



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mohammed & another v Mwembe (Civil Appeal E012 of 2025)  
[2025] KEHC 16616 (KLR) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16616 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E012 OF 2025  
AN ONGERI, J  
NOVEMBER 14, 2025**

**BETWEEN**

**ABDI ABDULLAHI MOHAMMED ..... 1<sup>ST</sup> APPELLANT**

**SHIRWA LOGISTICS LTD ..... 2<sup>ND</sup> APPELLANT**

**AND**

**TSIMBU DZITU MWEMBE ..... RESPONDENT**

*(Being an appeal from the Ruling of T. N. Sinkiyian (PM) in Voi  
CMCC Case No. 156 of 2019 delivered on 4th February 2025)*

**JUDGMENT**

1. This appeal arises from a Ruling delivered on 4<sup>th</sup> February 2025 in respect of Appellant/Objector's application dated 15<sup>th</sup> March 2024.
2. The Objectors, Abdi Abdullahi And Shirwa Logistics Ltd were seeking release of two motor vehicles registration KCB 235W and KCF 351M together with foodsuffs on the basis that they belonged to Abdi Abdullahi Mohamed And Shirwa Logistics Ltd and not the Judgment Debtor Gure Foodstuffs Ltd.
3. The trial court found that the 1<sup>st</sup> Objector had proved that motor vehicle registration No. KCB 235W belonged to him by availing search records.
4. Although the 1<sup>st</sup> Objector was a director of Gure Foodstuffs Ltd, the trial court found that the company in a distinct legal entity from the directors, owners or shareholders thereof.
5. The trial court ruled that the 2<sup>nd</sup> Objector Shirwa Logistics Ltd did not produce evidence to show how it acquired motor vehicle registration No. KCF 351M except the search records.



6. The trial court said that the 2<sup>nd</sup> Objector was not part of the suit and chose to avail evidence through the 1<sup>st</sup> Objector.
7. The trial court also found that there was no evidence that the food stuffs belonged to the Objectors and not the Judgement Debtor Gure Foodstuff Ltd.
8. The trial court directed that execution proceeds in respect of motor vehicle registration number KCF 351M and the food stuffs which were proclaimed.
9. The Objector/Applicants filed this appeal on the following grounds:-
  - i. That learned Magistrate erred in law and fact in holding that there was agency between the 1<sup>st</sup> Appellant and the 2<sup>nd</sup> Appellant regarding ownership of motor vehicle registration No. KCF 351M on the face of NTSA certificate to the contrary.
  - ii. That the learned trial Magistrate erred in law and fact in relying police abstract and NTSA certificate of search regarding motor vehicle registration No. KCF 351M that bore the date before the impugned proclamation.
  - iii. That the learned trial Magistrate erred in law and fact in failing to appreciate that by the time the impugned Proclamation was made, the registered owner of motor vehicle No. KCF 351M was the 2<sup>nd</sup> Appellant.
  - iv. That the learned trial Magistrate erred in law and fact in holding that the 2<sup>nd</sup> Appellant owned motor vehicle registration No. KCF 351M for an act done on behalf of the true owner, Gure Foodstuff Ltd in the absence of any evidence to support such finding.
  - v. That the learned trial Magistrate erred in law and fact in holding that there was no evidence to show that the proclaimed Foodstuffs belonged to the 1<sup>st</sup> Appellant on the face of documentary evidence confirming that the impugned proclamation was done at the premises owned by the 1<sup>st</sup> Appellant.
  - vi. That the learned trial Magistrate erred in law and fact in failing to appreciate that the 2<sup>nd</sup> Appellant was the prima facie registered owner of motor vehicle registration No. KCF 351M by dint of NTSA search certificate.
  - vii. That the learned trial Magistrate erred in law and fact in failing to appreciate that it is the Respondent who bore the burden of proving that the 2<sup>nd</sup> Appellant was not the owner of KCF 351M, NTSA Search Certificate notwithstanding.
  - viii. That the learned trial Magistrate erred in law and fact in arriving at the conclusions she did by relying on extraneous materials and/or facts which did not form part of the objection proceedings.
  - ix. That the learned trial Magistrate erred in law and fact in making conclusions that were not supported by the evidence on the record of the objection proceedings.
10. The parties filed written submissions as follows:- The Appellant submitted that this appeal arises from objection proceedings in the lower court concerning the attachment of the Appellants' properties—motor vehicle KCF 351M and various foodstuffs—by Trophy Auctioneers in execution of a decree from Voi CMCC No. 156 of 2019.



