

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. 394 OF 2013**

**JOYCE WAIRIMU NG'ANG'A.....1<sup>ST</sup> PLAINTIFF/DECREE-HOLDER**  
**SAMUEL MAINA MUKUNDI.....2<sup>ND</sup> PLAINTIFF/DECREE-**  
**HOLDER**

**-VERSUS-**

**EXCELLENT**

**LOGISTICS LTD.....DEFENDANT/JUDGMENT-DEBTOR**

**-AND-**

**TWO ONE TWO FLOUR LTD..... 1<sup>ST</sup>**  
**OBJECTOR**

**NDUNGU DANIEL KAMANDE..... 2<sup>ND</sup>**  
**OBJECTOR**

**TIMOTHY KORRUPTY DAZIA..... 3<sup>RD</sup>**  
**OBJECTOR**

**MOMENTUM CREDIT LTD..... 4<sup>TH</sup> OBJECTOR**

**RULING**

1. For determination are **two (2) Objector motions dated 27/06/2025**; one filed by **Two One Tow Flour Ltd, Ndung'u Daniel Kamande & Timothy Korrupty Dazia** (*hereafter 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Objector*) and the other filed by **Momentum Credit Ltd** (*hereafter the 4<sup>th</sup> Objector*) as against **Joyce Wairimu Ng'ang'a & Samuel Maina Mukundi** (*hereafter the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff/Decree-Holder*) and **Excellent Logistics Ltd** (*hereafter the Defendant/Judgment-Debtor*)

2. For ease of reference the Court will later in this ruling refer to the motions as the **1<sup>st</sup>** and **2<sup>nd</sup> motion**, respectively.

**1<sup>st</sup> motion dated 27/6/2025**

- a) The **1<sup>st</sup> motion** is filed *inter alia* pursuant to **Order 22 Rule 51** of the **Civil Procedure Rules (CPR)** seeking the following orders-; *Spent*
- b) *Spent*
- c) That the Honorable Court be pleased to make a finding that the proclaimed movable property, to wit, motor vehicles by Kenya Shield Auctioneers which motor vehicles include **KCL 948B Isuzu Lorry-Truck, KHMA 937K Toyota Fork-Lift, KCN 442G Lorry, KCN 441G Isuzu NKR, KCP 019N Mercedes Benz, KCP 418U, KCP 018N, KCJ 608A, KHMA 368N, KCJ 247A Mercedes Benz Prime Mover Actros, KCC 780K Toyota Saloon and KCE 239J Nissan Station Wagon** are solely and absolutely owned by 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Objectors.
- d) That the Honorable Court be pleased to issue an order stopping the attachment of the properties proclaimed by Kenya Shield Auctioneers.
- e) That the costs of the application be provided for.
3. It is premised on grounds found and amplified in the supporting affidavit sworn by **Mark Ndungu**, who cites being the director of the 1<sup>st</sup> Objector, and the supporting affidavit of **Ndungu Daniel Kamande** and **Timothy Korrupty**, all dated **27/06/2025**, who on their part cite being the 2<sup>nd</sup> & 3<sup>rd</sup> Objectors respectively.

**2<sup>nd</sup> motion dated 27/6/2025.**

4. It is filed *inter alia* pursuant to **Section 1A, 1B & 3A** of the **Civil Procedure Act (CPA)** and **Order 22 Rule 51(1)** of the **Civil Procedure Rules (CPR)** seeking the following orders-;

a. *Spent*

b. *Spent*

c. *That the Honorable Court be pleased to set aside the proclamation notice and warrant of attachment of motor vehicle KCJ 247A issued to Kenya Shield Auctioneers*

d. *That the costs of the application be borne by the Plaintiff/Decree Holder.*

5. It is premised on grounds found and amplified in the supporting affidavit sworn by **Sheila Imali, dated 27/06/2025**, who cites being the Legal Manager of the 4<sup>th</sup> Objector thus competent and duly authorized to depose on its behalf.

**Joyce Wairimu Ng'ang'a** and **Samuel Maina Mukundi** (*hereafter the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiff/Decree-Holder*) vide separate **Replying Affidavits dated 14/07/2025** oppose the **1<sup>st</sup>** and **2<sup>nd</sup>** motions respectively.

6. In rejoinder, **Sheila Imali**, filed a **Supplementary Affidavit dated 21/07/2025** in furtherance of her Supporting Affidavit in respect of the **2<sup>nd</sup> motion**.

