

1. Before the Court for determination is the motion **dated 06/03/2024** filed by **Antone Odida Oyugi, Parkview Holdings Ltd, Moreza Achieng Onyango, Mollyne Atieno Onyango, Fred Nyandaya Magomere and James Shikhule Anzabwa** (hereafter called the 1st, 2nd, 3rd, 4th & 5th Applicant/Applicants) seeking inter alia:

a) *Spent*

b) *That the prohibition order issued on 13/07/2021 against the following properties-; Kisumu/Nyalenda B/1545; Kisumu/Nyalenda B/1546; Kisumu/Nyalenda B/1547; Kisumu/Kanyakwar B/259; Kisumu/Nyalenda B/1548; Uholo/Tingare/ 1216; and Central Kasipul/Kawere Kamagak/2216 (hereafter suit properties), be lifted and or set aside and all encumbrances over the above parcels be vacated.*

c) *That cost of the motion be provided for.*

2. The motion is premised on grounds found at the supporting affidavit sworn by the 1st Applicant **Antone Udida Oyugi dated 16/08/2024**. The gist of his deposition is that he is the administrator of the estate of the late **Paul Otieno Nyamodi** where upon confirmation of the grant he sold and transferred the various suit properties to the 2nd, 3rd and 4th Applicant's. That the Advocate without his knowledge and or the Applicants obtained prohibitory orders in respect of the suit properties on 13/07/2021. He goes on to depose that despite the Advocate

filing summons to have the grant revoked and inclusion of his taxed bill as a liability in the estate and leave to sell the suit properties, the motion was dismissed. Therefore, it is necessary that the prohibition order is lifted to enable the Applicants enjoy their proprietorship rights

3. **Peter O. Ngoge t/a O.P. Ngoge & Associates** (hereinafter the Advocate) opposes the motion by way of a **replying affidavit dated 25/07/2025**. On his part the gist of affidavit is that **Antone Udida Oyugi** in his capacity as administrator of the estate of the late Paul Otieno Nyamodi, a director of the Respondent, had voluntary and unequivocally undertaken in writing to settle his claim plus auctioneer charges. He states that pursuant to the said undertaking, Antone Udida Oyugi, is estopped from excluding him as a creditor in the estate of the late Paul Otieno Nyamodi.
4. **Wolfe Projects & Building Construction Ltd** (hereafter the Respondent/Client) did not participate in the instant proceedings.
5. The Applicants motion was disposed of by way of written submissions. Only the Applicants complied with the Advocate preferring to rely on his affidavit material on record. That said, this Court has considered the rival material canvassed before the Court. Ex facie it is the Court's supposition that the issues for **determination concern: -**

a) Whether the prohibitory order issued on 13/07/2021 ought to be lifted and or set aside with the attendant encumbrances in respect of the suit properties?

b) Who ought to bear the costs of the motion?

6. In order to contextualize the disputation before this Court, it would be germane to set out the history of the matter leading hereto. The Advocate filed an Advocate-Client bill of costs dated 22/08/2006 which was taxed on 04/06/2008 in the sum of Kshs. 1,349,168/- with a Certificate of Taxation dated 25/09/2009, issued afterward.
7. Subsequently, the Advocate vide a **motion dated 15/03/2010** successfully obtained judgment on 07/06/2010 as against the Respondent in respect of the said amount in the Certificate of Taxation. It is on the premise of the said decree dated 07/06/2010 that the Advocate moved to lift the Respondent/Client's corporate veil towards having the said decree executed as against the movable and immovable assets of the Respondent directors for failing to satisfy the decree of this Court.
8. Thereafter, vide another motion dated 09/07/2021 brought pursuant to **Order 22 Rule 48 of the Civil Procedure Rules (CPR)**, the Advocate obtained a prohibition order on 13/07/2021 by way of attachment of the suit properties. It is on the backdrop of the said motion that the Applicants have presented the instant motion that is currently for consideration, seeking to lift and or set aside the prohibition

order alongside the attendant encumbrances in respect suit properties.

Whether the prohibitory order issued on 13/07/2021 ought to be lifted and or set aside with the attendant encumbrances in respect of the suit properties?

9. At the heart of the dispute is the prohibitory order issued by this Court on 13/07/2021. A prohibitory order by itself is provided for in Order 22 Rule 48 of the CPR which provides that-;

1) Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.

2) A copy of the order shall be affixed on a conspicuous part of the property.

