

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

APPEAL NUMBER E344 OF 2024

BAPLIX COMPANY LIMITEDAPPELLANT

-VERSUS

ANNE WAMBUI BARAGU.....1ST RESPONDENT

M & G STATIONERY.....2ND RESPONDENT

SMART LISAMIT INTERNATIONAL LIMITED.....3RD RESPONDENT

(Being an Appeal from the Ruling and Orders of the Hon. P.K. Rotich (SPM) delivered on 30th October, 2024 in Nairobi MCELRC No. E1649/2022)

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellant herein, being dissatisfied with the Ruling and Orders of the Hon. P.K. Rotich (SPM) delivered on 30th October, 2024 in Nairobi MCELRC No. E1649/2022 between the parties filed a memorandum of appeal dated the 26th of November 2024 seeking the following orders:-

- a) **The appeal be allowed with costs to the Appellant.**
- b) **The Ruling by the Learned Magistrate delivered on the 30th day of October 2024 be set aside and accordingly reviewed.**
- c) **The Appellant's objection application in the Magistrate's Court be allowed with costs.**
- d) **This Honourable Court be at liberty to make such orders as it deems fit and or just in this matter.**

GROUND OF THE APPEAL

2. The Honourable Trial Magistrate erred in law and in fact by holding that the Appellant had failed to prove ownership of the proclaimed property and dismissing its objection application.
3. The Honourable Trial Magistrate erred both in law and in fact by dismissing the Applicant's objection application.
4. The Honourable Trial Magistrate erred both in law and in fact by holding that by the Appellant using the trade mark M & G, execution could issue against it despite it having not been a party to the suit that led to the execution.
5. The Honourable Trial Magistrate erred both in law and in fact by finding that the 1st Respondent could execute against the Appellant.
6. The Honourable Trial Magistrate misdirected himself by going against the laid down rules on execution and of proof in objection proceedings.

7. The Honourable Trial Magistrate erred both in law and in fact by relying on irrelevant grounds in arriving at the decision to find for the 1st Respondent and dismiss the Appellant's objection application.
8. The Honourable Trial Magistrate erred in law by disregarding the Judicial Precedent.
9. The Honourable Trial Magistrate erred in fact and in law by failing to appreciate the evidence tendered by the Appellant.
10. The Honourable Trial Magistrate misdirected himself in arriving at his decision in his Ruling.
11. The Honourable Trial Magistrate erred in law by not finding that execution can issue on account of a non-existent person.

BACKGROUND TO THE APPEAL

14. The 1st Respondent filed a statement of claim against the 2nd and 3rd Respondents dated the 22nd of August 2022 seeking the following orders:-
 - a. A declaration that the respondents have breached the contract of employment of the claimant and have violated provisions of the Employment Act, the Fair Administrative Actions Act and Articles 27, 41 and 47 of the Constitution of Kenya, 2010.
 - b. A finding that the termination of employment was irregular and unlawful.

- c. Compensation to the claimant as particularized under paragraph 9 above.
- d. Certificate of service to be issued to the claimant.
- e. Costs of suit and interests.

(pages 10-13 of Appellant's ROA dated 27th April 2025).

15. Vide a judgment delivered on 25th January 2024, the Honourable Trial Court allowed the 1st Respondent's claim to the tune of Kshs. 429,000/- comprising of 12 months' salary as compensation for unfair termination, and one month's salary in lieu of notice; plus costs of the suit and interest (see pages 71-83 of ROA; and 9-14 of Supplementary ROA dated 30th May 2025).
16. Following the delivery of judgment, the 1st Respondent herein extracted a Decree and filed an application for execution against the 2nd and 3rd Respondents (pages 85-88 of ROA).
17. The Appellant filed a Notice of Motion application dated 24th July 2024 brought under certificate of urgency, objecting to the execution commenced by the 1st Respondent, on the premise that the assets proclaimed by Betabase auctioneers on the instructions of the 1st Respondent belonged to the Appellant/Objector. The Notice of Motion was supported by the Affidavit of one Claire Muthoni Wanjiru sworn on 24th July 2024 with attachments thereto (pages 93-124 of ROA). They filed a further Notice of Motion application of even date, additionally seeking stay of execution pending the hearing and determination of the objection application (pages 136-138 of ROA).
18. The Appellant also filed a Notice of Objection dated 24th July 2024 (page 126-127 of ROA).

