to the supporting affidavit sworn on



23/7/2024 as 'MJS 3' was improperly done as it did not have the full particulars of assets proclaimed as well as the signature of the owner of the goods. There was no certificate that was prepared by the auctioneer to the effect that a person refused to sign as required by the rules. Counsel also relied on section 44(1) of the Civil Procedure Act which establishes that only goods of the judgment-debtor are to be attached,

19. Counsel cited the case of Adetoun Oladeji (NIG) v. Nigeria Breweries PLC SC 91/2002 where the Nigerian Supreme Court held that a party is bound by their pleadings. The Applicant reiterates the holding and submits that, the Plaintiff did not sue the Objector but the Defendant hence, it cannot realize the fruits of the judgment therein against the Objector. With that said, your Lordship, unless the attachment is raised, the Objector stands to suffer irreparable loss if the goods are sold and also associated himself with the sentiments of the Court in the case of Michira Messah & Co. Advocates v. Katana Kalume Nduriya; Kalume Kenga Katana (Objector) [2021] eKLR which quoted the decision of Arun v. C. Sherma Astana Raikundeha t/a Raikundaha & Co. Advocates & 4 Others [2014] eKLR where the Court stated that:- “The Objector bears the burden of proving that it is entitled to or has legal equitable interest on the whole or part of the attached property. The key words are entitled to have a legal or equitable interest in the whole or part of the property.”
20. Counsel urged that the Objector has demonstrated ownership and interest in the proclaimed goods by producing before this honourable Court documents in support of their application and that the Objector/Applicant has also proved to this Honourable Court that the Judgment-Debtor has no attachable interest on the proclaimed goods and therefore the proclamation was unlawful and unwarranted.
21. Counsel contended that the Decree-holder and the auctioneers have however failed to prove in their Replying Affidavit sworn on 17th September, 2024 that the proclaimed goods belonged to the Defendant. We rely on Patrick Kingori Warugongo vs. James Nderitu & Another [2014] eKLR, the Court held that: “...once the Objector has established on a balance of probabilities of his interest in the attached goods, the burden of proof shifts to the auctioneer and the decree-holder to establish that the goods belong to the judgment-debtor and not the Objector...”
22. Counsel also relied on the case of Dubai Bank (K) Ltd Vs. Come Cons Africa Ltd & Another and submitted that, the Plaintiff/Respondent has failed to prove that the property belongs to the judgment-debtor.
23. According to Counsel, the instant application on the face of it proves to this Court that the Objector is entitled to and or has interests in the properties attached in execution of the decree.

The Plaintiff's Submissions

24. On whether the Objector proceedings are merited, Counsel for the Plaintiff submitted that the Objector proceedings herein merit and otherwise an utter abuse of the court process, calculated to mislead this Honourable Court into issuing orders which are clearly undeserving to the Objector and ought to be dismissed with costs for the following reasons, inter alia; the threshold for lifting a lawful attachment pursuant to Objection proceedings under Order 22 Rule 51(1) of the Civil Procedure Rules. Counsel urged that indeed upon reading of the above provision, it is crystal clear that the threshold for lifting attachment of property in favour of an objector is proof of ownership of the attached property as was established in the case of Mercy Njambi versus Othaya Villas Company Limited & Another [2020] eKLR. Counsel also relied on several other cases with regard to the issue.
25. Counsel further submitted that it is important to take note that in any application brought under the above provisions the burden of proof is on the Objector to prove and establish their right over the



attached property. In this regard Counsel relied on the case of *Precast Portal Structures versus Kenya Pencil Company Ltd & 2 others* [1993] eKLR. Counsel added that Courts have gone ahead to hold that the Objector's burden of proof in objector proceedings is further enshrined under Section 107 and 108 of the *Evidence Act*, Cap 80 Laws of Kenya, as was held in the case of *Charles Oburu Nyamboye & Another versus Campus Hostels Limited* [2015]eKLR and that in emphasizing the Objector's burden of proof, it is trite law that it is rather it is for the Objector to prove and establish their right over the attached property. Counsel relied on the holding in *Erad Supplies & General Contractors Limited Vs. National Cereals* [2012] eKLR and the case of *Oil Company Limited versus Fuad Mahmoud Mohammed & Others* [2002] eKLR 3113 (CCK). According to Counsel, it is trite law that in Objection proceedings such as the case herein, indeed Courts are mandated to determine whether the Objector has discharged its burden of proof in respect of ownership of the attached goods and that in this regard Courts will only discharge the attachment if satisfied that: (1) the property was not, when the judgment debtor; or (2) That the objector holds that property on his own account. Counsel cited the case of *Precast Portal Structures Vs. Kenya Pencil Company Ltd & 2 others* [1993] eKLR.

