



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**MISC APPLN NO. E1109 OF 2020**

**BETWEEN**

**KILIMANJARO CONSTRUCTION LIMITED ..... 1<sup>ST</sup>**  
**APPLICANT**

**VERSUS**

**CYTONN INVESTMENT PARTNERS THREE LLP ..... 1<sup>ST</sup>**  
**RESPONDENT**

**CYTONN REAL ESTATE LIMITED ..... 2<sup>ND</sup>**  
**RESPONDENT**

**AND**

**CYTONN INVESTMENT PARTNERS SIXTEEN LLP ..... 1<sup>ST</sup>**  
**OBJECTOR**

**CYTONN PROPERTIES ..... 2<sup>ND</sup>**  
**OBJECTOR**

**RULING**

**Background and Introduction**

1. For determination is the application dated 27<sup>th</sup> October 2023, brought in the nature of objection proceedings. The Objectors pray that the proclamation, attachment, and intended sale of the

assets and tools of trade enumerated in the Proclamation of Attachment dated 26<sup>th</sup> October 2023 be set aside and quashed. They further seek a permanent order restraining the Applicant (the Decree Holder) from attaching or disposing of the aforementioned assets. The application is opposed through a Replying Affidavit sworn on 11<sup>th</sup> January 2024 by **Arvind Patel**, the Managing Director of the Decree Holder.

2. I have equally considered the Objectors' Supplementary Affidavit filed in response to the Replying Affidavit as well as the submissions on record.

### **Analysis and Determination**

3. The applicable threshold for objection proceedings is set out under **Order 22 Rule 51(1) of the Civil Procedure Rules**. It stipulates that:

***“Any person claiming to be entitled to or to have 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 the 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.”***

4. The provision is intended to strike a balance between a decree-holder’s right to realize the fruits of judgment and the protection of third parties from unlawful deprivation of property. It acknowledges the principle that execution should only be levied against the property of the judgment debtor, and not against assets belonging to strangers to the proceedings.
5. Before delving into the substantive grounds raised in this application, I must first address the preliminary submission by the Objectors that the entire execution process is a nullity. Their argument is premised on the assertion that no notice of intention to proceed with execution was issued to either the Court or the Objectors, as required under ***Order 22 Rule 52 of the Civil Procedure Rules. Order 22 Rule 52*** is designed

to ensure transparency and fairness in the execution process by requiring that parties likely to be affected are duly notified.

- 6.** Even assuming, for argument's sake, that such notice was not issued in the present case, I am not persuaded that the omission has occasioned any prejudice to the Objectors. They have already participated fully in these proceedings, filed affidavits, and advanced submissions in opposition to the execution. This demonstrates that they were neither taken by surprise nor deprived of the opportunity to ventilate their claims. The essence of procedural fairness has therefore been preserved. The alleged failure to issue notice, if at all does not invalidate the execution process and I shall now proceed to consider the substantive grounds raised by the Objectors.
- 7.** The Objectors challenge the attachment on the basis that it seeks to execute against movable goods which they claim are lawfully owned by them, yet they were not parties to the arbitral proceedings. Their position is that the assets in

question are therefore not available for proclamation, attachment, or sale.

8. The Decree Holder on the other hand, asserts that the execution process is firmly anchored in law, being founded upon valid warrants of attachment issued by this Honourable Court. It is contended that the proclaimed goods belong to the Judgment Debtors and not to the Objectors as alleged. The Decree Holder emphasizes that the proclamation was carried out at the Judgment Debtors' premises and submits that the Objectors' claim of ownership rests on bare allegations unsupported by evidence.
9. The jurisprudence on objection proceedings is well settled. The determinative question in such applications is whether an objector has sufficiently demonstrated the existence of a legal or equitable interest in the property under attachment. Courts have consistently emphasized that the burden lies squarely on an objector to establish such interest through credible evidence.
10. This principle was articulated in **Arun V Sharma Astana Raikundaha T/A Raikundaha & Co Advocates & 4 Others, (2014) KEHC 1412**

**(KLR)**, where the Court underscored that objection proceedings are not intended to shield judgment debtors from execution, but rather to protect third parties who can prove genuine ownership or entitlement to the attached property.