19. In response to the Notice of Motion dated 24th July 2024, the 1st Respondent filed a Replying Affidavit dated 9th August 2024 (pages 139-143 of ROA); while an entity identifying itself as Uranusafri Investment Co. Ltd file a Replying Affidavit dated 13th August 2024 in response to the objection application, clarifying that M & G Stationery sued as the 1st Respondent in the original suit (2nd Respondent in the present appeal) is a trademark that belongs to third parties and does not exist as a legal entity (pages 144-154 of ROA).
20. The Appellant herein filed a Further Affidavit dated 2nd September 2024 (pages 155-168 of ROA).
21. The court issued directions that the Notice of Motion application be disposed of by way of written submissions. The parties complied.
22. The Trial Magistrate Court delivered its ruling on the 30th of October 2024, dismissing the Appellants' Notice of Motion (objection application) dated 24th July 2024 on the basis that the objection proceedings lacked merit (ruling at pages 224-229 of ROA; and pages 17-19 of the Supplementary ROA). The said Ruling spawned the present appeal.

DETERMINATION

23. The appeal was canvassed by way of written submissions. Both parties filed.

24. This being a first appellate court, it was held in Selle v Associated Motor Boat Co. [1968] EA 123 that:- *“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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 the 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 demeanor of a witness is inconsistent with the evidence in the case generally.”*
25. Further in on principles for appeal decisions in Mbogo V Shah [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94:
- “I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”*

Issues for determination

26. In their submissions dated the 19th of September 2025, the Appellant identified the following issues for determination, namely that the learned magistrate erred in law and in fact by holding that:

- i. The Appellant had not proved ownership despite uncontroverted evidence.
- ii. The use of a trademark exposed the Appellant to execution.
- iii. By disregarding the settled rules of objection proceedings.
- iv. By sanctioning execution against a non-existent entity.

27. On his part, the 1st Respondent submitted generally on the grounds of appeal in her submissions dated the 6th of October 2025.

28. The court finds the issue for determination in the appeal was whether the objection against execution by the appellant was merited.

DECISION

Whether the objection against the executions by the appellant was merited

29. The court was of the considered opinion that the crux of the appeal lay in 3 of the grounds-

- a) The Honourable Trial Magistrate erred in law and in fact by holding that the Appellant had failed to prove ownership of the proclaimed property and dismissing its objection application.

- b) The Honourable Trial Magistrate erred both in law and in fact by holding that by the Appellant using the trade mark M &G, execution could issue against it despite it having not been a party to the suit that led to the execution.
- c) The Honourable Trial Magistrate erred in law by not finding that execution can issue on account of a non-existent person.

The Appellant's submissions

30. On Whether the Appellant Discharged Its Burden of Proof 5. Sections 107 and 108 of the Evidence Act place the burden of proof upon the party who alleges. In Objection Proceedings, the Objector bears the duty of proving that the attached goods belong to it and not the Judgment Debtor. The Appellant in the lower court produced documentary evidence including: a) Receipts showing purchase of the proclaimed furniture; b) An agreement evidencing its independent business operations; and c) A tenancy arrangement demonstrating occupation of the subject premises. This evidence was uncontroverted by the Respondent. The Appellant thus discharged its evidential burden. The Appellant annexed receipts of purchase of the proclaimed furniture, an agreement showing its independent business operations and tenancy records of the premises. All this evidence was placed before the Trial Court. It was neither challenged nor rebutted by the Respondent. Sections 107 and 108 of the Evidence Act place the burden of proof on the party who alleges. The Appellant discharged that burden. In *Sarah Ambrose Achieng t/a Bondo Rafiki Hardware v Dennis Ambrose Achieng & Another; Robina Onyango (Objector)* [2020] eKLR, Justice Aburili held that where an Objector demonstrates ownership of proclaimed property and no contrary evidence is given, the proclamation must be lifted. We also rely on the case of *Phylis Kemuma Onenga v Dima College Limited & another* (Petition