**Samuel Maina Mukundi** (*hereafter the 2<sup>nd</sup> Plaintiff/Decree-Holder*) on his part filed a **Further Replying Affidavit dated 23/09/2025** in response to Sheila Imali Supplementary Affidavit dated 21/07/2025. The Court will address the nucleus of the above affidavits later in this ruling.

**Excellent Logistics Ltd** (*hereafter the Defendant/Judgment-Debtor*) did not participate in the instant proceedings.

7. Directions were taken on disposal of the **two (2) motions** by way of written submissions. The parties duly complied. That said, the Court has considered the rival affidavit material and submissions, to wit, it postulates that the issues for **determination concern: -**

- a) *Whether the Court ought to lift, set aside and or quash the proclamation attachment and sale of the assets of the Objectors movable property by Kenya Shield Auctioneers which include motor vehicle-; KCL 948B Isuzu Lorry-Truck, KHMA 937K Toyota Fork-Lift, KCN 442G Lorry, KCN 441G Isuzu NKR, KCP 019N Mercedes Benz, KCP 418U, KCP 018N, KCJ 608A, KHMA 368N, KCJ 247A Mercedes Benz Prime Mover Actros, KCC 780K Toyota Saloon and KCE 239J Nissan Station Wagon?*
- b) *Whether the proclaimed moveable assets of the Objectors are attachable in execution of the decree of this Court?*
- c) *Who ought to bear the costs of the motion?*

Having localized the above, the Court proposes to contemporaneously address the two (2) motions simultaneously thus;

- a) *Whether the Court ought to lift, set aside and or quash the proclamation attachment and sale of the assets of the Objectors movable property by Kenya Shield Auctioneers which include motor vehicle-; KCL 948B Isuzu Lorry-Truck, KHMA 937K Toyota Fork-Lift, KCN 442G Lorry, KCN 441G Isuzu NKR, KCP 019N Mercedes Benz, KCP 418U, KCP 018N, KCJ 608A, KHMA 368N, KCJ 247A Mercedes Benz Prime Mover Actros, KCC 780K Toyota Saloon and KCE*

*239J Nissan Station Wagon? and whether the proclaimed moveable assets of the Objectors are attachable in execution of the decree of this Court?*

8. At the outset it warrants mentioning that Objector proceedings, as at proclamation and attachment, such as those advanced in the two (2) motions are ideally codified in Section 34 & 63(e) of the CPA as read with **Order 22 Rule 51** with the procedure on disposal of the same before Court provided for in **Rule 52, 53 & 54 of the CPR.**

**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.*

9. 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)**

10. 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.

As concerns the **1<sup>st</sup> motion, Mark Ndungu** by his affidavit material, deposes that motor vehicles KCL 948B, KHMA 937K, KCN 442G, KCN 441G, KCP 019N, KCP 418U, KCP 018N, KCJ 608A, KHMA 368N, KCJ 247A, are vehicles the 1<sup>st</sup> Objector

bought from Judgment-Debtor, of which, are in the 1<sup>st</sup> Objector's name. That the vehicles were proclaimed by Kenya Shield Auctioneer whereas the Decree-Holders wrongly attached the vehicles purporting to belong to the Judgment-Debtor, without proper investigations. He states that the 1<sup>st</sup> Objector was never a party to the suit, to wit, the said proclamations ought to be vacated.

**11. Ndungu Daniel Kamande and Timothy Korrypty** by their deposition in support of the **1<sup>st</sup> motion** state that on 21/03/2013 and 19/04/2017 respectively, they bought motor vehicles KCC 708K and KCE 239J from the Judgment-Debtor, to wit, the vehicles belong to them and not the former. That the vehicles were proclaimed by Kenya Shield Auctioneer whereas the Decree-Holders wrongly attached the vehicles purporting to belong to the Judgment-Debtor without following the laid down legal procedure or investigations. They too maintain to being separate from the Judgment-Debtor, to wit, the said proclamations ought to be lifted.

**12.** The 1<sup>st</sup> & 2<sup>nd</sup> Decree-Holder vide their respective affidavit material assail the **1<sup>st</sup> motion** by stating that no adequate material has been evinced to show when ownership of the purported vehicles changed from the Judgment-Debtor. That prior to attachment, they obtained registration records of the motor vehicles in question, as such, it is their sincere belief that those records reflect the correct position regarding ownership of the attached motor vehicles.

