



**Wanjohi v Kariuki t/a Moran Auctioneers (Commercial Appeal E304 of 2024)
[2025] KEHC 13326 (KLR) (Commercial & Admiralty) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13326 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND ADMIRALTY
COMMERCIAL APPEAL E304 OF 2024
CM KARIUKI, J
SEPTEMBER 26, 2025**

BETWEEN

DAVID MUIGAI WANJOHI APPELLANT

AND

JOVAN KARIUKI T/A MORAN AUCTIONEERS RESPONDENT

JUDGMENT

.ARGUMENTS

BACKGROUND OF THE CASE

1. Sometime in October 2023, the Respondent proclaimed goods from Dasehn Group Limited on instructions from Mohamed Mithwan (their client) who claimed that Dasehn Group Limited owed him rent arrears. Among the proclaimed goods was motor vehicle KCF 010B (the suit motor vehicle) belonging to the Appellant valued at KES 1,000,000.
2. The Respondent then proceeded to issue a public auction notice via an advertisement in the newspaper that represented Dasehn Group Limited as the owner of the said Motor Vehicle, an application that the Appellant saw days after publication.
3. The Appellant had initially informed the Respondent of his ownership of the said motor vehicle and further went ahead through its advocate, to still inform the Respondent that the said motor vehicle belonged to him and not Dasehn group.
4. Despite being aware of the fact that the motor vehicle belonged to David Muigai Wanjohi and not Dasehn Group Limited, the Respondent still proceeded to allegedly sale the said motor vehicle.



5. All through, the motor vehicle that the Respondents had detained and/or allegedly sold, had not been transferred and the motor vehicle copy of records showed that the Appellant was the rightful owner of the said motor vehicle as evidenced by two moto vehicle searches conducted on diverse dates that were produced as Exhibits 1 and 7 of the Claimant's list of documents and list of further documents.
6. The appellant questions how the sale and transfer was concluded yet the motor vehicle searches still show that the Appellant is the rightful owner of the said motor vehicle.
7. As a result of the Respondent's detention and/or illegal alleged sale of the said motor vehicle, the Appellant has had to use an alternative means of transport to go about his day-to-day activities which has proven expensive, forcing him to incur unnecessary expenses that he wouldn't have incurred had the Respondent not detained the said motor vehicle.
8. The Appellant then proceeded to institute a claim in the Small Claims Court No. E1118 OF 2024 against the Respondent which was ruled in the Respondent's favour and which judgement the Appellant now challenges.
9. The Claim instituted at the Small Claims Court sought to:
 - a. Order the return of the said motor vehicle.
 - b. Compensation to the tune of KES 1,000,000.
10. The Appellant filed this appeal after being dissatisfied and aggrieved with the said judgement on the grounds THAT:
 - a. The Hon. Adjudicator/Resident Magistrate erred in law and in fact by ignoring the fact that the suit Motor Vehicle Registration Number KCF 010B belonged to David Muigai Wanjohi (the Appellant herein) and not Dasehn Group limited (the tenant of the instructing client to the Respondent).
 - b. The Hon. Adjudicator/Resident Magistrate erred in law and in fact by ignoring the fact that the Appellant and the tenant are two separate persons and by the virtue of the doctrine of separate legal personality, a director is not liable for the debts of a company.
 - c. The Hon. Adjudicator/Resident Magistrate erred in law and in fact by holding that the appellant should have filed objector proceedings despite the fact that objector proceedings cannot be filed unless there is an existing suit for which judgement has been issued, and the decree holder is at the stage of executing a decree.
 - d. The Hon. Adjudicator/Resident Magistrate erred in law and in fact by ignoring the fact that the Small Claims Courts have jurisdiction to handle on matters related to liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property.
 - e. The Hon. adjudicator/Resident Magistrate erred in law and in fact by ignoring the fact that the auctioneer (the Respondent) and the landlord were always aware that the vehicle never belonged to the company/tenant, yet they went ahead to sell the same by public auction. By proceeding to sell, the Respondent was perpetuating an illegality.