11. Similarly, in **Stephen Kiprotich Koech V Edwin K. Barchilei; Joel Sitienei (Objector), [2019] eKLR**, the Court reaffirmed that:

***“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.”***

**12.** Applying these principles to the present case, I have carefully examined the evidence tendered by the Objectors. I find that no credible or tangible proof of ownership has been presented to support their claim. The Objectors have not produced documentation, records, or any material capable of establishing either legal title or beneficial interest in the proclaimed assets. On the contrary, the Decree Holder has demonstrated that the proclamation was effected at the premises of the Judgment Debtors. In the absence of evidence to rebut this fact, the presumption of ownership by the Judgment Debtors remains intact.

**13.** Accordingly, I am persuaded that the Objectors have failed to discharge the evidentiary burden required under **Order 22 Rule 51 of the Civil Procedure Rules** and as such, this ground of objection is devoid of merit and must fail.

**14.** Further, the contention by the Objectors that the movable assets constitute their tools of trade, and that their attachment and disposal would jeopardize their business operations, is equally unavailing. In the absence of proof of ownership,

the Objectors lack the requisite locus standi to advance this or any other argument in relation to the attached property.

- 15.** That said, and in the interest of conclusively addressing all issues raised, I shall proceed to consider the final ground advanced by the Objectors.
- 16.** The Objectors contend that the properties sought to be attached and sold by the Decree Holder have already been sequestered by the Insolvency Court. They rely on the liquidation orders issued on 6<sup>th</sup> January 2023 in **Nairobi HC Insolvency Petition No. E063 of 2021 (Cytonn High Yield Solutions LLP V Official Receiver)**, wherein the assets of various Special Purpose Vehicles (SPVs), including Cytonn Investment Partners Sixteen LLP (CIP 16 LLP) (the 1<sup>st</sup> Objector herein), were preserved. On this basis, they argue that any directions or orders issued by this Court in relation to the assets intended for attachment and sale in execution of the decree dated 24<sup>th</sup> May 2023 would amount to an academic exercise, given the subsisting preservation orders.

- 17.** The Respondents, however, maintain that they are not privy to the insolvency proceedings and insist that those proceedings do not affect the ongoing execution process against the Judgment Debtors.
- 18.** From the record, it is evident that the application dated 24<sup>th</sup> May 2023 did not seek a blanket preservation of all assets belonging to the Special Purpose Vehicles (SPVs) of Cytonn High Yield Solutions (CHYS). Instead, the application was narrowly tailored to specific projects whose funds had been traced from the SPVs to CHYS and subsequently applied in the development of identifiable ventures, such as the Kilimani Asset associated with the 1<sup>st</sup> Objector.
- 19.** The Insolvency Court, in considering that application, expressly acknowledged the doctrine of tracing as the basis for preservation. It recognized that those projects whose funds could be directly linked to CHYS were subject to preservation orders. Save for the preserved projects, the SPVs remained distinct legal entities with separate ownership structures and obligations. This distinction underscores the

principle that insolvency proceedings cannot indiscriminately shield all assets of related entities, but only those specifically implicated in the financial flows under scrutiny.

**20.** In light of this, the Objectors' argument that all assets of the Judgment Debtors are insulated from attachment is misplaced. Only those specific assets expressly preserved under the Insolvency Court's orders are unavailable for execution. No evidence has been placed before me to demonstrate that the assets currently proclaimed fall within the category of preserved projects. In the absence of such proof, the presumption remains that the proclaimed assets are available for attachment.

**21.** Accordingly, just as the Objectors failed to establish ownership of the proclaimed goods, they have equally failed to demonstrate that the assets fall within the scope of the preservation orders issued in the insolvency proceedings. This ground, therefore, collapses and must fail.

### **Disposition**

**22.** Accordingly, the application dated 27<sup>th</sup> October 2023 is dismissed with costs to the Decree Holder.

**DATED, SIGNED AND DELIVERED AT NAIROBI  
THIS 23<sup>RD</sup> DAY OF JANUARY 2026.**

**F. MUGAMBI  
JUDGE**

**Delivered in presence of:**

Ms Obago HB for Mr Mbaluto for the respondents

Ms Mbesa HB for Mr Oonge for the plaintiff

Court Assistant: Lillian