



Ngatho & another v Moki Savings Cooperative Society Limited & 21 others & another; Gikonyo (Objector) (Environment and Land Case 745 of 2001) [2026] KEELC 1143 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1143 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 745 OF 2001
CG MBOGO, J
FEBRUARY 19, 2026**

BETWEEN

LILIAN WAIRIMU NGATHO 1ST PLAINTIFF

ELIZABETH MURUNGARI NJOROGE 2ND PLAINTIFF

AND

MOKI SAVINGS COOPERATIVE SOCIETY LIMITED & 21 OTHERS DEFENDANT

AND

JOEL MWANZIA VELELLA T/A BETABASE AUCTIONEERS RESPONDENT

AND

JOSEPH NJOROGE GIKONYO OBJECTOR

RULING

1. Before this court for determination is the notice of motion dated 19th August, 2025 filed by the objector/applicant and it is brought under the provisions of Articles 40 and 50 of *the Constitution*, Sections 1A, 1B, 3, 3A and 44 of the *Civil Procedure Act* in addition to Order 22 Rules 51, 52 and 53 and Order 42 Rule 6 of the Civil Procedure Rules seeking the following orders:-
 1. Spent.
 2. There be a stay of the proclamation herein dated 14th August, 2025 and any other precipitate action pending the hearing and determination of this application inter partes.
 3. An order restraining all parties herein from executing any judgment or decree herein against the property of the objector pending the hearing and determination of the application inter partes.



4. A declaration that the movable property subject of the proclamation dated 14th August, 2025 is the property of the objector and not subject to attachment in satisfaction of any decree in these proceedings.
 5. A permanent injunction against the parties herein from attaching the property subject of the proclamation dated 14th August, 2025 or any other property belonging to the objector.
 6. Costs of the application.
2. The application is premised on the grounds appearing on its face. It is further supported by the affidavit of the objector/applicant sworn on even date. The objector/applicant deposed together with the supporting affidavit of Joseph Njoroge Gikonyo sworn on even date. The objector/applicant deposed that he was served with warrants of attachment and proclamation notices by agents of the respondent on 14th August, 2025 at his home in Thindigua estate, the same being already prefilled with fourteen (14) items including household's yet the respondent's agents had never gained access into his house.
 3. The objector/applicant deposed that none of the items belong to the judgment debtor and hence the impugned attachment of his properties over unknown proceedings has caused him great anxiety and oppression.
 4. The application was opposed by the 3rd, 4th, 5th, 6th and 7th defendants vide the grounds of opposition dated 16th September, 2025. They contended that the application is incompetent for the reason that it is against attachment being executed by the 2nd, 13th to 22nd defendants/decree-holders whilst the objector has sought a permanent injunction against all the other decree-holders that have not proclaimed. It was further contended that the objector/applicant had not proved that the goods that have been proclaimed do not belong to the 2nd plaintiff/judgment-debtor who happens to be his spouse.
 5. The application was also opposed by the 2nd defendant vide her replying affidavit sworn on 19th September, 2025. She deposed that the amount of Kshs.3,519,730/= indicated in the warrants of attachment is in tandem with the amount on the certificate of taxation and that the 2nd plaintiff's property was duly proclaimed by Betabase auctioneers, the respondent. The 2nd defendant deposed that the object of the application is to frustrate any efforts to recover the taxed costs which are justly due.
 6. In response thereto, the objector/ applicant filed his further affidavit sworn on 30th September, 2025. He deposed that nothing had been shown to prove that the property the subject of proclamation belonged to the 2nd plaintiff.
 7. In a supplementary affidavit sworn by the 2nd defendant on 27th October, 2025 she reiterated the contents of her replying affidavit.
 8. The application was disposed of by way of written submissions. The objector/applicant filed written submissions dated 22nd October, 2025 and submitted that he had demonstrated an equitable interest in some of the proclaimed properties and that he had also produced receipts in his further affidavit. He relied on the decision of the Court of Appeal in the case of Southern Bell Limited v National Social Security Fund Board of Trustees & 4 others [2023] KECA 1170 (KLR). He urged the court to allow the application with costs.
 9. The 2nd, 13th to 22nd defendants filed their written submissions dated 29th October, 2025. They submitted that the objector/applicant had not filed a notice of objection to the attachment of the subject property. That in accordance with the provisions of Order 22 Rule 51 of the Civil Procedure Rules, any application filed without such notice of objection is stillborn. Reliance was placed on the