577 of 2017) [2022] KEHC 15476 (KLR) where it was held as follows:- 20. Under Sections 107 and 108 of the Evidence Act, an Objector has the burden of proving and establishing his right to have the attached property released from the attachment. See *Pre cast Portal Structures vs. Kenya Pencil Company Ltd & 2 others* [1993] eKLR. 21. My finding is that the Objector has satisfied this Court that a part of the proclaimed items belong to Mundia Geteria while others belong to the Objector. There is no evidence of any of them belonging to the Judgment debtor. The Judgment debtor and the Objector are two separate legal entities and must be treated as such.” 11. Similarly in *Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector)* [2019] KEELRC 2572 (KLR) the court held as follows:- The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached. So, a mortgagor can bring an objection on the ground that his interest in the property, viz, the equity of redemption cannot be attached and sold in execution of a decree against the mortgagee. See *Precast Portal Structures versus Kenya Pencil Company Ltd & 2 others* [1993] eKLR; The burden is on the objector to prove and establish his right to have the 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. (1) 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 (2) that the objector holds that property on his own account. 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.” It was therefore a clear misdirection for the Learned Magistrate to hold that ownership had not been proved despite this evidence being uncontroverted.

31. Use of a trademark by an objector- On whether use of the Trademark “M & G” exposed the Appellant to Execution. The Trial Court reasoned that because the Appellant used the trademark “M & G,” execution could lawfully issue against it. The appellant submitted that was an error in principle. That a trademark is not a juristic person. It is intellectual property capable of being used by different legal entities under license and or distributorship. Consequently, execution must be strictly confined to the Judgment Debtor who is juristic person. The Appellant could not be made liable on the basis of a mere trademark.
32. Rules of procedure in objection proceedings -On Whether the Court disregarded Rules of procedure and Precedent. Order 22 Rules 51 to 54 of the Civil Procedure Rules provide that once an Objector presents evidence of ownership, the evidential burden shifts to the Decree Holder. The Appellant met its part by producing receipts and agreements. The Respondent failed to dislodge that evidence. In the circumstances, the Trial Court was bound to make a finding of fact as to the ownership of the proclaimed goods in favour of the Appellant. We wish to rely on the case of Arun C. Sharma v Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others [2014] KEHC 1412 (KLR) where the Court reiterated the rules of procedure in Objection Proceedings as follows:- “The law is clear; under Order 22 rule 51(1) of the Civil Procedure Rules: 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 parties to the decree holder, of his objection to the attachment of such property. “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. Has the objector proved it is entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree?” The Court further went to hold as follows in regard to the shift on the burden of proof “Except, it is important to note that, where the attaching creditor has doubted documents like they have done here with the insurance policies produced they should subject them to forensic and other authentication examination. The court will not do that for the parties. In the circumstances, I will give the benefit of doubt to the objectors and order return of all the attached household goods to them.” In *Bakehouse Investment Ltd v Bake N Bite (Nairobi) Ltd & Another; Antonio Lionetti (Objector)* [2020] eKLR, the High Court confirmed that an Objector needs to annex proof of ownership of the domestic goods. It is not the branding of the premises that confers ownership of goods within the premises but actual proof of ownership and which the appellant exhibited. The Learned Magistrate ignored this settled principle and instead imposed an unreasonable standard on the Appellant.

33. Finally, execution was being carried out against “M & G Stationery,” an entity that does not exist in law. One cannot execute against a non-entity. 22. In *Housing Finance Co. of Kenya Ltd v Embakasi Youth Development Project* [2004] eKLR, the Court held as follows:- “There are also matters of law that I should set out here, as a basis for the resolution of the question raised in the Chamber Summons of 16th August, 2004. These are as follows: 1. The two cases sought to be relied on by the parties, albeit for different purposes, namely Fort Hall Bakery Supply Co.

v Fredrick Muigai Wangoe [1959] E.A. 474 and Francis Karani Elijah & 2 others v. Chairman (KANU) & 2 others, Misc. Civil Case No. 238 of 2002, for the purpose of the instant matter, speak authoritatively in the same terms : only a juristic person, that is an entity endowed with legal personality, can have locus standi before the Court, and can be the subject of rights and liabilities as may be declared by the Court. Court orders are not made in vain and are intended to be executed. Such execution is only possible in relation to entities endowed with legal personality. It follows that the notion that an entity lacking legal personality can seek orders of the Court or become the bearer of rights or liabilities declared by the Court, is totally inconsistent with the character and modus operandi of the Courts in the common law system. In this system, judicial orders may only be made where they are assured of enforcement and this assurance is secured by the effectiveness of the law relating to contempt of Court.” It would not have mattered that judgement had already been delivered against a non-existent entity. As soon as the Trial Court realized that “M & G Stationery” did not exist (even at the execution stage) then the it ought not have allowed execution against it. The Trial Court therefore erred in allowing attachment of the Appellant’s property based on a decree against a name that has no legal standing.

