



**Mongatte v Nine & another (Cause 1903 of 2017)
[2024] KEELRC 1050 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1050 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1903 OF 2017**

**L NDOLO, J
MAY 9, 2024**

BETWEEN

BENJAMIN BIKO MONGATTE CLAIMANT

AND

**RUBYCUT ENTERPRISES LIMITED T/A RUBYCUT GARDENS 1ST
RESPONDENT**

**GEORGE OWINO JUNIOR T/A RUBY HOUSE KANDARA
NINE 2ND RESPONDENT**

RULING

1. This ruling flows from the Objector’s Notice of Motion dated 9th February 2024, seeking an injunction restraining the Claimant by himself, servants and/or agents from selling or offering for sale the movable assets proclaimed pursuant to warrants of attachment dated 2nd February 2024.
2. The Motion is supported by an affidavit sworn by George Owino Junior and is based on the following grounds:
 - a. That the Objector does not owe any liability to the Judgment Debtor or Decree Holder nor does he consent for the property to be utilised towards satisfaction of the Judgment Debtor’s debts;
 - b. That unless the Court grants the relief sought, the Objector’s property shall be sold to satisfy the debts of the Judgment debtor;
 - c. That the Objector stands to suffer irreparable injury unless the order sought is granted.
3. The Claimant opposes the Motion by his replying affidavit sworn on 13th March 2024. He states that the Objector bears the burden of proving and establishing that he has a legal or equitable interest in the attached property.



4. The Claimant depones that the Objector has not produced any documentary evidence to prove that he has a legal or equitable interest over the attached property. According to the Claimant, the contested proclamation took place at the Respondent's premises at Kilimani Ring Road not at the Objector's declared address at Otiende Estate, Sasumua Road.
5. The Claimant avers that upon proclamation, the Respondent's Directors reached out to the Claimant's Advocates with a view to satisfying the decretal amount in two instalments. The Claimant adds that the said Directors issued two post-dated cheques drawn in the Objector's business name, Ruby House Kandara Nine. The said cheques were however stopped by the Objector.
6. The Claimant accuses the Objector of obtaining interim orders through deceit and misrepresentation.
7. George Owino Junior swore a supplementary affidavit on 18th March 2024, reiterating that he was not a party to the proceedings giving rise to the decretal sum. He depones that his business was incorporated on 28th January 2024. He adds that the proclaimed goods were under his control and possession and were in his premises in Kileleshwa, Kandara Road.
8. Regarding the post-dated cheques referred to by the Claimant, the Objector states that the cheques were issued through coercion to avoid the goods being taken away by the Auctioneer.
9. The Motion was urged by way of written proceedings. In his submissions dated 8th April 2024, the Claimant states that the Objector has not demonstrated any direct, indirect or remote relation with the proclaimed goods to justify the objection proceedings.
10. The Claimant cites order 22 rule 51(1) of the [Civil Procedure Rules](#) which provides as follows:
 1. 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 the parties and to the decree holder of his objection to the attachment of such property.
11. The Claimant further cited several decisions establishing that in objection proceedings, the Objector bears the burden of proving legal or equitable ownership of the attached goods.
12. In its decision in [Zingo Investment Limited v Miema Enterprises Limited](#) [2015] eKLR the Court of Appeal stated as follows:

“It is our considered view that title document 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.”
13. In [Arun v C. Sharma Astana Raikundaha t/a Raikundaha & Co Advocates & 4 others](#) [2014] eKLR the Court stated as follows:

“The Objector bears the burden of proving that he is entitled to or has legal or equitable interest in the whole or part of the attached property. The key words are, entitled to or to have a legal or equitable interest in the whole or part of the property.”



14. In *Kennedy Njuguna Mwangi v Collins Kiprono Bett & 3 others* [2018] eKLR it was affirmed that for an Objector to succeed in objection proceedings, they must produce evidence of legal and/or equitable interest in the whole or part of the attached property.
15. Apart from his word, the Objector did not adduce any evidence to demonstrate that the attached goods belong to him. What is more, the Objector did not adduce any evidence to support his claim that the post- dated cheques issued in settlement of the decretal sum, which were later stopped by him, were issued under duress.
16. In his submissions dated 19th March 2024, the Objector shifts the burden to the Claimant to prove ownership of the goods. With respect, this is a misapprehension of the law. The Objector, having failed to discharge his burden under Order 22 Rule 51(1) of the *Civil Procedure Rules*, these objection proceedings must fail.
17. The Motion dated 9th February 2024 is therefore dismissed with costs to the Claimant.
18. The interim orders granted on 15th February 2024 are vacated.
19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MAY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Ondigi for the Claimant

Mr. Ochieng for the Objector

No appearance for the Respondent