11. The Appellants, who were not parties to the original suit, argue that the learned Trial Magistrate erred in fact and law by disregarding their documentary evidence of ownership and upholding the attachment of these specific assets.
12. The Appellants contend that the Trial Magistrate fundamentally erred by ignoring legally recognized proof of ownership.
13. That for motor vehicle KCF 351M, the Appellants produced a certified copy of records from the National Transport and Safety Authority (NTSA) dated 15th March 2024, which unequivocally registers the vehicle in the name of the 2nd Appellant, Shirwa Logistics Limited.
14. That Section 8 of the Traffic Act is clear that the person in whose name a vehicle is registered is deemed its owner unless the contrary is proved.
15. That the Respondent failed to produce any cogent evidence to rebut this legal presumption. Instead, the Trial Magistrate relied on outdated documents, such as a 2019 Police Abstract and an NTSA record from 2019, to impute a relationship of agency between the Judgment Debtor (Gure Foodstuffs Ltd) and the Appellants—a finding for which there was no evidential basis.
16. That ownership is determined at the time of attachment, not retrospectively, and the Respondent did not allege or prove that the transfer of the vehicle was fraudulent or designed to avoid the decree.
17. Regarding the attached foodstuffs, the 1st Appellant produced a Tenancy Agreement dated 27th November 2021, demonstrating he leased the store where the goods were seized.
18. This document was never challenged, contradicted, or even addressed by the Respondent in his Replying Affidavit. The Trial Magistrate provided no reason for disregarding this evidence.
19. The Appellants emphasized that Gure Foodstuffs Ltd is a separate legal entity, and the 1st Appellant, as a shareholder, cannot be held personally liable for its debts without being joined as a party under the proper procedures outlined in the Civil Procedure Rules.
20. That the Respondent did not follow the requisite legal steps to "pierce the corporate veil" or to execute the decree against the Appellants directly.
21. The Appellants further argued that the Trial Magistrate's verdict is not born out from the evidence on record.
22. That the burden was on the Respondent, as the decree-holder, to prove that the attached properties belonged to the Judgment Debtor.
23. He did not discharge this burden. That allegations of fraud were vaguely made but never distinctly pleaded or proved as required by law.
24. That the Appellants' evidence, which was uncontroverted, established their legal and equitable interest in the properties under Order 22 Rule 51 of the Civil Procedure Rules.
25. In conclusion, the Appellants urge this Honourable Court, in its role as a first appellate court, to conduct a fresh evaluation of the affidavit and documentary evidence.
26. They submitted that the Trial Magistrate's decision was based on a misapplication of the law and a failure to properly assess the evidence, leading to a wrongful attachment of their properties. The Appeal should therefore be allowed.



27. The Respondent submitted that the High Court should dismiss the appeal and uphold the Magistrate Court's ruling, which correctly found that the Appellants failed to meet the legal burden required in objection proceedings.
28. The Respondent contends that the Appellants, who were the objectors in the lower court, did not provide sufficient evidence to prove they had a legal or equitable interest in the attached motor vehicles (KCR 235 W and KCF 351 M) at the time of the proclamation.
29. That the burden of proof in such proceedings rests squarely on the objector, requiring them to present credible evidence, such as sale agreements or transfer documents, to establish genuine ownership.
30. The Respondent argued that the Appellants failed to do this, and the transfer of vehicle KCF 351 M to the 2nd Appellant after the accident and judgment appears to be a fraudulent attempt to shield the asset from execution, especially since the 1st Appellant is the main director of the Judgment-Debtor company.
31. The Respondent further asserted that the Learned Magistrate's ruling was sound, as it properly applied the relevant law (Order 22 of the Civil Procedure Rules) and considered all evidence on record without relying on extraneous materials.
32. That the ruling correctly determined that the objectors did not rebut the presumption that the attached properties belonged to the Judgment-Debtor.
33. Therefore, the Appellant's grounds of appeal, which challenge the Magistrate's evaluation of evidence and application of the law, are without merit. The Respondent prays for the appeal to be dismissed with costs.
34. This being a first appeal, the court is minded of its duty to re-evaluate the evidence adduced before the trial court and reach its own conclusion, while being alive to the fact that it neither saw nor heard the witnesses and should therefore make allowance for that.
35. The sole issue for determination is whether the learned magistrate erred in dismissing the objection proceedings in respect of motor vehicle registration no. KCF 351M and the proclaimed foodstuffs.
36. The central principle governing execution against property is that a decree-holder can only levy execution against property that belongs to the judgment-debtor.
37. Where a third party claims that the attached property belongs to them, the onus is on that objector to establish their claim on a balance of probabilities. this principle is embodied in order 22 rule 51 of the civil procedure rules.
38. However, the standard and nature of evidence required to discharge this burden must be considered within the legal framework governing ownership of specific assets.
39. Regarding motor vehicle KCF 351M, the appellants produced a certified copy of records from the National Transport and Safety authority (NTSA) dated 15th march 2024, which showed that the vehicle was registered in the name of the 2nd appellant, Shirwa Logistics Ltd.
40. The legal presumption of ownership for motor vehicles is governed by section 8 of the *traffic act*, which provides that the person in whose name a vehicle is registered is deemed to be the owner until the contrary is proved.
41. The trial magistrate's finding that the 2nd objector failed to prove ownership, notwithstanding this documentary evidence, was a misdirection.



