



Choi v Exotic Gates Limited; Owuor (Objector) (Environmental and Land Originating Summons 155 of 2019) [2025] KEELC 4536 (KLR) (16 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4536 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 155 OF 2019
OA ANGOTE, J
JUNE 16, 2025**

BETWEEN

SUNG RIM CHOI DECREE HOLDER

AND

EXOTIC GATES LIMITED JUDGMENT DEBTOR

AND

NICHOLAS EDWARD OTIENO OWUOR OBJECTOR

RULING

1. Vide a Notice of Motion dated the 26th November, 2024, brought pursuant to the provisions of Sections 3 and 3A of the *Civil Procedure Act*, Order 22 Rules 51, 52 and 53, and Orders 40 and 51 of the Civil Procedure Rules, the Objector/Applicant is seeking for the following reliefs:
 - i. That the Law firm of M/S Onyango Ndolo & Company Advocates be granted leave to come on record for the Objector herein Nicholas Edward Otieno Owuor.
 - ii. Spent-That pending the hearing and determination of this application inter-partes, the Honourable Court be pleased to stay the proclamation, and or sale of the Objectors' Motor Vehicle Registration Number KBP 006M out of the proclamation notice dated and issued on the 21st November, 2024 by Mamalo Auctioneers.
 - iii. That the Honourable Court be pleased to stay the proclamation, and or sale of the Objectors Motor Vehicle Registration Number KBP 006M out of the proclamation notice dated and issued on the 21st November, 2024 by Mamalo Auctioneers and the Motor Vehicle Registration Number KBP 006M be returned back to the Objector.
 - iv. Spent-That pending the hearing and determination of this application inter-partes, the Honourable Court be pleased to set aside, recall the proclamation notice by Mamalo



Auctioneers dated the 21st November, 2024 for the attachment of the Objector's movable assets.

- v. That the Honourable Court be pleased to set aside, recall the proclamation notice by Mamalo Auctioneers dated 21st November, 2024 for the attachment of the Objectors movable assets.
 - vi. That the Honourable Court be pleased to vary, set aside and revoke the consent order dated 7th March, 2024 and/or the Partners of the law firm of Rachier & Amollo LLP to personally indemnify the Plaintiff out of the consent dated 7th March, 2024.
 - vii. That the costs be provided for.
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of Nicholas Edward Otieno Owuor, the Objector of an even date.
 3. He deponed that on 7th March, 2024, a consent was entered into between Counsel for the Decree Holder and Judgment Debtor providing for the settlement of the decree and that pursuant to the said consent, the Judgment Debtor's Counsel, M/S Rachier and Amollo LLP made a part payment of the decretal sum.
 4. According to Mr. Owuor, he was not involved in the issuance of instructions to record the aforesaid consent; that he was not aware of the same; that he was equally not involved in the provision of the funds used to make the part payment and that the Judgment Debtor was also not aware of the consent.
 5. Mr, Owuor deponed that the Decree Holder instructed Mamalo Auctioneers to attach his Motor Vehicle Registration KBP 006M, Subaru, despite the fact that the same is his private property and does not form part of the assets of the Judgment Debtor.
 6. According to Article 50 of *the Constitution*, 2010, he asserted, every person is guaranteed the right to be heard and he should not be condemned unheard as this goes against the principles of natural justice. He urged that should the court not vary or set aside the consent, the partners of M/S Rachier and Amollo LLP, should take personal liability towards the settlement of the said consent.
 7. In response to the Motion, the Decree Holder swore a Replying Affidavit on 10th January, 2025. She deponed that as advised by Counsel, the Motion is incompetent as it contravenes Order 22 Rule 51 of the Civil Procedure Rules which requires the issuance of a notice of objection upon the Decree Holder prior to, or to accompany the Motion.
 8. She deponed that without prejudice to the foregoing, on 24th September, 2020, judgment was entered in her favour, as against the Judgment Debtor for the sum of Kshs 3,000,000/= plus interest and costs and that after unsuccessful attempts to execute the judgment, she filed a Motion seeking to cross-examine the Judgment Debtor's directors and lift its corporate veil. As the Judgment Debtor did not defend the Motion, she deposed, the same was allowed.
 9. The Decree Holder deponed that before the aforesaid cross-examination which was slated for 15th March, 2023, the Judgment Debtor's Advocates reached out to her Counsel and requested that they pursue an out of court settlement; that the negotiations commenced which resulted in a consent dated 7th March, 2024, and adopted as an order of the court on 11th April, 2024 and that it was agreed vide the consent that that the Judgment Debtor would settle the decretal sum in installments as particularized therein.
 10. Ms Choi stated that in partial compliance with the consent, the Judgment Debtor has paid a total of Kshs 2,000,000/= with the latest payment of Kshs 500,000/= having been done in December, 2024