- f. The Hon. adjudicator/Resident Magistrate erred in law and in fact by ignoring the fact that even as at the date of hearing and filing this suit, the suit Motor Vehicle was registered in the name of the Appellant.
 - g. The Hon. Adjudicator/Resident Magistrate erred in law and in fact in ignoring the other reliefs that were sought and only focusing on one relief on the release of the suit Motor Vehicle.
 - h. The learned trial Magistrate erred in law and in fact in by ignoring the submissions filed by the claimant.
11. Directions were given for appeal to be canvassed via submissions
 12. Summary of the evidence of the trial court
 13. Claimant's Case:
 14. David Muigai Wanjohi a businessman the claimant in this matter testified he was the Director of the Dasehn Group company, and it is a separate legal entity with him. That he owns Motor vehicle KCF 010B. That Mr. Mohammed is not his landlord and that he did not owe him any money. He was landlord to Dasehn Group which has two (2) directors, himself and Josephat Obadi. The respondent never attached any property of the Co-director. They only attached his motor vehicle. He informed Moran Auctioneers that the motor vehicle was his personally via a letter. As per the Auctioneers the sale occurred in January 2024. He did a search of the Motor vehicle on 21/08/2024 and he was still the legal owner. The physical motor vehicle is not with him. He requested Moran Auctioneers to return his motor vehicle together with damages and costs of the suit.
 15. The forced value of M/V is Kshs. 1 Million as per the valuation report. The property by the landlord was commercial. He never used to live there. He was not notified of the auction earlier. He did not lodge any objector proceedings nor go to any court to stop the auction. The motor vehicle was seized in mid-July, 2023.
 16. Respondent's Case:
 17. The Respondent Nabhan Swaleh testified that, he is an advocate of the High Court Kenya. He received instruction on 05/ 10/2023 to demand rent arrears amounting to Kshs. 1, 217,000/=. They demanded the payment and sent a letter to Moran Auctioneers. Before the sale, he tried to assist the debtor, and the two (2) directors come and sign the acknowledgment of indebtedness that they would be liable to pay. The acknowledge was dated on 30/ 11/2023. They issued some cheques on the same day which bounced. They promised to pay. Up to today, no payment was done. The instruction letter is written to Moran Auctioneers. The tenant was Dasehn Group Limited. It is Dasehn who owed the debt. The tenancy agreement was drawn in their office between Dasehn Limited and the landlord. The same is not filed in court. Failure to file does not mean it did not exist. The acknowledgement agreement was executed by only the two (2) directors. The other parties were not the execute because they were not directors to Dahren Company. They said they were jointly and several liable to the debts owed. (The acknowledgement agreement read). The Claimant before the court. He executed the said acknowledgement of indebtedness. It is jointly the debtor that signs. He is not a party to this suit.
 18. Respondent No 2: Jovan Kariuki Humphrey T/ A Moran Auctioneers testified that, he was instructed on 05/ 10/2023 to levy distress by Nabhan Swaleh.
 19. On the same date, they proceeded and proclaimed the goods in the house including Motor vehicle KCF 010B. Thereafter, the Claimant approached their offices in Mombasa and promised to pay but



- he did not honour the same. He was living in that house. There were several negotiations between Swaleh and the Claimant. They sent an acknowledgement saying they will pay. They seized the motor vehicle together with the other household goods on 06/ 11/2023. In January, he was told the cheque had bounced and he should proceed with the sale to recover rent arrears.
20. They advertised the goods on 22/01/2024 and the sale took place on 31/01/2024. He engaged a valuer, and had a valuation report. It is dated 23/01/2024. The actual value was Kshs. 800,000/ = and the forced value was Kshs.600, 000/= . On 02/02/2024 he received a demand letter to release motor vehicle KCF 010B which had already been sold. They stated they were aware the sale took place on 31/10/2024. They did not get any order to stop the sale. He never requested for any independent valuation. No objection proceedings were bought. The motor vehicle was legally sold by public auction on 31/10/2024. He cannot have his cake and eat it. He engaged them all a long where were too his motor vehicle. He acknowledged debt and he issued cheques that bounced.
21. He prays that this claim be dismissed and be awarded costs. On cross-examination he stated that, he has been an Auctioneer for 14 years. He is aware of the procedure. The tenant is listed as Dahsen Group Limited. It is the company that owed the rent arrears. He knew that the company and David are two (2) separate legal entities. The NTSA search is dated 16/02/2024. The owner is David Muigai together with ASL Credit Limited as per the search. He issued sale certificate after selling the motor vehicle. The agreement is between David and Joseph on indebtness through that acknowledgement. The motor vehicle belongs to David Muigai and ASL Credit. The certificate was issued on 16/02/2024. He was aware about Auctioneer rules. He had not included a receipt. The buyer was one Mr. Fidel Odido. His documents are not attached. He is supposed to take them to KRA. The cheques are in the name of Dasehn Group and not David.
22. In Re-examination he stated that he issued the certificate of sale. (The date of acknowledgement clause 2 is read out). The Claimant has signed. It is dated 30/10/2024. It was witnessed by Charity Mwaniki. He was not involved in transfer of the motor vehicle. He is also not supposed to follow up with the buyer. The only documents that He give to the purchaser is certificate of sale. He did not need any documents from him. The sale was done according to auctioneer rules.