The Respondent’s submissions

34. BRIEF FACTS AND BACKGROUND - Prior to the Appellant herein filing the Objector proceedings at the Magistrate’s Court to stop execution, the 1st Respondent and decree-holder, had instructed auctioneers to attach property of the 2nd Respondent in execution of the decree of the Magistrates Court in ELRC Cause No. E1649 of 2022 where the 1st Respondent was awarded Kshs. 429,000/= as compensation for unfair termination of employment by the 2nd &

3rd Respondents. The 2nd Respondent participated in the proceedings at the Magistrates Court, while the 3rd Respondent never entered appearance nor filed response. On the day of hearing, the 2nd Respondent was not ready to proceed despite being granted enough time to prepare for hearing and to file documents. The case proceeded with the Claimant's case and when judgement was delivered against the 2nd & 3rd Respondents on 25th January, 2024, they did not file any appeal to challenge the decision. Warrants of attachment were issued on 18th July, 2024 against the 2nd & 3rd Respondents. The 1st Respondent through her lawyers, instructed auctioneers who went to attach the 2nd Respondent's property at their office along Muthithi Road in Westlands. The office in Westlands is clearly branded "M & G Stationery" and they have branches and shops in various parts of the city. The Appellant herein then moved to Court by filing Objector proceedings, claiming that the attached goods belonged to them. The Court not being satisfied with their application dismissed it on 30th October, 2024. The 2nd Respondent, one of the judgement-debtors, is trying to hide behind a proxy company, the Appellant herein in order to avoid paying the decretal sum and stall the process of execution. The Ruling appealed against is regular and the Appellant herein, who is the Objector, instead of only trying to prove that they are the owner of the attached goods, is trying to differ with the merits of the original judgement which they were not party to and which the 2nd & 3rd Respondents never appealed against. This only proves further the interconnectedness between the Appellant and the 2nd & 3rd Respondents, hence the Appeal filed herein is frivolous.

35. GROUNDS 1, 2, 4, 5, 6,7,8 & 9 OF THE MEMORANDUM OF APPEAL - The objector did not prove legal and equitable interest in the proclaimed goods. The objector only produced invoices and yet invoices are neither receipts nor proof of payment or ownership of the

proclaimed goods. The Objector did not show legal and equitable interest in the proclaimed goods and there is no nexus between the Objector and the proclaimed goods. In the case of Randon S. A. Implementors Eparticipacoes v RT (East Africa) Limited; Jovan H. Kariuki (Applicant); Multiple Hauliers (E.A) Limited & another (Objectors) [2021] eKLR the Court stated as follows: “From the above cited authorities, I find that the law is clear on the probative value of invoices in as far as objections to proclaimed/attached properties are concerned and I do not intend to reinvent the wheel on the said subject. The 2nd objector listed at least 12 items supported by various invoices in its affidavit in support of the objection to the attachment of the said items. I am not satisfied that the invoices presented by the 2nd Objector constitute sufficient proof of legal/equitable interest in the attached goods save for the invoice at page 19 of the annexures that has an ETR receipt attached to the top left corner. I therefore lift the attachment of the proclaimed goods only in respect to the goods specified in the invoice dated 3rd August 2020 (at page 19 of the Objector’s annexures). For the avoidance of doubt, I decline to lift the attachment of the goods listed by the 2nd objector save for the goods in the said annexure dated 3rd August 2020.” “Turning to the issue of whether the Objectors have made out a case for the granting of an injunctive relief, I find that save the motor vehicle and the items on the invoice at page 19 as stated hereinabove, the Objectors have not demonstrated that they are entitled to the injunctive orders sought. I find that the Objection in respect to the rest of the attached goods does not meet the conditions set in Giella vs Cassman Brown & Co. Ltd [1973] EA 358 case for the granting of orders of injunction.” In this case there was no single receipt produced of the proclaimed goods. What the objector attached were just invoices. On the basis of the above facts and the authority referred to above, there was no evidence produced to show that the objector owned the proclaimed goods to warrant lifting of the