decision of the court in *Gikunji 3 others v Nyaga 3 others Wahome 16 others (Objector)* (Environment and Land Case Civil Suit 808 of 2012) [2023] KEELC 16395 (KLR).

10. In conclusion, they submitted that the evidence provided by the objector/applicant had not met the threshold for issuance of the orders sought and that the application is a conspiracy between the objector and the 2nd Plaintiff to evade payment of taxed costs.
11. The 3rd to 7th defendants/decreed holders filed their written submissions dated 10th November, 2025. They elected to rely on the sworn affidavits of 2nd defendant while also adopting submissions made on her behalf, and they urged the court to dismiss the application with costs.
12. I have considered the application, the replies thereof, and the written submissions filed. The only apparent issue for determination is whether the objector/applicant has adduced sufficient evidence to demonstrate that the proclaimed/ attached properties belong to him.
13. In the case of *Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector)* [2019] eKLR, the court aptly 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.”

14. The provisions of Order 22 Rule 51 of the Civil Procedure Rules govern the procedure which an objector is required to follow when a claim is made for an objection to attachment. The law sets out as follows:-
 1. 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 the parties and to the decree-holder of his objection to the attachment of such property.
15. The objector/applicant challenges the attachment on the basis that it seeks to execute against movable goods which he claims are lawfully owned by him, yet he was not a party in the substantive suit or the eventual decree amounting to Kshs.3,522,730/=.
16. On the other hand, the decree-holders assert that the execution process is founded upon valid warrants of attachment issued by this court. It is contended that the proclaimed goods belong to the 2nd plaintiff/ judgment-debtor and not to the objector/applicant as alleged.
17. What the court is to determine is whether the objector/applicant has an interest, legal or equitable in the attached property. In the case of *Arun C. Sharma v 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.”



18. Similarly, in the case of *Precast Portal Structures v Kenya Pencil Company Ltd & 2 others* [1993] eKLR, the court expressed itself thus:-

“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.

- 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.”

19. In his further affidavit, the objector/applicant herein produced receipts for several household items as Exhibits “JNG-2, JNG-3, JNG-4 and JNG-5”. Applying the principles governing objection to attachment proceedings, the objector/applicant has demonstrated credible and tangible proof of ownership of the household items captured in the receipt. I am satisfied that he has established a legal and or equitable title in the proclaimed assets exhibited in his further affidavit.

20. The Court of Appeal in the case of *Southern Bell Limited v National Social Security Fund Board of Trustees & 4 others* [2023] KECA 1170 (KLR), observed as follows:-

“Once the objector proves that, then the court makes an order raising the attachment as to the whole or a portion of the property subject to the attachment.”

21. From the above, I find merit in the notice of motion dated 19th August, 2025 and it is allowed in the following terms:

- i. A declaration is hereby issued that the movable property subject of the proclamation dated 14th August, 2025, and more specifically Exhibits “JNG-2, JNG-3, JNG-4 and JNG-5” are the property of the objector and not subject to attachment in satisfaction of any decree in these proceedings.
- ii. Each party shall bear its own costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 19TH DAY OF FEBRUARY, 2026.

HON. MBOGO C.G.

JUDGE

19/02/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Githinji for the Objector

Mr. Ong’ati for the 10th and 13th to 22nd Respondents

Mr. Masore for the 3rd to 7th Defendants

Mr. Kibatia for the 8th to 12th Defendants – absent