Appellant Submissions

23. The appellant commenced submission by discussing the doctrine of separate legal personality, which is a cornerstone of corporate law exemplified by the case of *Salomon v. Salomon & Co. Ltd* [1897] AC 22. The doctrine asserts that a company, once incorporated, is a legal person in its own right, independent of its members (shareholders, directors, etc.), shielding them from personal liability for company debts and obligations. Locally he relied on cases of *Ukwala Supermarket v Jaideep Shah & another* [2022] KEHC 2207 (KLR)
24. The Kenyan legal framework, as per the *Companies Act*, strongly supports this principle, ensuring that the liabilities and assets of a company are distinctly separate from those of its individual members.
25. In the case at hand, he submitted that, the Respondent's witness Mr. Nabah Swaleh, affirmed to the Honourable Court that the actual tenant was Dasehn Group Limited, not the Claimant. Nevertheless, the learned magistrate held the directors, including the Claimant and Mr. Nyakundi, personally responsible for the rental arrears accrued by Dasehn Group Limited.
26. This decision clearly illustrates an error in law and fact by the Hon. Adjudicator/Resident Magistrate, who incorrectly imposed the company's debts on its directors, even though it was explicitly acknowledged by the Respondent that Dasehn Group Limited was the tenant, not the Claimant. Reliance made on case of the *Multichoice Kenya Ltd v Mainkam Ltd & Anor.* [2013] eKLR.



27. It is imperative that this honorable court rectify this grave error by acknowledging the distinct legal entities of David Muigai Wanjohi and Dasehn Group Limited, thereby upholding the doctrine of separate legal personality and restoring justice to the aggrieved party.
28. It is argued that, the core issue revolves around the breach of the Appellant's proprietary rights enshrined in Article 40 of *the Constitution* of Kenya. By misrepresenting the ownership of the motor vehicle, the parties involved have directly infringed upon his constitutional rights to own and enjoy property.
29. The Respondent clearly aware that the vehicle belonged to the Appellant proceeded to fraudulently represent and sell the vehicle as belonging to Dasehn Group Limited.
30. It is imperative therefore, that the court recognizes the severity of these actions and accordingly compensates the Appellant for any losses incurred due to these deceitful practices, including but not limited to financial damages and loss of use of the vehicle. The judiciary is empowered to offer remedies such as the restitution of the vehicle to the Appellant and the award of compensation and possibly punitive damages for the fraudulent acts perpetrated.
31. whether the concept of objector proceedings was applicable there must be consideration specifically the circumstances under which such proceedings are applicable, as well as the procedural framework provided by Kenyan law and as such, a precise understanding and the correct interpretation of Order 22, rule 51 of the Civil Procedure Rules is paramount.
32. This rule clearly specifies that any person claiming an interest in property attached as part of the execution of a decree may object to such attachment. The rule presupposes the existence of an attachment resulting directly from a decree execution, which necessitates the objector to assert their claim through a written notice and an accompanying affidavit.
33. Order 22, rule 51 of the Civil Procedure Rules states as follows:
 - “ 51. Objection to attachment [Order 22, rule 51]
 - a. 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.
 - b. 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.
 - c. Such notice of objection and application shall be served within seven days from the date of filing on all the parties.”



34. In this instant case, in paragraph 17 of the judgement by the Hon. Adjudicator/Resident Magistrate's the court in asserting that the claimant's case was marred by legal shortcomings and signs of inaction stated that:
- “ During this entire period, the claimant failed to file objection proceedings to contest the impending sale of his vehicle...”
35. In respect to the above mentioned statement by the court and the provisions of Order 22 rule 51, it is submitted that the Hon. Adjudicator/Resident Magistrate erred in law and in fact by holding that the appellant should have filed objector proceedings despite the fact that objector proceedings cannot be filed unless there is an existing suit for which judgement has been issued and the decree holder is at the stage of executing a decree.
36. The appellant's hands were tied in regard to the initiation of objector proceedings due to the absence of any decree execution involving the appellant's property. The vehicle, which was the subject of dispute, had not been attached pursuant to any judicial decree against the appellant, thus nullifying the premise for invoking objector proceedings. The insistence on this course of action, therefore, demonstrates a significant judicial oversight, misinterpreting the conditions under which such proceedings are applicable according to the Civil Procedure Rules.
37. It is critical, therefore, for this honorable court to recognize the misapplication of Order 22, rule 51 by the Hon. Adjudicator/Resident Magistrate and correct this procedural misstep that has led to the Claimant suffering loss of his property.
38. Section 23 of the *Auctioneers Act* provides for the duty of the auctioneer to act in accordance with such rules as may be prescribed when repossessing, attaching, storing or selling any property pursuant to the provisions of any written law or contract.
39. Thus, it was the duty of the auctioneer to halt the auction process when a credible objection regarding the ownership of the property was presented. The failure to do so, especially after being informed of such an objection, was not only a breach of statutory duty but also a direct contravention of the provisions intended to protect property owners against wrongful sales.
40. The improper execution of the sale of the vehicle directly resulted in special and general damages to the Appellant, who lost a valuable asset due to the auctioneer's unlawful actions. The auctioneers' decision to ignore the Appellant's objections led directly to these damages, making them liable under Section 26 of the *Auctioneers Act* which allows for the recovery of losses due to the unlawful or improper exercise of an auctioneer's powers.
41. In light of these breaches the court is urged to order appropriate remedies including the recovery of damages equivalent to the value of the motor vehicle and any additional compensation deemed just for the losses incurred by the Appellant. Such a measure would not only rectify the wrongful acts committed but also uphold the integrity of legal processes governing property sales.
42. In the case at hand, the trial magistrate's oversight in failing to consider the evidence that both the auctioneer and the landlord knew the vehicle was owned by the Appellant, not the tenant, is a crucial lapse. This evidence is central to establishing the basis on which the vehicle should not have been auctioned, as it was not legally part of the tenant's assets liable for seizure.
43. While rendering her judgement, the Learned Trial Magistrate disregarded the submissions with respect to the ownership of the said motor vehicle and the fact that RW2 acknowledged being in constant communication with the Claimant as of November 2023 and that he was aware that the Motor Vehicle



