



**Odundo v Kukam Limited & another (Environment and Land Case
693 of 2016) [2025] KEELC 5702 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5702 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 693 OF 2016**

**JG KEMEI, J
JULY 31, 2025**

BETWEEN

ANTHONY ADHIAMBO ODUNDO PLAINTIFF

AND

KUKAM LIMITED 1ST DEFENDANT

METRA INVESTMENTS LIMITED 2ND DEFENDANT

RULING

(In respect of the Defendants' application dated 2/4/2025)

1. Before this Court for determination is the Defendants' Notice of Motion application dated 2/4/2025. The application is premised under the provisions of Articles 48 and 50(1) of the Constitution, Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act and Order 42 Rule 6 of the Civil Procedure Rules, 2010. The Defendants prays for orders that;
 - a. Spent;
 - b. In the interim, the Honourable Court be pleased to stay the execution of the Judgment and orders of this Court delivered on 15/4/2024 and any subsequent Decree extracted thereon and all consequential orders.
 - c. The Honourable Court be pleased to set aside the proclamation notices dated 9/1/2024 issued by Phillips International Auctioneers.
 - d. Costs of this application be provided for.
2. The application is premised on the grounds on the face of it and the further supported by the Affidavit of Rahab Karei Mukiyama, the Applicants Director, deponed on 2/4/2025. The deponent avers that the Court in its Ruling of 27/3/2025, held that application dated 10/1/2025 was incompetent for want



of compliance with the provisions of Order 9 Rule 9 of the [Civil Procedure Rules](#) and thereby struck out the application. That as a result, the court did not consider the said application on its merit. That the Applicants have since filed a consent between the firm of Mutunga Justus & Associates Advocates and the firm of Onyango Ndolo & Company Advocates in regard to their representation.

3. The deponent avers that the Respondent instructed the firm of Philips Auctioneers who issued unlawful proclamation notices dated 9/1/ 2025. She avers that the proclamation is still in force and the Auctioneers may at any time proceed with the unlawful attachment of the Applicants' goods. She avers that the Auctioneer illegally proclaimed the household items of one of the Applicants' directors without having physically seen the proclaimed items as provided in law and/or lifting the Defendants' corporate veil of incorporation.
4. The deponent contends that the Applicants are threatened with imminent unlawful execution of a court decree without following the procedure laid by law. She asserts that she risks losing her personal and household items in pursuance of the unlawful venture. That the Auction may proceed anytime hence occasioning her substantial loss and irreparable harm.

Replying Affidavit of the Respondent

5. The application is vehemently opposed by the Plaintiff/Respondent vide the Replying Affidavit sworn on 27/5/2025 by Anthony Odhiambo Odundo. He contends that the application mischievously seeks to review the Court's Ruling of 27/3/2025. He argues that the Applicants sought stay orders while relying on new material/evidence as no explanation has been offered why the Consent could not have been obtained from their previous advocates before the court's Ruling. That the orders sought in the present application cannot therefore be granted.
6. The Respondent deposes that there is a pending application before the Court of Appeal by the Defendants being Appeal *E521 of 2024* by the Defendant/ Applicants seeking orders for extension of time to file a Notice of Appeal out of time. He avers that the application awaits Ruling by the superior court following the courts directions to file submissions. That the court is functus officio in so far as it relates to the reliefs sought in the present application. That should this court allow the application and the Court of Appeal disallows the application for extension of time and strike out the Notice of Appeal, the Court would have been engaged in an academic exercise. According to the Respondent this state of affairs amounts to nothing but forum shopping which should be frowned on.
7. In reference to the application pending before the Court of Appeal for stay of execution, in *E539 of 2024* by the Applicants herein, the Respondent avers that the instant application is an abuse of the court process as the Applicants have not adduced any evidence of fast-tracking the hearing and determination of the application.
8. Regarding the proclamation, the Respondent refutes that the same was illegal. He maintains that the Auctioneers did visit the Defendants' premises and duly proclaimed the goods. Further, that whereas the household items were indeed proclaimed, no evidence has been adduced to proof that the said items are the personal properties of the Defendants' Directors.
9. He further asserts that the application is fatally defective as the Defendants' Directors have failed to follow the mandatory procedure provided under Order 22 Rule 51 of the [Civil Procedure Rules](#) in objecting to the attachment. That the Applicant's reliance on the need to lift the corporate veil is misplaced and without merit. He urges the court to dismiss the application with costs to enable him enjoy the fruits of the Judgment issued in his favour having pursued justice for 15 years.