They contend that the purported agreements of sale, evinced in support of the 1<sup>st</sup> motion, were undertaken to defeat the ends of justice. They go on to depose that there is reason to believe the

vehicles belong to the Judgment-Debtor whereas the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Objectors appear to be colluding to deny them the fruits of successful litigation.

The latter is premised on the fact that no log-books have been evinced to shore up the respective depositions meanwhile the directors of the Judgment-debtor are also the majority shareholders of the 1<sup>st</sup> Objector. That, as is, the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Objector have not demonstrated a legal or equitable interest on the proclaimed vehicles.

**13.** With respect to the **2<sup>nd</sup> motion**, **Sheila Imali**, deposes that vide a loan application form dated 07/04/2022, one of the directors of the Judgment-Debtor received a facility advance, to wit, motor vehicle KCJ 247A was offered as security. That in order to secure the 4<sup>th</sup> Objector's interest over the aforementioned vehicle, the latter was registered in the names of both the 4<sup>th</sup> Objector and Judgment-Debtor meanwhile the 4<sup>th</sup> Objector's interest in the vehicle has yet to be discharged. She goes on to state that Kenya Shield Auctioneer ought to have conducted proper due diligence, to ascertain ownership, prior to proclamation. That the 4<sup>th</sup> Objector's interest is that of a secured creditor whose interest ranks in priority of the Decree-Holders therefore it is in the interest of justice that its objection is allowed.

**14.** The 1<sup>st</sup> & 2<sup>nd</sup> Decree-Holder vide their respective affidavit material assail the **2<sup>nd</sup> motion** by asserting that no credible material or evidence has been placed before the Court showing that the 4<sup>th</sup> Objector has a financial interest motor vehicle KCJ 247A. They take issue with the legibility of the documents relied

on by the 4<sup>th</sup> Objector, demonstrating financial interest, meanwhile point out that the 1<sup>st</sup> Objector equally claims legal and equitable interest over the same motor vehicle vide the **1<sup>st</sup> motion**.

- 15.** That the sale agreement in respect of the aforestated motor vehicle, as evinced in **1<sup>st</sup> motion**, does not capture any financial encumbrances in favour of the 4<sup>th</sup> Objector. They go on to depose that there is reason to believe the vehicle belongs to the Judgment-Debtor whereas the 4<sup>th</sup> Objector appears to be colluding with the former to deny them the fruits of successful litigation. They equally contend that the purported finance instrument evinced in support of the **2<sup>nd</sup> motion** appears to have been undertaken to defeat the ends of justice.
- 16.** In rejoinder **Sheila Imali**, deposes the 4<sup>th</sup> Objector has on 07/04/2022, 20/12/2023 and 23/06/2025 advanced facilities to one of the directors of the Judgment-Debtor, to wit, motor vehicle KCJ 247A is still charged to the 4<sup>th</sup> Objector with an outstanding loan over the same in the sum Kshs. 2,176,573.54/-. That the allegations on collusion between the Judgment-Debtor and 4<sup>th</sup> Objector are false since the latter only learnt about the existence of the Decree-Holders suit 26/06/2025 upon receiving proclamation notices from the Judgment-Debtor. She states that the 4<sup>th</sup> Objector is unaware of the purported sale of motor vehicle KCJ 247A to the 1<sup>st</sup> Objector since its consent was never sought. She concludes by stating that if the attachment is not lifted, irreparable prejudice will be visited upon the 4<sup>th</sup> Objector.

- 17.** In response to the 4<sup>th</sup> Objector's rejoinder, the 1<sup>st</sup> Decree-Holder states that the loan facilities alluded to, were taken out by the said director of the Judgment-Debtor in her personal capacity. That the 4<sup>th</sup> Objector has equally failed to evince proof of disbursement of funds or evinced consideration in order to establish a legal or equitable interest in motor vehicle KCJ 247A. He concludes by deposing that the claim by the 1<sup>st</sup> Objector and 4<sup>th</sup> Objector over the aforesaid motor vehicle being so closely tied or related to the Judgment-Debtor raises suspicion as to the genuineness of the facility advanced by the 4<sup>th</sup> Objector.
- 18.** With the above in reserve, it is well settled that in order to succeed in applications in the nature of the ones presented for determination, the Objector(s) must at the very outset demonstrate a legal or equitable interest in the attached property. Further, it is trite that in determining the question, the Court is not primarily concerned with ownership of the attached property. To the foregoing end, have the Objector(s) demonstrated *ex facie* legal or equitable interest in the attached property?
- 19.** Here, it is not in dispute that there exists a decree in favour of the Decree-holders as against the Judgment-debtor by dint of the decision rendered by **Ongeri, J.** on 24/04/2024, to wit, the former has since sought to realize by way of execution having instructed Messrs. Kenya Shield Auctioneers. The latter upon being duly instructed took out warrants of attachment and thereafter proceeded to proclaim the Judgment-debtors moveable property via a proclamation notices (**Annexure MN4 &**

