



**Mboleko Limited v Wamasa Travellers Limited; Mbolonzi &
2 others (Objector) (Miscellaneous Application E034 of 2023)
[2025] KEHC 13502 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E034 OF 2023
FG MUGAMBI, J
SEPTEMBER 26, 2025**

BETWEEN

MBOLEKO LIMITED DECREE HOLDER

AND

WAMASA TRAVELLERS LIMITED JUDGMENT DEBTOR

AND

DANIEL MUEMA MBOLONZI OBJECTOR

GEORGE MUSAU KIOKO OBJECTOR

STEPHEN MUKONZA MBOLONZI OBJECTOR

RULING

Background and Introduction

1. Before me are two applications for determination. The first application is dated 27th November 2024 and was filed by the Judgment Debtor (hereinafter the JD). The JD seeks to set aside or vary the directions and orders issued on 2nd October 2024 which had allowed the decree-holder's (hereinafter the DH) application dated 23rd January 2024. The JD further prays that its directors be allowed to be examined by the DH, that the Court do issue such further orders as the interests of justice may require, and that costs of the application be provided for.
2. The JD contends that the orders of 2nd October 2024 were made without affording its directors an opportunity to be heard, thereby condemning them unheard. It further alleges that the DH has instructed Crater View Auctioneers to proclaim and attach its goods, and unless a stay is granted, execution will proceed, rendering the intended appeal nugatory and occasioning irreparable loss.



3. The second application is dated 29th November 2024 and was filed by the objectors, who are the directors of the JD. They seek interim injunctive relief to restrain Crater View Auctioneers, acting on the DH's instructions, from attaching or selling certain motor vehicles that were proclaimed on 19th November 2024. They also seek a permanent injunction restraining the DH and its agents from ever proclaiming, attaching or selling those vehicles in satisfaction of the decree issued against the JD.
4. The objectors' case is that the proclaimed motor vehicles, registration numbers KCA 173L, KCF 417B, KBM 630C, KBM 339M and KCD 978U, belong to them personally and not to the JD. They argue that they are not parties to the dispute between the DH and the JD, and that execution against their assets is unlawful. They maintain that unless restrained, the auctioneers will unlawfully sell their vehicles, causing them irreparable loss. They also fault the auctioneers for failing to exercise due diligence in verifying ownership of the proclaimed assets.
5. The DH opposed both applications through grounds of opposition and a replying affidavit dated 5th February 2024 sworn by its Chief Executive Officer. The DH's position is that the Court lacks jurisdiction to grant the orders sought after judgment, that the arbitral award forming the basis of the decree has not been set aside under Section 37 of the *Arbitration Act* and remains binding and that the directors, being listed in the CR12, cannot disclaim liability.
6. It was further contended that the JD has improperly pursued both appeal and review against the same order, contrary to Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. The DH also highlighted that no security for costs was offered, that the notice of appeal was irregularly filed, and that the applications were merely aimed at frustrating execution.

Analysis and Determination

7. I have considered the two applications, the affidavits filed in support and opposition, and the submissions of the parties.

The First Application:

8. The JD seeks to set aside or vary the orders of 2nd October 2024. The applicable law is Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, which permit review of a decree or order only where there is discovery of new and important evidence not previously available despite due diligence, an error apparent on the face of the record, or any other sufficient reason.
9. The JD has not demonstrated any discovery of new material evidence, nor pointed to any error on the face of the record. Its main argument is that it was not heard before the order was made. It is not in contest that the JD has already lodged a notice of appeal against the very same order of 2nd October 2024. The law is well settled that a litigant cannot simultaneously pursue both review and appeal in respect of the same decision.
10. In *Martha Wambui V Irene Wanjiru Mwangi & Another*, [2015] eKLR, amongst other decisions, the Courts have emphatically stated that a party must elect either to appeal or to apply for review, but cannot do both.
11. Having elected to file an appeal, the applicant is bound by that choice. This Court, out of respect for the hierarchy of courts and in the interest of judicial comity, is thereby divested of jurisdiction to entertain the application for review. Accordingly, I find that the first application is misconceived and is without merit.



The Second Application:

12. The issue herein is inextricably linked to my earlier finding that there is already a pending appeal arising from the ruling of this Court. Nonetheless, for the sake of completeness, I will address the objectors' plea for injunctive relief.
13. The objectors urge the Court to restrain attachment and sale of the proclaimed motor vehicles on the basis that they are personally owned and not assets of the judgment debtor. However, by its order of 2nd October 2024, this Court expressly authorized execution against the directors of the judgment debtor after they failed to attend court for examination. That order effectively pierced the corporate veil and permitted execution against the directors in their individual capacities.
14. The attachment complained of is therefore in strict conformity with the order already issued by this Court. That order was made with full knowledge that the proclaimed vehicles belong to the directors and not the company itself. Consequently, the DH's attachment of those assets is consistent with the order of this Court. It follows that the second application is also devoid of merit.

Conclusion and Final Orders

15. Accordingly, the Judgment Debtor's application dated 27th November 2024 and the objectors' application dated 29th November 2024 are dismissed with costs to the Decree Holder.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2025.

F. MUGAMBI

JUDGE