upon commencement of execution proceedings and that the Judgment Debtor is in default of the terms of the consent on payment of the decretal sum.

11. According to Ms Choi, it was a term of the consent that should the Judgment Debtor default in making payments, Order III of the Motion of 25th June, 2022 would stand allowed and the Judgment Debtor's veil of incorporation would stand lifted with the Decree Holder being at liberty to execute against its directors.
12. Subsequently, upon the default, she applied to court for execution of the decree as per the consent and sought warrants of attachment and sale against the Judgment Debtor and its directors, Mr Oscar Agutu Mori, Ms Mildred Adhiambo Ouma and Mr Nicholas Otieno Owuor and instructed Mamalo Auctioneers to carry out the execution and that the auctioneers proceeded as instructed and proclaimed Motor Vehicle Registration number KBP 006M.
13. It was asserted that the claim that the vehicle is private property and as such is exempt from execution in satisfaction of the decree is unmerited as the Judgment Debtor's corporate veil was lifted and the directors became personally liable for the debt and that as one of the directors of the Judgment Debtor, the Objector cannot deny knowledge of the proceedings without providing evidence to this effect.
14. Ms Choi asserted that it is trite that a duly instructed Advocate has an implied general authority to compromise or settle a matter on behalf of a client and the client cannot avail himself of any limitation by him of the implied authority unless the same has been brought to the notice of the other side.
15. In the circumstances, she stated, the firm of M/S Rachier and Amollo LLP has been appearing in the matter for the Judgment Debtor and the record of the court can confirm as much and that the Objector does not deny that the said Advocates had instructions to appear in the matter for the Judgment Debtor nor has he given any evidence of any negative direction, notice of which was given to the Decree Holder regarding the Consent Order.
16. She urged that the consent has not been set aside, varied or vacated and neither has the Objector met the threshold for its setting aside as sought and that as a director of the Judgment Debtor, the Objector was duly represented in all the proceedings and cannot be heard to say that his rights to a fair hearing were contravened.
17. It was contended that the Objector is only opposed to the proclamation of his personal property but does not dispute that the decretal sum is outstanding, neither has he alleged any irregularity in the proclamation. Ultimately, she urged that she should be allowed to proceed with attachment in satisfaction of the decretal sum as the debt has been outstanding from the year 2020.
18. The Objector filed a Further Affidavit on 28th February, 2025. In response to the contention that the failure to issue a notice of objection renders the Motion fatal, he deponed that pursuant to Article 159 of *the Constitution*, justice should be done without undue regard to technicalities and the court is enjoined to consider the substance of the present Motion.
19. Mr. Owuor stated that while he concedes to being a director of the Judgment Debtor and that a company acts through its directors, neither the Judgment Debtor nor any of its directors were involved in the issuance of instructions to record the consent of 7th March, 2024.
20. He stated that there is no memorandum of appearance on record by the firm of M/S Rachier and Amollo LLP affirming that they were issued with instructions or allowed to participate in the negotiations and/or record the consent as provided under Order 6 Rule 2 of the Civil Procedure Rules. In the absence of a memorandum of appearance and/or notice of appointment, he urged, the consent is null and void.



21. He asserted that the attached motor vehicle does not form part of the Judgment Debtor's assets and should not be attached to satisfy the decretal amount. The Judgment Debtor did not participate in this Motion.

