



Muyeiya t/a Shisanya & Company Advocates v Makotsi (Suing as the Legal Representatives of Jenipher Busolo Khaiya (Deceased) & another; Anglo African Property Holdings Limited (Objector) (Civil Suit E006 of 2024) [2024] KEHC 14235 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL SUIT E006 OF 2024
AC BETT, J
NOVEMBER 15, 2024**

BETWEEN

**CALEB INZIANI MUYEIYA T/A SHISANYA & COMPANY
ADVOCATES APPLICANT**

AND

**JULIUS KHAYIYA MAKOTSI (SUING AS THE LEGAL REPRESENTATIVES OF
JENIPHER BUSOLO KHAIYA (DECEASED) 1ST RESPONDENT
MONARCH INSURANCE COMPANY LIMITED 2ND RESPONDENT**

AND

ANGLO AFRICAN PROPERTY HOLDINGS LIMITED OBJECTOR

RULING

1. Vide the Chamber Summons dated 29th August, 2024, the Objector, Anglo African Property Holdings Ltd. seeks the following reliefs:-
 - a. Spent
 - b. Spent
 - c. Spent
 - d. This Honourable court be pleased to set aside and quash the proclamation, attachment and sale of the assets of the Objector being reception desks, wooden top table 2pcs, office chairs, water dispenser, copier machine, printing machine, computer server ,desktop computer plus laptops, office desks, boardroom tables plus chairs and filing cabinets described on



the Proclamation Form dated 21.08.2024 and any other moveable attachable assets of the Objector.

The proclamation and attachment for sale of the Objector's assets being reception desks, wooden top table 2pcs, office chairs, water dispenser, copier machine, printing machine, computer server, desktop computer plus laptops, office desks, boardroom tables plus chairs and filing cabinets described on the Proclamation Form dated 21.08.2024 and any other moveable attachable assets of the Objector in the execution of the decree herein be lifted and declared null and void.

- e. That the costs be awarded to the Objector.
2. The application is founded on grounds advanced in the Supporting Affidavit of Samson Macharia Munene, the Objector's Company Secretary. The affidavit deposes that this Court issued warrants of attachment and sale of movable property belonging to the Judgment debtor in execution of the Decree of this Court for Kshs. 1,635,956/=.
3. The basis of the objection is that the assets proclaimed by the auctioneer, being; reception desks, wooden top table 2pcs, office chairs, water dispenser, copier machine, printing machine, computer server ,desktop computer plus laptops, office desks, boardroom tables plus chairs and filing cabinets are wholly owned by the Objector.
4. The Objector asserts that the Judgment Debtor has no interest in the said property and are only in possession of the property by virtue of a ten (10) year lease through the Movable Assets Operational Lease Agreement dated 7th March, 2023.
5. The Respondent further avers that the items proclaimed and attached are tools of trade and are therefore exempted in execution of decrees as provided for under section 44(1) of the Civil Procedure Rules.

Analysis & Determination

6. I have carefully considered the pleadings, evidence and written submissions by the respective parties to this application. The Objector's application is brought under Order 22 Rules 51 and 52 of the Civil Procedure Rules which provide as follows:-
 - “ 51. Any person claiming to be entitled to or to have a legal or equitable interest
 - (1) 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.
 52. Upon receipt of a valid notice and application as provided under rule 51, the court may order a stay of the execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the



court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.”

7. The law is clear that the onus lies on the Objector to establish its legal or equitable interest in the properties which are the subject matter of the proclamation and attachment objected to.
8. In this regard, in the case of *Chotabhai M. Patel v Chaprabhi Patel* [1958] EA 743, the Court held:-
 - 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.”
9. The issue for determination by this Court therefore is whether the Objector has shown a legal or equitable interest in the proclaimed and attached properties to be entitled to the orders it seeks.
10. It is notable that the Objector, in support of its claim, has annexed a Lease Agreement dated 7th March, 2023 as well as invoices and receipts pertaining the subject property.
11. Faced with a similar claim *Odunga J, in Dubai Bank (K) Ltd v Come-Cons Africa Ltd and Impak Holdings Co Ltd*. held 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.”
12. Back to the instant matter, it is discernible from the Movable Assets Operational Lease Agreement dated and the Schedule thereto that the title to all the movable property comprised in several buildings let to the 1st Respondent is vested in the Objector.
13. It cannot thus be gainsaid that the Objector has established a legal interest in the attached property. I also note that the Plaintiff/Respondent has not submitted any evidence to controvert the Objector’s claims.



14. I am therefore satisfied that the Objector's prima facie legal interest in the subject properties has been established.
15. For the above stated reasons, I find the Notice of Motion dated 18th May, 2021 merited in so far as the attached properties are concerned. I therefore make the following final orders:-
 - a. The proclamation and attachment of the assets of the Objector being reception desks, wooden top table 2pcs, office chairs, water dispenser, copier machine, printing machine, computer server ,desktop computer plus laptops, office desks, boardroom tables plus chairs and filing cabinets described on the Proclamation Form dated 21.08.2024 and any other moveable attachable assets of the Objector is hereby lifted and set aside.
 - b. The costs of these objection proceedings shall be borne by the 1st Respondent since the Applicant did not have any reason to believe that the moveable property in the 1st Respondent's business premises did not belong to the 1st Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 15TH DAY OF NOVEMBER 2024.

A. C. BETT

JUDGE

In the presence of:

Mr. Shisanya for the Plaintiff/Decree Holder

Mr. Kharagali for the Objector/Applicant

Court Assistant: Polycap