- they had proclaimed belonged to the Claimant and not Dasehn Group Limited. Had the Learned Trial Magistrate regarded the said submissions, she would have found that the Respondent was aware of the ownership status of the Motor Vehicle during its proclamation, seizure and sale and thus held that the same was an illegality.
44. Further, she failed to consider the fact that the acknowledgement of indebtedness adduced by the Respondent as Exhibit No. 8 in the Respondent's List of Documents was not signed by the primary beneficiaries and that there was no evidence showing their confirmation of acceptance of the terms in the acknowledgement of indebtedness. Had the Learned Trial Magistrate considered this, she would have found that the Claimant and Mr. Nyakundi being directors of Dasehn Group Limited were not personally liable to the debts of the company.
 45. Furthermore, as previously submitted to the Honourable Trial Court, the acknowledgement of indebtedness never created any security or charge over the Appellant's motor vehicle. The directors did not pledge the Motor Vehicle as security for the debts incurred by the company. It is therefore worrisome that the Respondent would proceed to auction a motor vehicle that was not pledged. Even if the motor vehicle was pledged, the contract was not enforceable for lack of acceptance. Furthermore, there are procedural steps to be followed when enforcing an informal security which include: issuance of a demand notice, institution of legal proceedings and then proceeding to sell after court award.
 46. This failure to consider the evidence and submissions presented by the Claimant led to the entry of the judgement being challenged in this appeal that causes the Claimant to suffer injustice through the loss of his property.
 47. The case of Republic v. Kenya Revenue Authority Ex Parte Yaya Towers Limited [2018] eKLR offers a pertinent precedent where the court emphasized the necessity of considering all evidence presented before making a judicial determination. The failure to do so was deemed a contravention of the fair administrative action guaranteed by Article 47 of *the Constitution*, and the right to a fair trial under Article 50.
 48. The Claimant had sought another relief as an alternative to the release of the said Motor vehicle being judgement in the sum of KES 1,000,000 which would have catered for the value of the sold motor vehicle and the expenses incurred due to the illegal confiscation and sale of the said motor vehicle. Had the Trial Magistrate Considered the alternative relief sought by the Claimant, she would have ordered the Respondent to pay the said KES 1,000,000 to the Claimant.
 49. REspondent Submissions
 50. It is submitted that, the instant appeal is objection proceedings disguised as an appeal. It is not denied that Respondent was instructed by Sachdeva, Nabhan & Swaleh Advocates vide a letter dated 5th October 2023 to levy distress against Dasehn Group Ltd for rent arrears of Kshs. 1, 217, 000. The Respondent religiously demonstrated that throughout the course of his undertaking, he exhibited utmost good faith and remained professional in his dealings.
 51. In strict adherence to the law, the Respondent proceeded to the Landlord's premises on the same 5th October 2023 and proclaimed goods for recovery of the rent arrears, amongst the good proclaimed was motor vehicle registration number KCF 010B. The Respondent issued the Appellant with a proclamation notice dated 5th October 2023.
 52. Soon thereafter, on 6th November 2023, after the Appellant had failed, refused, ignored and/or neglected to redeem the proclaimed goods within the 14 days' notice period, the Respondent proceeded to the Landlord's premises and carted away the proclaimed good including motor vehicle



registration number KCF 010B and issued the Appellant with a notification of sale dated 6th November 2023.