Submissions

22. The Objector's counsel filed submissions on 6th May, 2025. Counsel submitted that as stated by the courts in Kenya Commercial Bank Limited vs Specialized Engineering Co Ltd (1982)KLR 485 and Flora N Wasike vs Destino Wamboko[1988]KLR, consents can be set aside where it is proved that they were obtained by fraud or collusion or by an agreement contrary to the policy of the court.
23. In the circumstances, it was submitted, neither the Objector nor any of the other directors gave any written, oral or other instructions on the alleged consent of 7th March, 2024 and as such, the Advocate having entered into the same without consent, it is liable to be set aside. Reliance was placed on the case of Samuel Mbugua Ikumba vs Barclays Bank of Kenya Limited [2015] eKLR.
24. Counsel contended that the proclamation notice dated and issued on 21st November, 2024 by Mamalo Auctioneers, having been based on the irregular consent should equally be recalled and/or set aside. On costs, it was submitted that guided by Section 27 of the Civil Procedure Act, the same should be granted to the successful party.
25. The Decree Holder filed submissions on 13th May, 2025. Counsel submitted that the Objector did not file a notice of objection as contemplated by Order 22 Rule 51 of the Civil Procedure Rules and as such, the Motion has been mounted in a vacuum rendering it fatally defective. Reliance was placed on the cases of Gikunji & 3 Others vs Nyaga & 3 Others: Wahome & 16 Others(Objector) {2023}KEELC 16395 and Jiwa vs Idrata Developers Limited: Wild Catch Limited & 2 Others(Objector)[2023]KEHC 19702(KLR).
26. According to Counsel, contrary to the Objector's assertions, failure to issue a notice of objection does not constitute a procedural technicality that can be overlooked. As expressed by the Court of Appeal in Moses Mwicigi & 14 Others vs Independent Electoral and Boundaries Commission and 5 Others [2016] eKLR, where a procedural motion bears the ingredients of just determination and is overlooked by a litigant, the court will not hesitate to declare the attendant pleadings incompetent.
27. It was submitted that the circumstances in which a consent can be set aside by the court are clear and that one has to establish that the consent was obtained by fraud, collusion or by an agreement contrary to the policy of the court as stated by the courts in Board of Trustee National Social Security Fund vs Michael Mwalo [2015]eKLR, Guzzini & Anor vs Tinga & 7 Others[2024]KECA 493(KLR), Panij Automobiles(K) Ltd vs Munguti(Suing as the legal representative of the Estate of Kevin Maingi Leonard) & another[2024]KEHC 9315(KLR) and Mashashi & Another vs The Archdiocese of Kisumu & 3 Others[2023] KEHC 24832(KLR)[2023].
28. In the circumstances, it was urged, the Objector has not proved that the said firm did not have instructions and the threshold aforesaid has not been met nor is there any evidence that any action has been taken against the Counsel for allegedly acting without instructions.
29. It was urged that despite judgment having been entered in favour of the Decree Holder in 2020, the same remains unsatisfied and the Objector, a director of the Judgment Debtor, has made no indications of how they intend to settle the same.
30. Counsel asserted that the Objector is a Judgment Debtor as per the terms of the consent dated the 7th March, 2024 and as the default clause was clear, the court is mandated to give effect



to it. Reliance was placed on the case of Crescent Construction Company Limited vs Richfield International Company Limited [2020] Eklr and Chepkwony & Anor vs Gulflink Enterprises Limited[2023]KEELC 22593(KLR).

