

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

CAUSE NO. E010 OF 2023

AHMED ABDULKADER JIN CLAIMANT

VERSUS

KWALE INTERNATIONAL SUGAR COMPANY LIMITED RESPONDENT

And

BN KOTECHA & SONS LIMITED 1ST OBJECTOR

PABARI DISTRIBUTORS LIMITED 2ND OBJECTOR

UNIFRESH EXOTICS LIMITED 3RD OBJECTOR

RULING

The objectors filed an application dated 7 August 2025 under the provisions of Order 22 rule 51, 52 and 53 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, seeking orders that there be a stay of execution of the decree and warrants of attachment issued on 30 July 2025. The objectors seek a stay of the proclamation, attachments and sale of their vehicle registration numbers. KCA 039Q, KAW 308K, KAX 707M, KBH 672Q, KBE 826E, KAC 604B. The vehicles have been proclaimed to satisfy the decree issued against the respondent, but they are the properties of the objectors.

The application is supported by Hemal Kotecha, the director of the first objector, who states in his Supporting Affidavit that the objectors are the registered owners of vehicle registration numbers KCA 039Q, KAW 308K, KAX 707M, KBH 672Q, KBE 826E, and KAC 604B. However, they are not parties to the suit and therefore cannot satisfy the decree issued against the respondent, who is a separate legal entity. The claimant has since proclaimed the objectors' property, which consists of commercial vehicles that were at the respondent's premises undertaking commercial activities for the benefit of the objectors. The attached

vehicles are wholly and legally the property of the objectors, and the respondent has no legal or equitable interest. If execution is allowed to proceed, the objectors will suffer loss and damage, whereas they are not parties to these proceedings.

In reply, the claimant asserts that the objectors are companies registered in the same group as the respondent, and therefore, they are not separate entities. The human resource director who terminated the claimant's employment is the subject of a shared dispute between the respondent and the objectors, and the instant proceedings are only meant to hide the true identity of the decree holder. The claimant received various communications from Unifresh Exotic Limited, the 3rd objector, indicating a close relationship between the respondent and the objectors.

Execution proceedings are lawful and legitimate. Upon the court decree, the warrants of attachment issued or Warrants of Sale issued are part of the judicial process to enforce its orders. The decree holder or auctioneers act as the agents of the court to secure lawful orders.

However, illegal, irregular and unlawful execution of a decree by any party against the property of a third party negates the very essence of execution proceedings as held in **Arisa v Kipkebe Limited; Ryce EA Limited (Objector) [2025] KEELRC 1468 (KLR)**. Great diligence should be undertaken to ensure compliance with the law.

The objectors assert that they hold legal and equitable title to vehicle registration numbers KCA 039Q, KAW 308K, KAX 707M, KBH 672Q, KBE 826E, and KAC 604B. The claimant has obtained warrants of attachment and sale of their properties, yet they are not the respondent who is required to satisfy the decree herein.

The objectors filed NTSA records over vehicle registration numbers:

KCA 039Q, owned by Kotecha and Sons Ltd,

KAW 308K, owned by Unifresh Exotics K Limited,

KAX 707M, owned by Unifresh Exotics K Limited,

KBH 672Q, owned by Unifresh Exotics K Limited,

ZD0672 trailer, owned by Unifresh Exotics K Limited,

KBE 826E, owned by Unifresh Exotics K Limited,

KAC 604B is owned by Pabari Distributors Limited.

In response to the Memorandum of Claim, the respondent admitted that the claimant was employed through a letter dated 9 October 2020 and was placed under the 3rd objector as part of the group of companies. In the supporting statement of Amos Suge, this fact is confirmed.

The offer of employment issued to the claimant is under the name of Unifresh Exotics K Limited and executed by H. Kotecha as the director. Projects James Otieno, the Human Resources and Administration manager, confirmed the offer of employment.

Communications during employment were mainly between the claimant and Harshil Kotecha.

The respondent issued the notice terminating employment at Kwale International Sugar Co. Ltd., signed by H. Kotecha and James Otieno.

Of interest are the statutory payments to NHIF. These are remitted interchangeably between the respondent and 3rd objector, Unifresh K Limited. There is a third entity, East Global K Limited.

There is a direct correlation between the respondent and 3rd objector to the claimant. The offer of employment, payment and remittance of statutory dues and interrelations during employment. The 3rd objector can't extricate itself from the execution proceedings commenced through the decree and warrants of attachment issued on 30 June 2025. Having offered the claimant employment, the 3rd objector cannot turn around and claim the respondent terminated employment; therefore, they should satisfy the decree and not hide behind the objection proceedings.

The basis of the relations between parties must be traced from the definition of the employer under section 2 of the Employment and Labour Relations Court, an agent of the employer holds similar responsibility as the employer:

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

In this case, the agency of the 3rd objector in the employment and interrelations between the claimant and the respondent is distinct and direct.

Save for properties owned by the 1st and 2nd objectors, which are distinguishable and include motor vehicle registration numbers KCA 039Q and KAC 604B, the properties owned by the 3rd objector are available for execution. These include,

KAW 308K, owned by Unifresh Exotics K Limited,

KAX 707M, owned by Unifresh Exotics K Limited,

KBH 672Q, owned by Unifresh Exotics K Limited,

ZD0672 trailer, owned by Unifresh Exotics K Limited,

KBE 826E, owned by Unifresh Exotics K Limited,

Accordingly, the application dated 7 August 2025 is partially successful. Execution against the 1st and 2nd objector properties is stayed. The execution against the 3rd objector's properties is lawful and legitimate. The attachment and sale of Motor vehicle registration numbers KAW 308K, KAX 707M, KBH 672Q and KBE 826E shall proceed as proclaimed.

The 3rd objector shall meet the costs due to the claimant.

Delivered in open court at Mombasa, this 16th day of October 2025.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Japhet

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