53. Fully aware of the imminent sale of the proclaimed goods, the Appellant issued two postdated cheques both dated 30th November 2023 which temporarily halted the sale of the proclaimed goods. Regrettably, both postdated cheques issued by the Appellant bounced due to the fact that the Appellant's account had insufficient funds. A clear admission of the rent arrears owed to the Landlord and deliberate attempt to settle the said arrears.
54. The Appellant proceeded to personally execute an acknowledgment of indebtedness dated 30th November 2023. Paragraph 2 of the said acknowledgement states that, in verbatim; "We, David Muigai Wanjohi and Joseph Obai Nyakundi acknowledge and accept that we are personally, jointly and severally liable for the payment of the outstanding amount stated in clause 1 being Kshs. 1, 217,000 and for any further amount which has accrued or will accrue in the future including but not limited to storage charges in respect of Motor Vehicle registration number KCF 010B seized by the auctioneers and/or the cost of recovery of the said amount".
55. It is submitted that, the Trial Magistrate did not err for holding that he had failed, ignored, neglected and/or refused to prove that the Respondent actions were ultra vires. The Respondent meticulously demonstrated to the Trial Court that it levied distressed in strict adherence to Rule 12 of the Auctioneers Rules and as duly instructed by the Landlord's advocates vide a letter dated 5th October 2023.
56. Additionally, it is contended that the Learned Trial Magistrate judiciously deciphered the Appellant's acknowledgment of indebtedness, she rightly held that the Appellant and Joseph Obai Nyakundi were acting in their personal capacities not as directors of Dasehn Group Limited. The liability for the outstanding amount was upon them as individuals and not the company as a separate legal entity. She proceeded to pronounce that, when the Appellant herein and Joseph Obai Nyakundi failed to clear the outstanding balance, the Respondent was within their rights to proceed with the execution.
57. It is submitted that, submit that the Learned Trial Magistrate demonstrated a profound comprehension of the law by pronouncing that, courts have repeatedly held that orders cannot be issued in vain. Since the motor vehicle has already been sold to a third party, issuing an order for its release would be purely academic and without practical effect.
58. Thus, the Court is urged to hold that the Learned Trial Magistrate was succinct in her decision and uphold it. Thus, the court is urged to hold that it cannot issue an order for release of the subject motor vehicle at this point in time as sought in the Memorandum of Appeal dated 10th October 2024 as rightly highlighted by the Trial Court, the said motor vehicle was already sold to a third party via public auction on 31st January 2024.
59. It is urged that, the salient issue that commends itself for determination at this juncture is whether the Respondent usurped his mandate when selling the motor vehicle. It is urged that this court to uphold the Learned Trial Magistrate, decision that, the auction of the motor vehicle was conducted properly and in accordance with the law and the Appellant cannot fault the Respondent for strictly adhering to the law.

It is contended that, the trial Magistrate was astute in her decision to hold that, in verbatim, during this entire period, the Claimant (Appellant herein) failed to file objection proceedings to contest the impending sale of his vehicle. This inaction weakens the Claimant's position significantly. Reliance is made on Paul Ngei Wolile & 2 Others v Dalali Traders Auctioneers & Another [2021] eKLR, the Learned Judge in that matter when faced with a similar issued as the one that commends itself in the



instant suit stated that, and rightly so, that objections to a sale conducted through a public auction are not tenable if the sale was carried out in accordance with the law. The proper course for an aggrieved party is to file a separate suit for damages, as envisaged under Sections 99(4) of the *Land Act*. See also the case of Paul Ngei Wolile (Supra Koech & Another v Ethics & Anti-Corruption Commission & 3 Others; Koech (Objector); Gathogo t/a Valley Auctioneers & 5 Others (Interested Parties) [2022] KEHC 11909 (KLR) in which the court held that once a public auction is completed and the property is transferred to the purchaser, subsequent objections are not sustainable. The auction process, having been concluded, cannot be undone through objection proceedings.

60. The motor vehicle is valued at Kshs. I Million. It is also the force value. The auction was not against him as an individual. He seeks legal redress. He has not seen documents to proof the motor vehicle has been sold. There is a possibility the same has not been sold. It is still in his name
61. Issues, Analysis and Determination
62. After going through evidence and submissions on records, I find the issues are.
63. Whether the attachment and sale of applicant's M/V was lawful? If above in the negative, what is the remedy? What is the order as to costs?
64. In a Kenyan civil case, the first appellate court's duty is to conduct a full and independent review of the entire evidence and the trial court's findings of fact and law, with the power to uphold, vary, or set aside the decision, take additional evidence, order a new trial, or otherwise make a final determination. The overarching goal is to ensure the just and efficient determination of the proceedings and to correct any errors made by the lower court. Key Duties of a First Appellate Court. As the appellate court, this Court's duty is to subject the whole of the evidence to a fresh and exhaustive scrutiny and make own conclusions. The duty of the court in a first appeal such as this one was stated in the case of *Selle & another –vs- Associated Motorboat Co. Ltd. & others* (1968) EA 123 in the following terms:

“I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (*Abdul Hammed Saif –vs- Ali Mohamed Sholan* (1955), 22 E.A.C.A. 270).