Analysis and Determination

31. Having considered the Motion, responses and submissions, the issues that arise for determination are:
 - i. Whether the law firm of M/S Onyango Ndolo & Company Advocates requires leave to come on record for the Objector?
 - ii. Whether the Application is competent and if so,
 - iii. Whether the court should revoke and set aside the consent order dated the 7th March, 2024 and the proclamation notice dated 21st November, 2024?
32. Vide prayer 2 of the Motion, the firm of M/S Onyango Ndolo & Company Advocates seeks leave to come on record for the Objector. Objector proceedings, governed by Order 22 Rule 51 of the Civil Procedure Rules, are a special category of post-judgment proceedings whereby a person who was not a party to the original suit, claims a legal or equitable interest in property attached in execution of a decree. The Objector in such proceedings is a new and distinct party asserting an independent claim.
33. Notably, the Civil Procedure Rules only explicitly require a court order for an Advocate to come on record under Order 9 Rule 9. This order specifically addresses scenarios involving a change of advocates or when a party who was previously represented seeks to act in person after judgment. In the present matter, and as aforesaid, the Objector is appearing before the court for the first time, thus rendering the provisions of Order 9 Rule 9 inapplicable.
34. In light of these considerations, and considering that the Objector has the right to representation of his choice, the court finds that M/S Onyango Ndolo & Company Advocates does not require leave to come on record for the Objector.
35. Vide her Replying Affidavit, the Decree Holder seeks to impugn the present Motion. She contends that Order 22 Rule 51, upon which the Motion is founded mandates the issuance of a notice of objection before and/or accompanying the Motion. Failure to issue the same, she asserts, renders the Motion fatally defective.
36. On his part, the Objector does not dispute that no Notice of Objection was filed. He asserts that the same is a procedural irregularity which does not go to the root of the Motion and guided by Article 159(2)(d) of *the Constitution*, cannot render it fatal.
37. The law with respect to objection proceedings is found under Order 22 Rule 51(1), (2) & (3) of the Civil Procedure Rules which provide as follows:
 - “ 51. Objection to attachment [Order 22, rule 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.”

38. It is apparent from a reading of the aforesaid provision that the law requires that where a party seeks to object to the attachment of property so attached in execution of a decree, he/she should issue a notice of objection thereto. It being conceded that the same was not done here, what is left to the court is to consider whether the omission renders the Motion fatally defective.
39. Courts have had occasion to consider this very issue on numerous occasions. In the case of Celina Trading LLC vs Ngao Credit Limited & another; Njoroge (Objector); Auctioneers (Interested Party) [2021] KEHC 18 (KLR), the court opined that from a reading of the provision, the same is couched in discretionary rather than mandatory terms, thus, the failure by the Objector to give notice to the court and other parties is not fatal to the application.
40. On the other hand, in Gikunji & 3 others vs Nyaga & 3 others; Wahome & 16 others (Objector) (Environment and Land Case Civil Suit 808 of 2012) [2023] KEELC 16395 (KLR) (16 March 2023) (Ruling), the court was categorical that the notice of objection constitutes and forms the legal foundation and basis upon which objections proceedings are anchored and predicated and where no notice is lodged, objection proceedings cannot be mounted. In the event the same are mounted, they would constitute a nullity.
41. In assessing whether the failure to file a notice of objection has fatal consequences, the court opines that it is necessary to consider the purpose of such a notice. The court takes the view that the notice serves to alert the Decree Holder that the attached property is subject to a third-party claim, thereby placing them on notice that ownership of the property is disputed.
42. Upon receiving this information, the Decree Holder is expected to either proceed with execution against the contested property or to abandon the process. This decision would typically be guided by the nature and strength of the Objector’s asserted interest in the property.
43. In the present case, although no notice under Order 22 Rule 51 of the Civil Procedure Rules was issued, the Decree Holder was later made aware of the Objectors’ claim through the present Motion. Given that the intended objective of the notice, namely, to inform the Decree Holder of the Objector’s interest was ultimately achieved, the court is not persuaded that any prejudice arose from the omission.
44. Accordingly, the court finds that the failure to issue a notice of objection prior to and/together with the present Motion is not fatal. The court will therefore proceed to determine the Motion on its merits.
45. The Objector asks the court to set aside and recall the proclamation notice by Mamalo Auctioneers dated 21st November, 2024 for the attachment of his movable assets. He also asks that the court revokes the consent order dated the 7th March, 2024 and or the Partners of the law firm of Rachier & Amollo LLP personally indemnify the Plaintiff out of the aforesaid consent.
46. In response, the Decree Holder asserts that the proclamation is proper and is pursuant to a consent entered into by the parties on the 7th March, 2024. She denies the assertions that the consent was entered into without due instructions.