**MN5), (NDK1) & (TKD1)** as exhibited in the **1<sup>st</sup> motion** and **(Annexure SI-5)** as exhibited in the **2<sup>nd</sup> motion**.

- 20.** By the said proclamation notices, Kenya Shield Auctioneers appears to have proclaimed twelve (12) motor vehicles in total, to wit, the vide the **1<sup>st</sup> motion**, the 1<sup>st</sup> Objector contends that motor vehicles KCL 948B, KHMA 937K, KCN 442G, KCN 441G, KCP 019N, KCP 418U, KCP 018N, KCJ 608A, KHMA 368N, KCJ 247A belong it by dint of a Sale Agreement as between the latter and the Judgment-Debtor **(Annexure MN2)**; meanwhile KCC 780K belongs to the 2<sup>nd</sup> Objector by dint of a Sale Agreement as between the latter and the Judgment-Debtor **(Annexure NDK2)** and KCE 239J belongs to the 3<sup>rd</sup> Objector by dint of a Sale Agreement as between the latter and the Judgment-Debtor **(Annexure TKD2)**.
- 21.** The 4<sup>th</sup> Objector on its part contends that KCJ 247A by dint of **(Annexure SI-2(a), (b) & (c), SI-3, S1-4)** – *being a copy loan application form, Judgment-Debtor CR12, board resolution & copy of logbook indicating joint registration* – the latter motor vehicle comprises of security in respect of a facility taken out by one of the directors of the Judgment-Debtor.
- 22.** The Decree-holders on their part have vehemently assailed the latter assertion in totality by arguing that by dint of Annexure **(JWN & SMM 1 – 10 & 24)** – *the NTSA record exhibited, reflect the true ownership of the vehicles in question as at 24/03/2025* – the Objectors have failed to demonstrate a legal or equitable interest in the attached property whereas the Objectors appear to be colluding with the Judgment-Debtor to deny them the fruits of successful litigation.

- 23.** Concerning, the **1<sup>st</sup> motion**, I have taken the liberty of perusing the annexures thereto as earlier highlighted herein, concerning motor vehicle KCL 948B, KHMA 937K, KCN 442G, KCN 441G, KCP 019N, KCP 418U, KCP 018N, KCJ 608A, KHMA 368N, there appears to be questionable facts from the documents availed before the Court.
- 24.** The **1<sup>st</sup> Objector** purports that it bought the latter motor vehicles from the Judgment-Debtor, on or about the 23/03/2023 and has proceeded to adduce a copy of the sale agreement as evidence. However, it is also notable that one Josephine Watetu Muteru and Fredrick Ngugi Ndungu, being directors of the Judgment-Debtor are equally directors of 1<sup>st</sup> Objector.
- 25.** Interestingly, with respect to motor vehicle KCJ 247A, that the 1<sup>st</sup> Objector purports that it bought from the Judgment-Debtor, the 4<sup>th</sup> Objector argues that the same was offered as security when Josephine Watetu Muteru took out the same in 2022 yet the vehicle was again sold to the 1<sup>st</sup> Objector in 2023, with no evidence of therein being a discharge of the security in favour of the 4<sup>th</sup> Objector.
- 26.** From the record, I gather that the suit by the Decree-Holders against the Judgment-Debtor was filed in 2013. Judgment against the latter was rendered in 2024. The 1<sup>st</sup> Objector, who shares the same directors in part with Judgment-Debtor, purports to have bought motor vehicle KCL 948B, KHMA 937K, KCN 442G, KCN 441G, KCP 019N, KCP 418U, KCP 018N, KCJ 608A, KHMA 368N, KCJ 247A in 2023 while relying on sale

agreement as the only proof of a legal and equitable interest over the aforestated vehicles.