The appropriate standard of review established in the case above can be stated in three complementary principles:

- a. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions.
- b. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
- c. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time”



65. On the first issue, Whether the attachment and sale of applicant's M/V was lawful? The core focal point of discussion is the doctrine of separate legal personality, which is a cornerstone of corporate law exemplified by the case of *Salomon v. Salomon & Co. Ltd* [1897] AC 22. The doctrine asserts that a company, once incorporated, is a legal person in its own right, independent of its members (shareholders, directors, etc.), shielding them from personal liability for company debts and obligations.
 66. The Kenyan legal framework, as per the *Companies Act*, strongly supports this principle, ensuring that the liabilities and assets of a company are distinctly separate from those of its individual members.
 67. The case of *Ukwala Supermarket v Jaideep Shah & another* [2022] KEHC 2207 (KLR) reinforces this principle within the Kenyan jurisdiction, where the court decisively upheld the separation between a director and the corporate entity. The court ruled that the assets or liabilities of a company cannot be conflated with those of its directors unless under exceptional circumstances, such as fraud or similar illegal activities that justify piercing the corporate veil.
 68. In the case at hand, the Respondent's witness Mr. Nabah Swaleh, testifying as RW1 during cross-examination, affirmed to the Honourable Court that the actual tenant was Dasehn Group Limited, not the Claimant. Nevertheless, the learned magistrate held the directors, including the Claimant and Mr. Nyakundi, personally responsible for the rental arrears accrued by Dasehn Group Limited.
 69. This decision clearly illustrates an error in law and fact by the Hon. Adjudicator/Resident Magistrate, who incorrectly imposed the company's debts on its directors, even though it was explicitly acknowledged by the Respondent that Dasehn Group Limited was the tenant, not the Claimant.
 70. The misapplication of liability in this case is a clear deviation from the legal standards set by the *Multichoice Kenya Ltd v Mainkam Ltd & Anor.* [2013] eKLR, where the court maintained that the personal assets of a director should not be assumed to settle the debts of the company unless it is proven that the individual has engaged in fraudulent activities to evade responsibilities.
 71. It is submitted that the subsequent misattribution of liability, represents not just a misinterpretation of the law but a fundamental injustice that undermines the principles of separate legal personality and individual property rights enshrined in Article 40 of *the Constitution* of Kenya. It is imperative that this honorable court rectify this grave error by acknowledging the distinct legal identities of David Muigai Wanjohi and Dasehn Group Limited, thereby upholding the doctrine of separate legal personality and restoring justice to the aggrieved party.
 72. The core of this issue revolves around the breach of the Appellant's proprietary rights enshrined in Article 40 of *the Constitution* of Kenya. By misrepresenting the ownership of the motor vehicle, the parties involved have directly infringed upon his constitutional rights to own and enjoy property.
 73. The Respondent clearly aware that the vehicle belonged to the Appellant proceeded to fraudulently represent and sell the vehicle as belonging to Dasehn Group Limited.
- a. Such a misrepresentation not only deprives the Appellant of the vehicle's use but potentially subjects him to unwarranted liabilities given that the vehicle was used as collateral with ASL Credit Limited. Proceeding to allegedly sale the said motor vehicle after having received prior notice; (c) Despite the alleged sale, the Respondent has not accounted for the sale proceeds.**
74. It is imperative therefore, that the court recognizes the severity of these actions and accordingly compensates the Appellant for any losses incurred due to these deceitful practices, including but not limited to financial damages and loss of use of the vehicle.