26. Counsel maintained that Courts have gone further to establish that in discharging the burden of proof, the including purchase receipts, title deed or a lease agreement; as was established in the *Njeru Chiengo (Objector/Applicant)* [2021] eKLR. In establishing the Objector's failure to discharge its burden of proof, Counsel submitted that upon a perusal of the subject Application, it is clear beyond peradventure that the Objector has failed to produce any documentation whatsoever evincing the alleged ownership of the said proclaimed goods. Counsel urged that indeed, as held in the Authorities above, it is trite law that ownership of goods/property can only be proved by way of the respective title documents such as receipts evincing purchase of the said goods and thereby absence of any of the said title documents, renders any purported claim of ownership baseless and unsubstantiated. Counsel contended that the only documentation produced by the Objector in its Application is a Registration Certificate for Motor Vehicle Registration No. KBQ 102S. However, Counsel maintained that no proof of ownership has been tendered in support of the Blankets, Mattresses, School Uniforms and School Bags. Counsel further submitted that Courts have gone ahead to hold that in the event the Objector fails to produce any documentation to prove ownership of the attached goods then it follows that the Objector's case lacks any legs to stand on and as such it must collapse. In this regard, Counsel urged the Court to be guided by the case of *Mercy Njambi versus Othaya Villas Co. Limited & another* [2020] eKLR and that further to the above, where an Objector has failed to discharge their burden of proof by failing to produce ownership documents in support of their Application, then Courts have proceeded to dismiss the subject objector proceedings as was held in the case of *Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector)*[2019]eKLR. Counsel also cited several other cases in that regard.
27. In light of the foregoing, Counsel submitted that that by virtue of the Objector failing to produce any documents whatsoever evincing the purported ownership of the attached goods, then it therefore follows that its case lacks any legs to stand on and as such it must collapse and be dismissed with costs to the Plaintiff.
28. Counsel urged that it is clear that in exercise of its lawful right to enjoy fruits of its judgment, the Plaintiff has indeed lawfully proceeded to proclaim the Defendant's goods for purposes of selling them in execution of the decree issued by this Honourable Court, that the subject goods were proclaimed at the Defendant's offices, which goods are deemed to be owned by the Defendant unless proved otherwise, which fact the Objector has not disproved by any title documentation whatsoever.
29. In conclusion, Counsel submitted that the Application herein is an afterthought and absolutely devoid of merit, whose aim is to only to deny and delay the Plaintiff's attempt to enjoy fruits of its judgment as



per the Decree issued by this Honourable Court which ought not be countenance by this Honourable Court. Counsel relied on the holding in the case of *Termco Tank Kenya Ltd versus Nyoro Construction Co. Ltd* [2004] eKLR.

The Defendant's Submissions

30. On whether the proclamation of the Objector's properties was unlawful, Counsel for the Defendant submitted that the Plaintiff herein instituted this suit against the Defendant for the recovery of money owed to them. Judgment was entered in favour of the Plaintiff as against the Defendant and the Plaintiff obtained warrant of attachment dated 19/6/2024. The warrant of attachment was to be executed upon the Defendant herein. Counsel added that while being negligent, the Plaintiff through Mamalo Auctioneers went ahead and proclaimed properties belonging to the Objector herein that is Jayantlal Uniforms Limited. The proclaimed goods included: Motor vehicle registration number KBQ 102S, Blankets, Mattresses, School uniforms and School bags.
31. Counsel cited Section 44(1) of the *Civil Procedure Act* and submitted that provision stipulates that only the property belonging to the Judgment-Debtor should be attached. Despite the proclamation reading the debtor as the Defendant that is Kimilili Wholesalers Limited, the auctioneers proceeded to proclaim the properties belonging to the Objector.
32. Counsel submitted that the Defendant has no attachable interest on the proclaimed goods, that the properties belong to the Objector as evidenced by the annexures attached to the Affidavit in support of the application dated 23/7/2024. Counsel maintained that the Objector has proved to this Honourable Court that the motor vehicle registration number KBQ 102S is owned by them as it has produced a logbook marked as 'MJS5' and further that the other goods were found within the objector's premises as it has been evidenced by the single business permit and Certificate of incorporation.
33. According to Counsel, the attachment was illegal and the auctioneers were negligent for proclaiming goods that did not belong to the Defendant.
34. Counsel urged that the proclamation dated 20/6/2024 be lifted and that costs of the application and of the purported execution upon the Objector be borne by the attaching creditor/Plaintiff.