- 27.** It further not in dispute that the aforestated vehicles were proclaimed between 11/06/2025, 12/06/2025 & 13/06/2025. However, it quite peculiar that from the copy of record evinced by the Decree-Holders, as at 24/03/2025 which is prior to proclamation and as at 08/07/2025 which is subsequent to proclamation, motor vehicles KCL 948B, KHMA 937K, KCN 442G, KCN 441G, KCP 019N, KCP 418U, KCP 018N, KCJ 608A and KHMA 368N were all registered in the names of both the Judgment-Debtor and KCB Bank Kenya Limited. The 1<sup>st</sup> Objector has offered no explanation to the latter fact.
- 28.** Consequently, the Court is inclined to agree with the Decree-Holders that the former have offered no plausible proof of a legal and equitable interest over the said motor vehicle. Meanwhile, given the aforestated, it would not be farfetched to impute mischief on the part of the Judgment-Debtor and 1<sup>st</sup> Objector in light of the fact that both companies share directors, save for one Mark Ndungu, who is a third director of the **1<sup>st</sup> Objector**.
- 29.** With respect to the **2<sup>nd</sup> Objector**, from the material presented before this Court, the latter has relied on an incomplete sale agreement as concerns motor vehicle KCC 708K and a certificate of insurance in favour of the 2<sup>nd</sup> Objector issued by CIC General Insurance. While the certificate of insurance is not proof of legal ownership, it is evidence of an insurable interest in respect of motor vehicle KCC 708K which in itself may transmute to being a beneficial and equitable interest in the said vehicle.

It would equally be remiss not to restate that the Court notes with concern that from the copy of record evinced by the Decree-Holders the vehicles in question are still registered in the name of the Judgment-Debtor as at 24/03/2025 which is prior to proclamation and as at 08/07/2025 which is subsequent to proclamation.

- 30.** Meanwhile, as concerns the **3<sup>rd</sup> Objector**, on his part he equally relied on an incomplete sale agreement with respect to motor vehicle KCE 239J. No other material was evidence to demonstrate legal and or equitable ownership of the vehicle in question. Meanwhile, a perusal of copy of record evinced by the Decree-Holders as at 24/03/2025, the vehicle was still registered in the name of the Judgment-Debtor. Here, the Court is inclined to agree with the Decree-Holders that the 3<sup>rd</sup> Objector has not sufficiently demonstrated a legal and equitable interest in the vehicle in question.
- 31.** Concerning the **2<sup>nd</sup> motion**, I have taken the liberty of perusing the annexures and material relied on by the respective parties and particularly the 4<sup>th</sup> Objector. As earlier noted, the motion gyrates on the 4<sup>th</sup> Objector's protest over proclamation of motor vehicle **KCJ 247A**, which was purportedly and contemporaneously sold to the 1<sup>st</sup> Objector in 2023. In support of the objection, the 4<sup>th</sup> Objector relied on a copy loan application form, Judgment-Debtor CR12, board resolution & copy of a logbook indicating joint registration.
- 32.** *Ex facie* perusal of the above shows that indeed the 4<sup>th</sup> Objector advanced various facilities between 2022, 2023 & 2025 to Josephine Watetu Muteru, who is one of the directors of the

Judgment-Debtor and the 1<sup>st</sup> Objector, with motor vehicle KCJ 247A being offered as security. Further to the aforestated both the Decree-Holders and 4<sup>th</sup> Objector have respectively evinced a copy of records and a copy of a log book over the said motor vehicle showing that the same is registered in the name of the both the Judgment-Debtor and 4<sup>th</sup> Objector. Thus, given the forestated, the Court is convinced that the 4<sup>th</sup> Objector has sufficiently discharged the burden of proving a legal and equitable interest in respect of motor vehicle KCJ 247A. that once the Objector

**33.** In the end, the **1<sup>st</sup> motion** partially succeeds to wit, the commending order entails that-

**a. An order hereby issues stopping the attachment of motor vehicle KCC 780K proclaimed by Kenya Shield Auctioneers.**

**b. Each party to bear their own costs.**

**34.** Meanwhile, the **2<sup>nd</sup> motion** succeeds in the following terms-

**a. An order hereby issues setting aside the proclamation notice and warrants of attachment of motor vehicle KCJ 247A issued to Kenya Shield Auctioneers.**

**b. The 4<sup>th</sup> Objector is awarded the cost of the 2<sup>nd</sup> motion.**

**Orders Accordingly.**

**Delivered Dated and Signed at Nairobi this 26<sup>th</sup> day of February, 2026.**

.....

**JANET MULWA.**

**JUDGE**

ORIGINAL