75. The judiciary is empowered to offer remedies such as the restitution of the vehicle to the Appellant and the award of compensation and possibly punitive damages for the fraudulent acts perpetrated.
76. On whether the Hon. Adjudicator/Resident Magistrate erred in law by improperly requiring that the appellant ought to have filed objector proceedings challenging the proclamation of the said motor vehicle, there must be consideration specifically the circumstances under which such proceedings are applicable, as well as the procedural framework provided by Kenyan law and as such, a precise understanding and the correct interpretation of Order 22, rule 51 of the Civil Procedure Rules is paramount.
77. This rule clearly specifies that any person claiming an interest in property attached as part of the execution of a decree may object to such attachment. The rule presupposes the existence of an attachment resulting directly from a decree execution, which necessitates the objector to assert their claim through a written notice and an accompanying affidavit.
78. Order 22, rule 51 of the Civil Procedure Rules states as follows:
79. “51. Objection to attachment [Order 22, rule 51]
- a. 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.
 - b. 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.
 - c. Such notice of objection and application shall be served within seven days from the date of filing on all the parties.”
80. In this instant case, in paragraph 17 of the judgement by the Hon. Adjudicator/Resident Magistrate’s the court in asserting that the claimant’s case was marred by legal shortcomings and signs of inaction stated that:
- “.... During this entire period, the claimant failed to file objection proceedings to contest the impending sale of his vehicle...”
81. In respect to the above mentioned statement by the court and the provisions of Order 22 rule 51, it is submitted that the Hon. Adjudicator/Resident Magistrate erred in law and in fact by holding that the appellant should have filed objector proceedings despite the fact that objector proceedings cannot be filed unless there is an existing suit for which judgement has been issued and the decree holder is at the stage of executing a decree.
82. The appellant’s hands were tied in regard to the initiation of objector proceedings due to the absence of any decree execution involving the appellant’s property. The vehicle, which was the subject of dispute, had not been attached pursuant to any judicial decree against the appellant, thus nullifying the premise for invoking objector proceedings. The insistence on this course of action, therefore, demonstrates a significant judicial oversight, misinterpreting the conditions under which such proceedings are applicable according to the Civil Procedure Rules.



83. This misapplication led to an unnecessary legal burden on the appellant, diverting attention from the core issue of ownership and wrongful sale of the vehicle. Such an error not only impacts the fairness of the trial but also undermines the legal rights of the property owner. By imposing objector proceedings without an existing decree, the magistrate placed an undue procedural obligation on the appellant, which was both legally unfounded and irrelevant to the circumstances of the case.
84. It is critical, therefore, for this honorable court to recognize the misapplication of Order 22, rule 51 by the Hon. Adjudicator/Resident Magistrate and correct this procedural misstep that has led to the Claimant suffering loss of his property.
85. Whether the auctioneers breached their statutory duties in relation to the conduct of the sale of the motor vehicle. It is submitted that the auctioneers breached their statutory duties in relation to the conduct of the sale of the suit motor vehicle by disregarding the objection raised by the Appellant. The auctioneers were explicitly informed by the Appellant, David Muigai Wanjohi, that the motor vehicle in question was his personal property and not a part of Dasehn Group Limited's assets. This communication was acknowledged by RW2, who confirmed during testimony that they were aware of the Appellant's claim to the vehicle. Proceeding with the auction under these circumstances constitutes a disregard for the rightful ownership of the property.
86. Section 23 of the *Auctioneers Act* provides for the duty of the auctioneer to act in accordance with such rules as may be prescribed when repossessing, attaching, storing or selling any property pursuant to the provisions of any written law or contract.
87. Thus, it was the duty of the auctioneer to halt the auction process when a credible objection regarding the ownership of the property was presented. The failure to do so, especially after being informed of such an objection, was not only a breach of statutory duty but also a direct contravention of the provisions intended to protect property owners against wrongful sales.
88. The improper execution of the sale of the vehicle directly resulted in special and general damages to the Appellant, who lost a valuable asset due to the auctioneer's unlawful actions. The auctioneers' decision to ignore the Appellant's objections led directly to these damages, making them liable under Section 26 of the *Auctioneers Act* which allows for the recovery of losses due to the unlawful or improper exercise of an auctioneer's powers.
89. In light of these breaches the court is urged to order appropriate remedies including the recovery of damages equivalent to the value of the motor vehicle and any additional compensation deemed just for the losses incurred by the Appellant. Such a measure would not only rectify the wrongful acts committed but also uphold the integrity of legal processes governing property sales.
90. Whether the trial magistrate erred by ignoring critical evidence that both the auctioneer and the landlord knew that the vehicle did not belong to the tenant, and by not considering all the reliefs sought by the Appellant, including the submissions filed.
91. The foundation of fair trial principles, enshrined in *the Constitution* of Kenya, mandates that all judicial proceedings must be conducted impartially and fairly, ensuring all evidence presented is duly considered. Article 50(1) of *the Constitution* stipulates that every accused person has the right to a fair trial, which includes the right to have all relevant evidence adjudicated. Similarly, the *Civil Procedure Act* requires that judgments should be based on the material brought before the court, ensuring that every material contention is taken into account.
92. In the case at hand, the trial magistrate's oversight in failing to consider the evidence that both the auctioneer and the landlord knew the vehicle was owned by the Appellant, not the tenant, is a crucial



lapse. This evidence is central to establishing the basis on which the vehicle should not have been auctioned, as it was not legally part of the tenant's assets liable for seizure.