Determination

35. I have considered the application, the grounds in support of the application, the affidavits in support and opposition as well as the rival written submissions by both parties. The only issue that arises for determination is:
 - a. Whether the Court should set aside the proclamation of the attached goods.
36. In the present case, it is not disputed that the Objector herein was never a party in the suit before this Honourable Court and no order has been made against it in these proceedings. Pursuant to this Court's judgment delivered on 10/2/2023, a decree was issued in favour of the Plaintiff against the Defendant for the sum of Kshs.22,806, 508/=. The Plaintiff then in seeking to satisfy the decree commenced the process of attachment through a Proclamation Notice dated 20/6/2024 in respect of several properties including a motor vehicle registration number KBQ 102S being claimed by the Objector in the instant Application.



37. Order 22 Rule 51 (1) of the *Civil Procedure Rules* provides that:

“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 parties and to the decree-holder of his objection to the attachment of such property.

38. In the case of *Chatabhai M. Patel v Chaprabhi Patel* [1958] EA 743, it was stated that:

- a) Where an objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to attachment, the court shall proceed to investigate the objection with the like power as regards examination of the Objector, and in all other respects as if he was party to the suit.
- b) The Objector shall adduce evidence to show that at the date of attachment he had some interest in the property attached.
- c) The question to be decided is, whether on the date of attachment, the Judgment Debtor or the Objector was in possession, or where the court is satisfied that the property was in the possession of the Objector, it must be found whether he held it on his own account or in trust for the Judgment Debtor. The sole question to be investigated is, thus, one of possession of, and some interest in the property.
- d) Questions of legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment Debtor or some other person. To that extent the title may be part of the inquiry.”

39. Odunga J, in *Dubai Bank (K) Ltd v Come-Cons Africa Ltd and Impak Holdings Co Ltd*. (Supra) stated as follows:

“Although the law is that in the objection proceedings, the court does not and cannot make a finding as to the ownership of the property the subject of the objection proceedings but simply decide whether or not the objector has interest legal or equitable in the attached property, it is equally true that the onus of proof in objection proceedings is on the objector to establish ownership see *Chatabhai M. Patel & Another HCCC NO. 544 OF 1957 (Lewis)* on 8/12/58 HCU (1958) 743.” emphasis added

40. The copy of the logbook exhibited in the Objector’s affidavit in support of his application, indicated that the subject motor vehicle is registered in the name of the Objector at the material time. This evidence was not controverted and pursuant to the provisions of Section 8 of the *Traffic Act*, the Court is satisfied that the Objector has reasonably demonstrated that he has a legal and equitable interest in the subject motor vehicle. There is no evidence from the Plaintiff to the effect that the proclaimed motor vehicle belong to the Defendant. Therefore, prima facie, the Objector is deemed to be the owner of the suit motor vehicle. A decree holder is required to carefully pursue properties owned by the Defendant.

41. The Objector however has not tendered any evidence to show that attached Blankets, Mattresses , School Uniforms and School bags belong to it. At this juncture this Court is unable conclusively determine that the said goods being Blankets, Mattresses, School Uniforms and School Bags belong to the Objector as such the said allegation has not be satisfactorily proved. It must always be remembered that he who alleges must prove. The Single business permit and Certificate of Incorporation is not substantive proof that the said goods belong to the Objector. In the case of *Akiba Bank Ltd v Jetha &*



Sons Ltd (2005) eKLR, Waweru J. held that for an objector to succeed in his objection, he must exhibit evidence of his legal or equitable interest in the whole or part of any property attached in execution of a decree.

42. In the premises, the application herein partially succeeds and the attachment of motor vehicle registration number KBQ 102S belonging to the Objector is hereby set aside. The Objector shall have costs of this Application.

43. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 25TH DAY OF OCTOBER 2024

R. NYAKUNDI

JUDGE

