

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CIVIL CASE NO. E083 OF 2022**

**RAMAZAN CETIN.....PLAINTIFF**

**-VERSUS-**

**WANANCHI FAERM MACHINERY & ACCESSORIES  
LIMITED.....DEFENDANT**

**-AND-**

**MBARAK IDHA MBARAK ALI.....1<sup>ST</sup> OBJECTOR**  
**WANANCHI UK TRACTORS & IMPLEMENTS**  
**LIMITED.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. This ruling is in respect of objection proceedings initiated by way of a motion dated 8 May 2025 filed under sections 3A and 63(e) of the Civil Procedure Act, cap. 21 and order 22 rule 51(1) and (2) of the Civil Procedure Rules. Of the prayers sought, the only ones, pertinent to this ruling, have been expressed as follows:

***“3. That the Honourable Court be pleased to make a finding that the movable properties attached by M/s Kinyua & Co. Auctioneers is solely the Objectors property to the exclusion of anyone else.***

***4. That the Honourable Court be pleased to order the Plaintiff and/or M/s Kinyua & Co. Auctioneers to return the attached properties back to the objector's yard.”***

The objectors have also asked for the order on costs of their application.

2. It is stated on the face of the application that the application is supported by the affidavit of Mbarak Idha Mbarak Ali. However, the said Mbarak Idha Mbarak Ali appears in the jurat of affidavit as the deponent but the affidavit itself is sworn by Omar Hassan Said who has introduced himself as “*the manager of the 2<sup>nd</sup> objector*”. To illustrate what I am saying, in parts pertinent to this application, the affidavit reads as follows:

***“I, OMAR HASSAN SAID of C/O P.O. Box 935-80100, Mombasa, in the Republic of Kenya do hereby make oath and state as follows;***

***1). That I am a male adult of sound mind thus competent to make and swear this Affidavit.***

***2). That I am the Manager of the 2<sup>nd</sup> Objector Company herein.”***

***And in the last paragraph and the jurat, it is stated as follows:***

***16. That what I have deponed to herein above is true to the best of my knowledge on information and belief sources whereof have been duly disclosed.”***

***Sworn at Mombasa by the said Mbarak Idha Mbarak Ali...”***

3. Between Omar Hassan Said and Mbarak Idha Ali, to whom can one attribute the affidavit in these circumstances? It cannot be attributed to Omar Hassan Said because the affidavit has been signed by Mbarak Idha Ali. On the other hand, although Mbarak Idha Ali is alleged to have

sworn the affidavit, he has not because it is clear at the beginning of the affidavit that it is Omar Hassan Said who “*is making oath and stating...*”.

4. The depositions in an affidavit are evidence and the deponent commits himself to this evidence by signing the affidavit. In swearing the affidavit, the deponent not only commits himself to the truth of the facts to which he has sworn but also that those facts are within his knowledge. Order 19 rule 3 of the Civil Procedure Rules, speaks to this in the following terms:

***3. Matters to which affidavits shall be confined***

***(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove:***

***Provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.***

5. I need not belabour the point on who a deponent in an affidavit is but material to this application is the point that whoever introduces himself as the deponent must also be the person who signs the affidavit. Once commissioned by a commissioner for oaths, or any other person authorised to administer oaths in accordance with section 14 of the Oaths and Statutory Declarations Act, cap. 15, the signature of the deponent signifies that the affidavit has been duly sworn.
6. Turning back to the objectors’ application, the pertinent provision is Order 22 rule 51 of the Civil Procedure Rules. This rule reads 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. (Emphasis added).***

7. Of particular relevance to the question at hand is rule 51(2) which enjoins the objector to support his application by an affidavit setting out the nature of the objector's claim in the whole or a portion of the property attached. It certainly is in the affidavit that the objector demonstrates how he is entitled to or has a legal or equitable interest in the whole of or part of any property attached in execution of a decree.

8. With all the deficiencies in the affidavit purportedly filed in support of the objector's application, no affidavit as contemplated under order 22

rule 51(2) of the Civil Procedure Rules can be said to have been filed in support of the objector's application.

9. I am aware that under order 19 rule 7 of the Civil Procedure Rules "*the court may receive any affidavit sworn for the purpose of being used in any suit notwithstanding any defect by misdescription of the parties or otherwise in the title or other irregularity in the form thereof or on any technicality*".

10. But an affidavit where one person introduces himself as the deponent swearing the affidavit and a totally different person signs the same affidavit as having sworn it cannot be said to be an affidavit that can be excused on account of a defect of misdescription of parties in the title or irregularity in form. Neither can the defect be said to be a defect on a technicality.

11. The "defect" here goes to the root of affidavit and the evidence sought to be introduced to the extent that it reduces the affidavit to a bare document, without any evidential value, and on which none of the persons purportedly indicated there as "the deponent" can be cross-examined on the depositions made in the affidavit.

12. The result is that, even without considering the affidavit filed in response to the objectors' application, the application is not supported by any evidence; it is fatally defective and, for this reason, it is hereby struck out with costs to the decree holder. Orders accordingly.

**Signed, dated and delivered on 31 October 2025**

Ngaah Jairus  
**JUDGE**