attachment. Is there a relationship between the Objector and the 2nd Respondent (M & G Stationery)? The relationship between the Objector and the 2nd Respondent is one that allows the application of Section 44(1) of the Civil Procedure Act which states as follows: “All property belonging to a Judgement debtor including property over which or over the profits of which he has disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree.” The Objector expressly stated that they are distributors of M & G Stationery products and the office they operate in at Muthithi place is clearly branded M & G Stationery. In fact, when clients buy goods from M & G Stationery, payments are made through an account at Diamond Trust Bank, account number 100500 belonging to Baplix Limited, the Objector herein. 15. In the case of National Bank of Kenya v Richard K. Serem & 3others [2017] eKLR the Court held as follows while dismissing objector proceedings: “I am persuaded to agree with the Plaintiff/Decree-holder that the Objector is colluding with the judgment debtor to defeat the execution process. I say so because when he was placed in civil jail in July 2010, he undertook to sell part of the property in consultation with his family to payoff the debt. Instead, when he regained his freedom, he did not do so. He moved to court by the objectors in these objection proceedings.” “It is trite that when a party offers a property to secure or be a collateral to a loan or any financial facility, that property whether family land, matrimonial property or otherwise becomes a commercial property for sale to realise the loan amount and or a debt or decretal sum.” “I have considered issues in the main suit and in the objection proceedings. I do not find it necessary to consider them as a suit. The Judgment Debtor failed to defend the suit during which he would have probably brought out all the issues now being discussed in these objection proceedings. Those where not his

intentions then. This buttresses the decree holders contention that these objection proceedings are an after-thought in inclusion with the judgment debtor.” “In its entirety, I find no plausible objections that could be said to be justifiable in any way.” “I therefore come to the conclusion that the land Parcel No.Kericho/Koiyet/142 is solely owned by the Judgment Debtor and not held in trust for the objectors or any other persons recognisable in law. Further, it is the courts finding that there is no basis upon which these objection proceedings could be ordered to proceed as a suit. Any issue touching on the suit ought to have been canvassed in the main suit and as I have stated the Judgment Debtor opted not to defend the suit. He cannot reopen the case by way of objection proceedings by the objectors whose interests have not been proved or demonstrated.” “Consequently, the attachment proceedings may be progressed to finality unless otherwise ordered by the court.” According to section 67 the Companies Act 2015, a company is required to display its name on the premises. In this case the Objector’s name does not appear on the premises at Muthithi Place where the goods were proclaimed, but the name displayed is that of the 2nd Respondent, M & G Stationery, hence the objection is baseless. The same employees whom the Claimant used to work with while the office was located at Nyakio House, are the same ones working at the Muthithi place, Westlands Office. The 2nd Respondent is trying to hide behind a proxy company, the Objector herein in order to avoid paying the decretal sum and stall the process of execution. On the basis of Section 44(1) of the Civil Procedure Act and the Objector being distributors of M & G Stationery products, the Objector’s appeal herein should be dismissed.

36. WHETHER THE TRIAL COURT ERRED IN ALLOWING EXECUTION AGAINST THE 2ND RESPONDENT GROUNDS 3 & 10 OF THE MEMORANDUM OF APPEAL- The

issue raised by the Objector on this ground is that the 2nd Respondent is a trademark and not a registered company and therefore it could not be sued and decree cannot be executed against it. The issue of whether the 2nd Respondent is a company or not is not an issue for determination during objection proceedings when there is a judgement and decree, that was not appealed against. Objection proceedings are limited to whether there is any interest raised by the objector in the proclaimed goods. In the case of *Randon S. A. Implementors Eparticipacoes v RT (East Africa) Limited; Jovan H. Kariuki (Applicant); Multiple Hauliers (E.A) Limited & another (Objectors)* [2021] eKLR the Court stated as follows on the purpose of objector proceedings: “The court is required to determine is whether an objector has an interest, legal or equitable in the attached property. In *Arun C. Sharma vs Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] eKLR the court held as follows: - “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.” “In *Precast Portal Structures vs Kenya Pencil Company Ltd & 2 Others* [1993] eKLR it was held: - “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. i) 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. ii) That the objector holds that property on his own account. 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 Judgment-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” Judgement was delivered on 25th January, 2024 against the 2nd and 3rd Respondents and no appeal was filed. Therefore, the issue of whether the 2nd Respondent is a company or not is immaterial to these proceedings. In any case, the Employment Act defines “employer” for the purposes of the Act to mean: “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”. The 2nd Respondent was the Claimant’s employer and she was even issued with a work identity card that clearly stated the name of her employer as M & G Stationery (attached in Claimant’s list of documents). The 3rd Respondent too was found liable as the salary payments were channelled through them. 24. The 2nd Respondent has branches and shops all over Nairobi city and the 1st Respondent should be allowed to execute the decree at any of the branches which are clearly branded “M & G Stationery.” Execution will be against the 2nd & 3rd Respondents as per the original judgement and the Appellant is not a party to it. 25. Since judgement was issued jointly and severally against the 2nd and 3rd respondents, the 1st Respondent is at liberty to execute against either of them.