10. By the instant motion the Applicant appears to be presenting objections proceedings in respect of the prohibitory orders issued by this Court. It warrants mentioning that the Objector proceedings on execution such as those advanced in the present motion are ideally codified in **Section 34 & 63(e) of the CPA** as read with **Order 22 Rule 51, 52, 53 and 54 of the CPR.**

11. **Order 22 Rule 51(1)** provides that -;

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.

(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.

12. As to the nature of objector proceedings, I draw guidance from the rendition of the Court of Appeal in **Southern Bell Limited v National Social Security Fund Board of Trustees & 4 others [2023] KECA 1170 (KLR)** wherein it was pithily observed that-;

“30. On the merits of the issue that we have identified for determination, it is certain that in objection proceedings such as those before the trial court, the court does not and cannot make findings as to ownership of the suit property the subject of the objection proceedings. The

court simply decides whether or not the objector has interest, legal or equitable, in the attached property.

31. In the persuasive High Court case of Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector) [2019] eKLR, the court held 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.”

See also **Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others [2014] KEHC 2430 (KLR)**.

13. The Court of Appeal in Southern Bell Limited (supra) went on to note that once the Objector discharges the burden of proving that it has a legal or equitable interest on the whole or part of the attached property, the Court is obligated to make such order raising attachment as to the whole or a portion of the property subjected to attachment.
14. From the aforementioned provisions and case law, it is clear that in order to succeed in an application in the nature of the one presented for determination, the Objector must at the very outset demonstrate a legal or equitable interest in the

attached property. Further, it is trite that in determining the present motion, the Court is not primarily concerned with ownership of the attached property. To the foregoing end, has the Applicants demonstrated ex facie a legal or equitable interest in the attached property?

15. Here, it is not in dispute that there existed an advocate-client relationship leading up to taxation of the Advocates bill and a decree of this Court issuing on 07/06/2010. Further, it would appear that the confirmation of grant in respect of the estate of the Late Paul Otieno Nyamodi was issued on 20/03/2009 going by Annexure AUO-2.
16. However, a perusal of the record reveals that prior to piercing and or lifting of the Respondent's corporate veil on 17/06/2021 and or issuance of the prohibitory on 13/07/2021, Antone Odida Oyugi had since successfully transferred the interest in land in respect of **Kisumu/Nyalenda B/1546** to the 3rd Applicant on 03/11/2009, in respect of **Kisumu/Nyalenda B/1545** to the 4th Applicant on 25/09/2009, in respect of **Kisumu/Nyalenda B/1548 & Kisumu/Nyalenda B/1547** to the 2nd Applicant on 18/05/2010 & 20/05/2010 respectively. Going by Annexure AUO-4.
17. In any event as rightly acknowledged by the late Ochieng, J (as he then was) in **Ngoge v Oyugi [2022] KEHC 500 (KLR)** attached as **Annexure AUO-5**, that "If indeed the named persons are the current registered proprietors of parcels of land which hitherto constituted the Estate of the late Paul

Otieno Nyamodi, I find that they were essential parties to the matter which was being canvassed before me. I so hold because if the court were to revoke the Grant and to set aside the Certificate of Confirmation of Grant, the said orders would have a direct impact on the proprietary rights of the registered owners of the various parcels of land.”, likewise to the instant matter, the 2nd, 3rd & 4th Applicant were necessary parties to the prohibitory proceedings as they had proprietary rights to the attached properties by dint of by Annexure AUO-4. It is apparent they were not accorded an opportunity to be heard on the matter hence the instant proceedings.

18. As earlier noted, attachment or execution of immovable property by way of a prohibiting order is specific to the judgment-debtor’s property. Here, is obvious that as at issuance of the prohibiting order on 13/07/2021 the judgment-debtor or otherwise was not the proprietor and or registered owner with legal or equitable interest in **Kisumu/Nyalenda B/1546, Kisumu/Nyalenda B/1545, Kisumu/Nyalenda B/1548 and Kisumu/Nyalenda B/1547.**

19. Therefore, without belaboring any further, I believe the Court has sufficiently addressed itself to the objection proceedings instituted herein.

20. The resultant finding is that the application dated 6/03/2024 is merited. The prohibitory orders issued on 13/07/2021 against the properties hereunder is lifted,

set aside and quashed; and all encumbrances over the said properties are also vacated, to wit;

- a. Kisumu/Nyalenda B/1546,**
- b. Kisumu/Nyalenda B/1545,**
- c. Kisumu/Nyalenda B/1548 and**
- d. Kisumu/Nyalenda B/1547.**

21. The Applicants will have nominal costs of the motion assessed at Kshs. 10,000/- Orders accordingly.

Delivered Dated and Signed at Nairobi this 5th day of February, 2026.

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JANET MULWA.
JUDGE