

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION

HCCOMM ARB. NO. E023 OF 2023

**ENSERVE LIMITED.....DECREE
HOLDER**

VERSUS

**BELVIN TRADERS LIMITED.....JUDGMENT
DEBTOR**

**EZEKIEL M. MWANIKI.....1ST
OBJECTOR/APPLICANT**

**JAMES MUTEMBEI GITONGA.....2ND
OBJECTOR/APPLICANT**

RULING ON OBJECTION PROCEEDINGS

1. The Applicants herein are the Objectors in the execution proceedings taken out by the Decree Holder arising from a decree dated 13th May 2025.
2. The Judgment Debtor failed to settle the decretal amount and costs necessitating the taking out of execution proceedings upon the ruling of this court which recognized and adopted the arbitral award issued on 25th January 2022 and the award on costs dated 2nd May 2023.
3. Upon warrant of attachment having been duly issued by the court to Icon Auctioneers a proclamation of moveable

property was done at the premises of Belvin Traders Limited (the judgment Debtor) on 16th October 2025.

4. It is on that basis that the Objectors moved to court vide the Notice of Motion dated 30th December 2025 seeking orders that:

1. Spent...

2. Spent...

3. Spent...

4. The attachment and/or intended sale of the goods listed the proclamation dated 16th October 2025 be lifted, stayed and/or set aside

5. A declaration be issued that the proclaimed/removed goods do not belong to the judgment debtor but to the objector.

6. The proclaimed goods be forthwith released to the objector.

7. The costs of the objection proceedings be in the cause.

5. The application was supported by the affidavit and further affidavit of Ezekiel Mwaniki as well as the affidavit of James Mutembei who are the two Objectors. It was deposed that the judgment debtor does not own the four containers among the goods that were proclaimed. And that the Judgment Debtor only had temporary possession and/or custody of the goods in the ordinary course of business as an import and export, remodelling and refurbishment company.

6. The Objectors further contend that the containers belong to them , and not the Judgment Debtor and their proclamation was unlawful and irregular. They urge the court to grant the orders sought.
7. One Ben Wamae, the Judgment Debtor's Director in his affidavit sworn on 23rd January 2026 averred that the subject containers had been sold to the Objectors by the Judgment debtor and paid for in full. He supported the Objectors' application.
8. The Decree holder opposed the application through the affidavit of its Operations Manager Adrian Kariuki Mwai sworn on 9th January 2026. He deposed that the alleged transaction between the Judgment Debtor and the 1st Objector ought to have been completed in February 2024 as per documents annexed to the Objector's supporting affidavits. And that in any case those transactions do not refer to the proclaimed containers.
9. The Decree Holder prayed that applicant prayed that the notice of motion be dismissed with costs.

Analysis and determination:

10. Having considered the application, the affidavits in support and in opposition thereto and the parties' submissions, the issues raised are:

- i. *whether the Objector has established a legal or equitable interest in the attached motor vehicle.*
- ii. *whether the attachment should be lifted.*

11. On these issues, the Court is guided by **Order 22 Rule 51(1)** of the **Civil Procedure Rules**, which provides as follows:

“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.”

12. Indeed, the instant objection proceedings are brought under this very provision. As held in **Patrick King’ori Waruguongo v James Nderitu & another [2014] eKLR** and **Chai Trading Co. Limited v Muli Mwanzia & 2 others [2019] eKLR**, in objection proceedings, it is always the objector’s duty to establish ownership of the subject property. It is therefore not enough for an objector to state that the property does not belong to the judgement debtor, they must show by cogent evidence that they themselves have a definite interest in the said property.

13. It was submitted for the Objectors that the availed documents including invoices raised by the Judgment Debtor, evidence of payments and acknowledgment, plus email correspondences, was adequate demonstration that the Objectors had acquired beneficial and equitable proprietary interest in the containers prior to attachment.
14. On the other hand, it is submitted for the Decree Holder that the alleged ownership documentation exhibited by the Objectors is suspect, leaves a lot of gaps in terms of dates of transactions, invoices lack serial numbers, number of containers and sizes and therefore there is no linkage between the Objector and the subject containers proclaimed. And further that it is evident that the email correspondences were clearly forwarded from the Judgment Debtor's email address *belvintradersltd@gmail.com* to the Objector's Advocates email address *tkruttoadvocates@gmail.com*
15. The aspect of where the subject containers were at the time of proclamation and attachment is not disputed - they were in the premises of the Judgment Debtor. What the court must be satisfied with is whether the Judgment Debtor held or was keeping the said property on its own account or on account of the Objector in the ordinary course of trade. The question to be interrogated is, one of possession of and some interest in the attached property.

16. I have perused the documents availed by the Objectors in their application. In addition to the concerns raised by the Decree Holder in respect of the subject containers, I note that the transactional emails lack specificity. The observation is that the Judgment Debtor generally transacted in containers and there is no way of isolating the subject containers herein. There any ample documentation to prove that the subject containers assets were at date of proclamation owned by the Objector.
17. In **Zingo Investment Ltd v Miema Enterprises Ltd [2015] eKLR**, the court held that proprietary interest in the assets must be provided. In the instant case, there is no proof of purchase of the container by way of payment receipts or otherwise. Further, the court has not been provided with an inventory of containers that may have been purchased or came into possession of the Objector after 20th December 2023 when an email was send by the Judgment Debtor giving its Bank Account details.
18. As it stands, the burden of proof has not been discharged by the Objector to the satisfaction of the court. The objector has failed to satisfy the court that they owned the attached/proclaimed containers as at date of attachment. It is not enough that the Objector aver that at date of proclamation the assets were wholly owned by them. No sufficient and credible documentation of ownership has

been provided for the Objectors to claim beneficial interest of the proclaimed containers.

19. For the foregoing the court finds the Objectors application dated 30th December 2025 to be without merit and it is dismissed.

20. The temporary stay of execution orders issued by this court on 4th January 2026 pending hearing and determination of the application are hereby vacated.

21. The Objectors are condemned to bear costs of the application to the Decree Holder.

Orders accordingly.

RULING delivered virtually, dated and signed at **NAIROBI**

This **29th** day of **January** 2026.

P.M. MULWA

JUDGE

In the presence of:

Mr. Ouma Ochieng h/b for Mr. Mureithi for D/Holder

Ms. Maina for J/Debtor

Mr. Otieno h/b for Mr. Rutto for Objectors

Court Assistant: *Carlos*