The Applicant's Further Affidavit

10. The Applicant filed a further Affidavit sworn by Rahab Mukiyama deponed on 7/7/2025 in further support of the application. She deposes and denies that Applicants are indirectly seeking a review by introducing new evidence. She avers that the Applicants were only keen on complying with the provisions of Order 9 Rule 9 of the Civil Procedure Rules by obtaining a consent from the previous counsel in view of the Judgment on record.
11. The deponent further avers that the Court of Appeal delivered its Ruling in COACIVAPP No. E521 of 2025 on 4/7/ 2025 and has since granted leave to the Applicants to serve the Notice of Appeal out of time hence the issues raised by the Respondent are moot. She further asserts that this court has jurisdiction to hear and determine the application by virtue of the provisions of Section 34 of the Civil Procedure Act, this Court, being the Court that issued the Decree retains the jurisdiction to determine all questions pertaining to the lawfulness or otherwise of execution of the Decree. Moreso, since it has not been disputed that the Respondent herein has obtained before this Court warrants of attachment whose execution is challenged. That the allegation that this court is functus officio is also misplaced.
12. Regarding the assertion that the Applicants are not keen on fast tracking the appeal, the deponent avers that the Respondent is only feigning ignorance and seeking to mislead the Court. That on 4/2/2025 the Court of Appeal stood over COACIVAPP No. E539 of 2024 (stay application) to await the outcome of COACIVAPP No. E521 of 2024 (application for extension to serve of the Notice of Appeal out of time) in the presence of the Respondent's Counsel hence the assertion is purely intended to mislead this Court.
13. In reference to the attached goods, she invites the Court to look at the proclaimed goods. She deposes that the Respondent has for instance proclaimed a washing machine alleging that it belongs to the Applicants. The Auctioneers have not demonstrated and/or provided the details of the physical location of the Applicants' premises and no explanation has been proffered as to why a personal item such as a washing machine would be situated at a company premises. The arguments by the Respondents are to say the least, preposterous. She therefore asserts that the instant application is properly before court and the same should be allowed.

The Written Submissions

14. The Court directed that the application be canvassed by way of written submissions. Both parties complied. The Respondents submissions are dated 7/7/2025 whereas the Applicants submissions are dated 18/7/2025. The Court has had the opportunity to read through and considered the said submissions and wishes to thank Counsels for their highlights.

Analysis and Determination

15. The Court has read and considered the Application, the Affidavit in support and in opposition, the annexures thereto as well as the rival submissions, I am of the view that the issues for determination are;
 - a. Whether the Application is competent and if so,
 - b. Whether the Court should revoke and set aside and the Proclamation Notice dated 9/1/2025.
 - c. Which orders should the Court issue.



Whether there are competent and Valid Objection Proceedings before this Court for Determination

16. Before delving further, I wish to address myself on the issue of review as raised by the Plaintiff. The Respondent contends that the application mischievously seeks to review the Court's Ruling of 27/3/2025. He argues that the Applicants are praying for stay orders while relying on new material/evidence as no explanation has been offered why the Consent could not have been obtained from their previous advocates before the court's Ruling. That the orders sought in the present application cannot therefore be granted.
17. This Court in its Ruling of 27/3/2025, stated that Order 9 Rule 9 of the *Civil Procedure Rules* make it mandatory that for any change of Advocates after judgment has been entered to be effected, then there must be an order of the Court upon application with notice to all parties or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate. The Court found that the application dated 10/1/2025 was incompetent for non-compliance with Order 9 Rule 9 of the *Civil Procedure Rules*. The application was therefore struck-out.
18. The Applicants have since adduced a Consent between the firm of Mutunga Justus & Associates Advocates and the firm of Onyango Ndolo & Company Advocates in compliance with the said provision. The current Advocates for the Applicants are therefore properly on record. The assertion that the Applicants are now seeking a review of the orders of 27/3/25 is therefore not founded.
19. On the claim that the prayer for stay of execution is res judicata, as stated in the Ruling of 27/3/2025, the issue of stay of execution was not determined with finality. In fact, the Court intimated clearly to the applicants that they could file a formal application.
20. Similarly, the assertion that stay of execution sought herein is sub judice to the proceedings in the Court of Appeal in *E539/2024*, as I already stated in the previous Ruling, the law provides that stay of execution pending appeal can either be sought from the court being appealed from or the court being appealed to. The same cannot therefore be said to be sub judice.
21. Turning back to the issue for determination, the Respondent contends that the Applicants have not followed the mandatory procedure provided under Order 22 Rule 51 of the *Civil Procedure Rules* in objecting to the attachment. That the Applicant's reliance on the need to lift the corporate veil is misplaced and without merit hence the application should be dismissed with costs.
22. The Applicants despite filing a further Affidavit and submissions, did not address this pertinent issue under Order 22 Rule 51 of the *Civil Procedure Rules*.
23. 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.
24. For clarity, Order 22 Rules 51(3) of the *Civil Procedure Rules*, 2010 provides that;
 1. 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.
 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.”
25. Order 22 Rule 52 of the *Civil Procedure Rules*, 2010 on the other hand provides that;