DECISION

37. The objection proceedings arise from the execution proceedings in judgment of the lower court delivered on the 25th January 2024 against the respondents jointly and severally (pages 82-83 of the ROA was the judgment). The respondents were M&G stationery and Smart Lisamit International Limited. During the execution the Objector filed an application dated

24 July 2024 to effect that the respondents had no equitable or legal interest in the proclaimed goods (pages 95-97 of ROA was the Notice of Motion application). The objector was a limited liability company and annexed its certificate of incorporation dated 16th December 2022 (page 102 of the ROA). The objector annexed licence of distribution of goods under products and trademark M&G (pages 104- 114). The deponent of the supporting affidavit averred that while it sold goods branded M&G it had never been known as M&G stationery. The appellant further annexed letter of offer of rentals space at Muthithi Place where the proclamation occurred and tax invoice and KRA legal receipt for rent and remittance (page 118 & 119 of the ROA). The appellant annexed invoices alleged to be for the attached goods (pages 122-124).

38. The employment contract of the claimant was before the lower court to effect that the employer was the 2nd respondent. On perusal of the employment contract the court did not find mention of M&G (151-152 of ROA). A search was annexed of the 1st respondent to effect that it was not a legal entity registered as a company (page 153). On this, the 1st respondent submitted that the judgment was not appealed against and could not be subject of objection. The instructions to the auctioneer by the advocates were to M&G Stationery at Nyakio House, Keekorok Road, Nairobi (page 169). The auctioneer proclaimed at Muthithi place. The proclamation notice stated M&G stationery.
39. The 1st respondent swore an affidavit to effect that she held an employment card of M&G stationery (page 142). That she was aware of the relationship between the objector and the M&G stationery, as when large clients buy goods from the M&G stationery, they pay through an account held by the objector and annexed MPESA payment, herself having paid Kshs. 1 to the bank account of the Objector (page 143).

40. The trial court relying on the affidavit of the claimant found that the offices at Muthithi place where the proclamation occurred were branded M&G stationery the 1st respondent in the suit and further had not produced receipts for the goods proclaimed as proof of ownership. The trial court held that the goods were branded M&G, and the objector admitted distributing goods for M&G stationery.
41. The court established that the employer of the claimant was the 3rd respondent. The court found that the trial court held the goods were branded M&G. The place of instruction of attachment was different from where the attachment occurred. As to the proof of whether the goods attached belonged to the objector, the trial court held there was no evidence. The court found there was evidence of rent having been paid for the premises at Muthithi. The objector produced documents as proof of ownership of the goods. At page 123 of the ROA, documents annexed by Wanjiru, dated 24th July 2024, for the objector as CMW5 (China Square Limited to the objector). It was titled tax invoice original for the sum of Kshs. 277,780, indicating cash (page 123). On page 124, another document titled 'sales invoice' was stated to be retained as proof of purchase. The court noted that there was proof of rent remittance by the objector/appellant for the said premises. The court found there was sufficient proof of ownership of the said proclaimed goods by the appellant. The documents indicated cash and said was proof of purchase. The court found the sending of Kshs. 1 by the claimant to the account of the objector was not proof of nexus between the employer and the objector. On a balance of probabilities, the appellant proved it was the owner of the proclaimed goods branded M&G by production of purchase evidence. The trial court erred by failing to scrutinize the evidence presented as proof of the purchase. The court found it would be absurd

to attach goods of a random business on basis of distribution of brand of goods based on a debt accrued by another distributor of the same brand/trademark. A brand or trademark is not a legal entity to bear any duty or liability.

42. The appeal is allowed. The Ruling and Orders of the Hon. P.K. Rotich (SPM) delivered on 30th October, 2024 in Nairobi MCELRC No. E1649/2022 delivered on the 30th day of October 2024 is set aside and substituted with an Order that the Appellant's objection application in the Magistrate's Court dated 24th July 2024 is allowed with costs.
43. Costs of the appeal to the appellant.
44. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH
DAY OF NOVEMBER, 2025.**

J. W. KELI,
JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Lwande h/b for Akenga

Respondent: absent