93. While rendering her judgement, the Learned Trial Magistrate disregarded the submissions with respect to the ownership of the said motor vehicle and the fact that RW2 acknowledged being in constant communication with the Claimant as of November 2023 and that he was aware that the Motor Vehicle they had proclaimed belonged to the Claimant and not Dasehn Group Limited. Had the Learned Trial Magistrate regarded the said submissions, she would have found that the Respondent was aware of the ownership status of the Motor Vehicle during its proclamation, seizure and sale and thus held that the same was an illegality.
94. Further, she failed to consider the fact that the acknowledgement of indebtedness adduced by the Respondent as Exhibit No. 8 in the Respondent's List of Documents was not signed by the primary beneficiaries and that there was no evidence showing their confirmation of acceptance of the terms in the acknowledgement of indebtedness. Had the Learned Trial Magistrate considered this, she would have found that the Claimant and Mr. Nyakundi being directors of Dasehn Group Limited were not personally liable to the debts of the company.
95. Furthermore, as previously submitted to the Honourable Trial Court, the acknowledgement of indebtedness never created any security or charge over the Appellant's motor vehicle. The directors did not pledge the Motor Vehicle as security for the debts incurred by the company. It is therefore worrisome that the Respondent would proceed to auction a motor vehicle that was not pledged. Even if the motor vehicle was pledged, the contract was not enforceable for lack of acceptance. Furthermore, there are procedural steps to be followed when enforcing an informal security which include: issuance of a demand notice, institution of legal proceedings and then proceeding to sell after court award.
96. This failure to consider the evidence and submissions presented by the Claimant led to the entry of the judgement being challenged in this appeal that causes the Claimant to suffer injustice through the loss of his property.
97. The case of Republic v. Kenya Revenue Authority Ex Parte Yaya Towers Limited [2018] eKLR offers a pertinent precedent where the court emphasized the necessity of considering all evidence presented before making a judicial determination. The failure to do so was deemed a contravention of the fair administrative action guaranteed by Article 47 of *the Constitution*, and the right to a fair trial under Article 50.
98. In addition to the averments above, the Learned Trial Magistrate in paragraphs 11 and 12 only addressed one of the reliefs sought, being the release of the said Motor Vehicle KCF 010B, that: "... Since the motor vehicle has already been sold to a third party, issuing an order for its release would be purely academic and without practical effect..."
99. She ignored the fact that the Claimant had sought another relief as an alternative to the release of the said Motor vehicle being judgement in the sum of KES 1,000,000 which would have catered for the value of the sold motor vehicle and the expenses incurred due to the illegal confiscation and sale of the said motor vehicle. Had the Trial Magistrate Considered the alternative relief sought by the Claimant, she would have ordered the Respondent to pay the said KES 1,000,000 to the Claimant.

Conclusion

100. In Kenya, levying distress and selling attached goods is governed by the *Distress for Rent Act* (Cap 293) and the *Auctioneers Act* (Cap 526), which require a duly licensed auctioneer to seize a tenant's goods for unpaid rent and sell them to recover the arrears. The process involves the tenant's goods being taken



to a public auction, and any surplus after covering the rent and costs is returned to the owner. Tenants can also protect their goods by paying the rent or making a request to sell the goods at a public auction.

Protection of right to property under Article 40 COK,2010

- (1) ... every person has the right, either individually or in association with others, to acquire and own property--(a) of any description; and (b) in any part of Kenya.

101. under Section 26 of the *Auctioneers Act* which allows for the recovery of losses due to the unlawful or improper exercise of an auctioneer's powers. Unfortunately, other than the value of m/v no special or general was pleaded and proved thus that elements will not be available.
102. The trial magistrate judgement cannot stand as it ignored appellant constitutional rights to fair trial and property, evidence and law thus the court makes the orders.
- i. This appeal is allowed and the judgment delivered by the trial court on the 20th day of September 2024 is hereby set aside.
 - ii. The costs of this Appeal are to be borne by the Respondent.
 - iii. The following prayers sought in the Statement of Claim are by awarded: i.e.;
 - iv. Release of Motor Vehicle Mitsubishi Lancer, Registration Number KCF 010B.
 - v. In the alternate, judgement in the sum of KES 1,000,000.
 - vi. Costs of the Claim.
 - vii. Interest on judgement amount and costs above.

DELIVERED AND DATED AT NAROK VIA MICROSOFT TEAMS THIS 26TH DAY OF SEPTEMBER, 2025.

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CHARLES KARIUKI

JUDGE