47. It is trite that execution against a judgment debtor is lawful and legitimate. This follows a judgment and decree of the court as held in *Accredo AG, Salama Beach Hotel Limited, Hans Juegen Langer & Zahra Langer v Stefano Uccelli & Isaac Rodrot* [2019] KECA 385 (KLR).
48. As such, the court should not stop a lawful execution process unless an objector can demonstrate that the attached property belongs to it. Consequently, and guided by Order 22 Rule 51 of the Civil Procedure Rules, an objector must demonstrate that he/she holds sufficient proprietary interest, legal or equitable in the attached property to warrant its release from attachment.
49. Speaking to this, the court in *Arun C. Sharma vs Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] eKLR stated:
- “The objector bears the burden of proving that he is entitled to or has legal or equitable interest on 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.”
50. Earlier on the court in *Precast Portal Structures vs Kenya Pencil Company Ltd & 2 Others* [1993] eKLR had expressed:
- “The burden is on the objector to prove and establish his right to have attached property released from the attachment. On the evidential material before the court, a release from attachment may be made if the court is satisfied.”
- i. That the property was not when attached, held by the Judgment-Debtor for himself or by some other person in trust for the Judgment-Debtor, or.
- ii. ii) That the objector holds that property on his own account.”
51. The court further observed that:
- “But where the court is satisfied that the property was, at the time of attachment, held by the Judgment Debtor as his own and not on account of any other person, or that it was held by some other person in trust for the Judgment-Debtor or that ownership has changed whereby the Judgement-Debtor has been divested of the property in order to evade execution on the change is tainted with fraud, the court shall dismiss the objection”
- “The court takes into account the grounds of objections raised and the contentions of the respective parties to the objection proceedings. Any special features evident in the proceedings which throw light on the controversy must be regarded.”
52. The court is so guided.
53. By way of brief background, this matter was instituted by way of Originating Summons on 4th April, 2019 where the Decree Holder, as the Plaintiff, sought as against the Judgment Debtor as the Defendant, inter-alia, a declaration that the Judgment Debtor was in breach of a contract for the sale of Apartment EGL/01/011/2014 in Block A, Hatheru Road, and for the immediate repayment of Kshs 3,000,000/= and interest thereon as well as general damages.
54. The Judgment Debtor vide a counterclaim sought Kshs 507,500/= being 2.5% of the sale price as per the refund policy, Kshs 1, 064,900/= being the cumulative default penalty and 10% of the sale price being Kshs 2,030,000/= as per the law society conditions of sale



55. Upon consideration of the matter, the court vide its judgment of 14th May, 2020, found in favour of the Decree Holder, awarding her, inter-alia, Kshs 3,000,000/= together with interest at court rates from 12th November, 2014 until payment in full.
56. On 13th August, 2021, the Decree Holder filed an application seeking to have the Judgement Debtor show cause why execution should not proceed by way of sale and attachment of its movable properties. Despite service, the Judgment Debtor did not file a response to the Motion and the same was allowed.
57. After her failure to get the Judgment Debtor's property, On the 25th June, 2022, the Decree Holder filed a Motion seeking to have the Judgment Debtor's directors, to wit, Mr. Oscar Agutu Mori, Ms Mildred Adhiambo Ouma and Mr. Nicholas Edward Otieno orally examined as to the business affairs of the Respondent; orders directing them to produce books of account; audited financial statements and all statutory documents related to the operations and transactions of the company.
58. They also sought, in default of the foregoing, to have the veil lifted so that the aforementioned directors be held personally liable to settle the decree.
59. On 15th March, 2023, when cross-examination of the directors was due, the parties informed the court that they were engaging in negotiations with a view to settle the matter and the same culminated in the consent of 7th March, 2024 adopted as an order of the court on 11th April, 2024.
60. The aforesaid consent set out the installments and timelines within which the decretal sum would be paid. The consent also included a default clause which provided that in the event of default, the Motion of 25th June, 2022 would stand as allowed in terms of prayer III lifting the veil of incorporation and granting the Decree Holder the liberty to execute as per the said clause.
61. It is this execution, being by way of proclamation and intended sale of the Objector's vehicle that has prompted the present Motion. The Objector contends that not only is the vehicle his personal property and therefore not liable to be attached and sold in execution of the Judgment Debtor's debt, but also that the entire consent is invalid having been undertaken without the Judgment Debtors and/or its director's instructions. This will be the court's first port of call.
62. The law on variation and/or setting aside of a consent judgment is now settled to the effect that the variation of a consent judgment can only be on grounds that would allow a contract to be vitiated. These grounds include but are not limited to fraud, collusion, illegality, mistake, an agreement being contrary to the policy of the court, absence of sufficient material facts and ignorance of material facts.
63. This was enunciated by the Court of Appeal in Board of Trustees National Social Security Fund vs Michael Mwalo [2015] eKLR as follows:

“The law pertaining to setting aside of consent judgments or consent orders has been clearly stated. A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of the Court.”
64. Similarly, the Court of Appeal in S M N vs Z M S & 3 Others [2017] eKLR, noted:

“There is no dearth of authorities on the law governing the setting aside of consent judgments or orders,... Generally, a court of law will not interfere with a consent judgment except in



circumstances such as would provide a good ground for varying or rescinding a contract between parties.”

65. With respect to the authority of Advocates to enter into consents on behalf of their clients, it is well-established in law that an Advocate who is properly on record is presumed to have general authority to act on behalf of their client, including the authority to compromise a suit, unless there is clear evidence to the contrary.
66. This principle was affirmed in *Kenya Commercial Bank Limited v Benjoh Amalgamated Limited & Another* [1998] eKLR, where the court cited with approval a passage in *The Supreme Court Practice 1976* (Vol. 2) paragraph 2013 page 620 where it stated that:
- “Authority of Solicitor - a solicitor has a general authority to compromise on behalf of his client, if he acts bonafide and not contrary to express negative direction; and it would seem that a solicitor acting as agent for the principal solicitor has the same power (*Re Newen*, [1903] 1 Ch pp 817,818; *Little v Spreadbury*, [1910] 2 KB 658). No limitation of the implied authority avails the client as against the other side unless such limitation has been brought to their notice - see *Welsh vs Roe* [1918 - 9] All E.R Rep 620.”
67. From the foregoing, it is clear that a consent entered into by counsel who is properly on record is binding upon the client, unless it can be shown that the Counsel acted in bad faith, exceeded the scope of authority, or was expressly prohibited from entering into such a compromise.
68. The court has considered the record and evidence adduced in this regard. Contrary to the Objector’s contention, the court record reveals that the firm of M/S Rachier and Amollo LLP filed a memorandum of appearance on behalf of the Judgment Debtor on 3rd June, 2019. The memorandum is dated 31st May 2019. This is in line with Order 6 Rule 2 of the Civil Procedure Rules on mode of appearance by parties.
69. The court has also carefully considered the correspondence relied upon by the Objector dated 8th March, 2023 and 26th November, 2024. The same makes reference to the Objector as the client, not the Judgment Debtor. While it is true that a company acts through its directors, it remains a distinct legal entity, separate from its shareholders or directors.
70. In light of the formal appearance filed by M/S Rachier & Amollo LLP which has not been revoked, the Objector’s attempt to dissociate the Judgment Debtor from the actions of the firm is unpersuasive.
71. Further, there is no evidence to show that the Judgment Debtor initiated any proceedings or disciplinary action against the firm despite the serious nature of the allegations now raised. Moreover, the fact that a partial payment of Kshs. 2,000,000 was made toward the decretal sum further undermines the claim that the firm acted without authority.
72. It has indeed not been established that the firm prosecuted the matter to its end, negotiated and executed a consent, and facilitated a substantial payment purely on its own volition and without any instructions from its client.
73. Declining to set aside a consent on similar allegations, the Court of Appeal in *Guzzini & Another vs Tinga & 7 Others (Civil Appeal E047 of 2021)* [2024] KECA 493 (KLR) noted:
- “It is not in dispute that learned counsel for the appellants had been duly instructed to conduct the proceedings in the trial court on their behalf. Those instructions had not been withdrawn as at the time the consent orders were recorded as an order of the court. We find