42. The respondent's burden was to rebut this presumption with cogent evidence showing that the registration was a sham or a fraudulent transfer designed to defeat creditors.
43. The reliance by the trial court on a 2019 police abstract and NTSA record to impute an agency relationship between the judgment-debtor and the 2nd appellant was erroneous, as ownership is determined at the time of the attachment, not retrospectively.
44. The respondent did not plead or lead evidence to prove that the transfer of the vehicle to the 2nd appellant was fraudulent.
45. Consequently, the learned magistrate erred in law and fact by disregarding the conclusive NTSA certificate and upholding the attachment of motor vehicle KCF 351M.
46. Concerning the proclaimed foodstuffs, the 1st appellant sought to prove ownership by producing a tenancy agreement dated 27th November 2021, demonstrating that he leased the store where the goods were seized.
47. The trial magistrate found that there was no evidence that the foodstuffs belonged to the 1st appellant and not the judgment debtor.
48. The burden was on the 1st appellant to prove his interest in these specific goods.
49. A tenancy agreement proves possession or control of premises, but it does not, by itself, establish ownership of movable property found therein.
50. As such, the 1st appellant failed to provide sufficient evidence, such as purchase receipts, delivery notes, or invoices, to connect him legally or equitably to the foodstuffs. the trial magistrate was therefore correct in finding that he had not discharged the burden of proof regarding these items.
51. An objector must establish a right to the property itself, not merely an interest in the premises where it is located.
52. The appellants' contention regarding the separate legal personality of Gure Foodstuffs Ltd is salient. the trial court correctly acknowledged this principle in its finding on motor vehicle KCB 235W.
53. This principle, established in *Salomon v. Salomon & co. ltd* [1897] AC 22, means that the 1st appellant's position as a director does not, without more, make his personal property, or that of his other company, liable for the debts of Gure Foodstuffs Ltd.
54. To disregard this separate legality, the court would have to find grounds to pierce the corporate veil, such as fraud or improper conduct. the respondent did not allege, let alone prove, such grounds to warrant this extreme measure. the trial magistrate's contrary inference, without a legal basis, in relation to motor vehicle KCF 351M, was an error in law.
55. Upon a fresh evaluation of the evidence, the court finds that the learned magistrate erred in dismissing the objection in respect of motor vehicle KCF 351F. the 2nd appellant proved its prima facie ownership via the NTSA certificate, and the respondent failed to rebut this presumption.
56. However, the court finds no error in the magistrate's decision regarding the foodstuffs, as the 1st appellant provided insufficient evidence of ownership.
57. The Respondent, as the decree-holder, was entitled to execute against the property of the Judgment Debtor, Gure Foodstuffs Ltd.



- 58. The mere presence of goods in a store rented by a director of the debtor company does not automatically rebut the presumption that the assets belong to the company, especially where, as here, the company is in the business of dealing in foodstuffs.
- 59. The corporate veil protects shareholders from personal liability for corporate debts, but it does not conversely make a shareholder's premises a shield for corporate assets from lawful execution.
- 60. Consequently, the appeal partly succeeds. the ruling of the subordinate court delivered on 4th February 2025 is hereby set aside and substituted with an order allowing the objection application in respect of motor vehicle registration no. KCF 351M.
- 61. The attachment and any proceedings against the said motor vehicle are hereby lifted and set aside.
- 62. However, the appeal in respect of the foodstuffs is hereby dismissed. Each party shall bear its own costs of this appeal.
- 63. Orders to issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2025 IN OPEN COURT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

.....for Appellants

.....for Respondent