“Upon receipt of a valid notice and application as provided under rule 51, the court may order a stay of the execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.”
26. 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 in accordance with Order 22 Rules 51(1) of the *Civil Procedure Rules*. Further, it is the said notice of objection that must be accompanied by the requisite application by and on behalf of the named objector(s).
27. In my view, the Notice of Objection constitutes and forms the legal foundation and basis upon which the objections proceedings are anchored and predicated. In this regard, where no Notice of objection is lodged, then the objection proceedings cannot be mounted.
28. 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.
29. Courts have had occasion to consider this very issue on numerous occasions. In the case of *Celina Trading LLC v 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.
30. On the other hand, in *Gikunji & 3 others v Nyaga & 3 others; Wabome & 16 others (Objector)* [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 objection 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.
31. 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.
32. 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.
33. In the present case, the Application has been filed by a Director of the Defendants. The Director, Rahab Karei Mukiyama swore the Affidavit in support of the application as a Director of the Applicants but not in her own capacity. The Defendants cannot be Objectors against execution of a Decree issued against them.



34. Had the Applicants' Director commenced proper Objection proceedings but had not issued notice under Order 22 Rule 51 of the Civil Procedure Rules, the Court would have considered it as an omission.
35. Premised on the foregoing observations, I am of the considered opinion that the objection proceedings, which have been mounted in complete disregard of the set and established rules, are not only premature and misconceived, but same are invalid and bad in law.
36. Consequently, and in the premises, I would have been minded to terminate the ruling at this juncture, but for the sake of completeness, I shall endeavor to address the remaining issues, which are similarly critical and imperative.

Whether the Court should Revoke and Set Aside and the Proclamation Notice dated 09/01/2025

37. It is trite that execution against a judgment debtor is lawful and legitimate. The Applicant's Director asks the court to set aside and recall the proclamation notice by Phillip Auctioneers. It is trite that execution against a judgment debtor like in this case is lawful and legitimate.
38. 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.
39. The Court in Arun C. Sharma v 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.”
40. Earlier on the court in Precast Portal Structures v 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.”

 - a. 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.
 - b. That the objector holds that property on his own account.”
41. 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.”

42. The Applicants’ Director alleged that the proclaimed goods belongs to her and not the Applicants. She argued that the goods indicated on the Proclamation Notice are of personal nature and cannot belong to the Applicants who are juristic persons. The deponent did not attach any proof of ownership. The Applicants bore the burden of proving their claim(s) pertaining to ownership of the proclaimed goods, which anchor or color the objections proceedings.
43. It is therefore my finding that the Applicants herein have neither established nor demonstrated that they have any legal or lawful rights to and in respect of the proclaimed goods.
44. The Applicants further sought an interim stay of execution. The prayer as framed does not specify the stay shall be granted pending what eventuality. Having found that there is no plausible reason of setting aside the Proclamation Notice, the Court has no basis of granting a Stay of Execution under Order 22 Rule 52 of the *Civil Procedure Rules*. In any event, there is an application for stay of execution awaiting determination before the Court of Appeal.
45. Final orders for disposal
 - a. In conclusion, the Applicants application dated 2/4/2025 is not merited.
 - b. It is dismissed with costs to the Plaintiff/Respondent.
46. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Mr Karuti for the Respondent
2. Mr Moshe for the Applicants
3. CA- Ms Yvette