nothing on record to suggest that circumstances had changed in any way so as to call into question the propriety of those orders, except for the appellants' allegation that they were not informed of its contents. But that is a matter between client and counsel. Be that as it may, we hasten to observe that a court is not obligated to inquire into the terms on which counsel is instructed by their client in judicial proceedings. Neither can the court take upon itself to inquire into the conduct of negotiations between learned counsel leading to such consent orders. In the absence of fraud, mistake, or misrepresentation, such orders stand..."

74. Guided by this authority and the circumstances presented, the court finds no merit in the Objector's challenge to the consent order and declines to interfere with it. Claims of indemnity by the firm of M/S Rachier and Amollo LLP are similarly unfounded and dismissed.
75. Turning now to the question of whether the proclamation notice issued by Mamalo Auctioneers should be set aside, it is important to note that the notice is challenged purely on the basis that it stems from a consent order which the Objector alleges was entered into without authority. However, the court having found that the said consent was validly recorded by counsel, the notice cannot be defeated on this limb.
76. It is however also contended by the Objector that the motor vehicle in question, registration number KBP 006M, is his personal property and thus not liable to attachment in execution of the decree.
77. The Decree Holder has maintained that the execution process, including the impugned proclamation, was undertaken strictly in accordance with the terms of the consent order. The court has examined the consent, which clearly outlines the schedule for payment of the decretal sum by the Judgment Debtor, including specific instalments and timelines. Crucially, the consent contains a default clause with the following terms:
- “In default of clause (1) above, the application dated 25th June, 2022 shall stand as allowed in terms of Order III thereof and the veil of incorporation shall stand lifted. Further, the entire decretal sum, interests and costs of the suit shall become payable and the Plaintiff shall be at liberty to execute as contemplated under the said Order III as against the Defendant.
78. Order III referenced above, in the Motion of 25th June, 2022 provides as follows:
- “That in default of such attendance and/or producing before court books of accounts, audited financial statements, cheques, books and other statutory documents relating to the operations and transactions of the Respondent/Judgment Debtor and its affiliates for the last three(3) years as prayed in Order I and II above, this Honourable Court be pleased to lift the veil of incorporation and order that Mr Oscar Agutu Mori, Ms Mildred Adhiambo Ouma and Mr Nicholas Otieno Owuor be held personally liable to settle the decree of the court obtaining from this suit together with other sums expressed and/or implied therein or be imprisoned and committed to civil jail for a period not less than 6 months.”
79. The Judgment Debtor's failure to settle the decretal sum is undisputed. Similarly, it is not contested that the Objector is a director of the Judgment Debtor and that Motor Vehicle Registration Number KBP 006M is his personal property, as evidenced by logbook K10677790. It is also clear that the terms of the consent order have not been complied with.
80. Given the explicit terms of the consent order, the lifting of the corporate veil and subsequent execution against the directors were agreed upon and enforceable consequences of default thereof. Therefore, the



Objector's personal assets, including the proclaimed motor vehicle, are legally liable to attachment in satisfaction of the outstanding decretal amount.

81. Consequently, there is no legal or equitable basis to shield the Objector from execution proceedings that were properly initiated according to the agreed terms of the consent order.
82. In the end, the court finds the Notice of Motion dated 26th November, 2024 to be unmerited, save for prayer number (i).
83. The application is dismissed with costs to the Decree Holder to be borne by the Objector.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16TH DAY OF JUNE, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Kendi for Decree Holder

Ms. Okusimba for Ndolo for Objector/Applicant

Court Assistant: Tracy

