

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

CAUSE NO. E047 OF 2023

KENYA ENGINEERING WORKERS UNION CLAIMANT

VERSUS

KENYA MARINE CONTRACTORS [EPZ] LIMITED RESPONDENT

AND

DIAMOND TRUST BANK KENYA LIMITED OBJECTOR

AND

MS JOSEPH M KINGO'ORI

T/A BEMAC AUCTIONEERS AUCTIONEERS

RULING

The objector, Diamond Trust Bank Limited, filed an application dated 5 January 2026 under the provisions of Order 22 Rule 51 of the Civil Procedure Rules, seeking orders:

1. Spent.
2. Spent.
3. The court be pleased to stay the execution of the decree issued against the judgment-debtor herein dated 19 November 2025, pending the hearing and determination of the application
4. The court be pleased to raise the proclamation of the assets belonging to the judgment-debtor subject to various debentures.
5. The court be pleased to order that the proclaimed movable assets subject to the various debentures be released to the objector unconditionally.
6. This court be pleased to order the respondent and judgment-debtor to meet the auctioneer's costs.
7. Costs of this application be paid to the objector.

The application is supported by Faith Ndonga, the objector's debt recovery officer. She avers that pursuant to a decree herein dated 30 October 2025 and warrants of attachment dated 30 January 2026, the auctioneers acting under the instructions of the claimant, proclaimed the following movable assets:

1. Motor vehicle registration No. ZC2626 valued at Ksh. 8,500,000.
2. Motor vehicle registration No. KHMA 422E valued at Ksh. 9,500,000.
3. Motor vehicle registration No. ZD 9302 valued at Ksh. 9,000,000.
4. Computers valued at Ksh. 8,000,000.
5. Printers valued at Ksh. 2,000,000.

6. Work stations valued at Ksh. 5,000,000.

Ndonga avers that these movable assets are securities registered as collateral in favour of the objector to secure a facility advanced to the respondent, evidenced by various letters. Without the knowledge of the objector, the claimant caused to be proclaimed these assets on 30 January 2026.

Under the Letter of Offer dated 16 February 2006, the objector extended a facility of \$1,330,000 comprising an overdraft of \$250,000 and a term loan of \$1,080,000 to the respondent.

The letter of offer dated 30 December 2023, modified the loan facility by consolidating the outstanding arrears, penalties, and interest, resulting in a remaining balance of \$13,855,346.80 to be repaid over the next 50 months, with a maturity date of 30 March 2028, including a 6-month moratorium.

Ndonga avers that the objector is the holder of various debentures created over the respondent's entire existing and future assets in its favour. All assets fixed or floating debenture dated 2 March 2006 over the respondent assets already registered for \$1,330,000 and supported by a legal charge dated 2 March 2006 and facilities agreement dated 2 March 2006. All supplemental assets fixed and floating debenture dated 30 May 2006 over the assets of the respondent; second supplemental assets fixed and floating debenture dated 20 November 2006; with a second, third, fourth, fifth, and sixth such assets fixed and floating for various amounts.

Ndonga also avers that there is a mortgage over all of the respondent's vessels and a facilities agreement for various amounts.

There is a corporate guarantee of Comargo Properties EPZ Limited, Maast Marine Keya Limited, Maast Maritime Group DMCC (UAE) and a personal guarantee and indemnity of Simon Fraser Philips in support of the aggregate borrowing.

Thus, all movable assets have been pledged and are already being used to secure the credit with the objector, evidenced by registered debentures.

Large sums of money have been advanced to the respondent, and the proclamation raised cannot defeat the objectors' rights.

In reply, the claimant filed the Replying Affidavit of Wycliffee Amakombo Nyamwata, the general secretary of the claimant union. He avers that the orders sought by the objector relate to an application dated 5 March 2025, are null and void and related to a period before the decree was issued.

Nyamwata avers that the respondent and objector have been uncooperative, prompting the court to direct the Deputy Registrar to serve them without success. Service herein has been done through the print media from January 2020, of which the objector alleges to have advanced a huge sum of money to a single institution without verification.

The loans alleged to have been granted to the respondent are despite the fact that there are employees who are entitled to their due, and hence the debentures are in bad faith. The alleged transactions between the respondent and objector through leading form 2006 indicate they have a good relationship and thus should pay the claimant the sum of Ksh. 35,753,134.11 as claimed.

The letter of offer dated 30 December 2023 to modify the assets, amalgamate all the assets, and then issue redundancy notices on 1 January 2024 amounts to collusion and fraud, and is intended to deny claimant members their terminal dues.

The objector appointed an administrator for the respondent, Anant Bhatt LLP, Certified Public Accountant, who placed an advertisement in the newspapers for anyone with a debt owed by the respondent. The claim through the letter dated 6 December 2024 confirmed its debt.

There is no evidence that the respondent received the alleged loans. No records are filed with the affidavit in support of the application. The items proclaimed are in the name of the respondent, as per the Kenya Revenue Authority PIN P0514433258E; hence, the court should allow execution to proceed.

The respondent deliberately refused to participate in these proceedings. The court orders and decree herein supersede the objector's interests since parties have a CBA, and under section 59 of the Labour Relations Act, it is subject to enforcement.

The auctioneer filed Grounds of Objection on the basis that the application dated 5 January 2026 was filed before the proclamation of the stated properties issued. The warrants were issued on 26 January 2026. The objector is bound to inform the public of any securities for any loan to the respondent via advertisement in the print media to avoid inconveniences.

The objector does not admit that the auctioneers discharged their duty to the court, and the respondent should pay their costs, a clear demonstration that the application is undeserved. The objector should have sought to reclaim its costs.

Determination

Execution proceedings are lawful and legitimate. Upon the court's decree, warrants of attachment or warrants of sale are issued as part of the judicial process to enforce the court's orders. The decree holder or auctioneers act as the agents of the court to secure lawful orders. However, illegal, irregular and unlawful execution of a decree by any party against the property of a third party negates the very essence of execution proceedings as held in **Arisa v Kipkebe Limited; Ryce EA Limited (Objector) [2025] KEELRC 1468 (KLR)**. Great diligence should be undertaken to execute within the law.

There is a valid judgment herein against the respondent.

A decree has since been issued for the sum of Ksh. 34,344,144.11 plus auctioneer charges. The objectors assert that they hold the proclaimed goods against the respondent, judgment-debtor, and should be released. Various facilities have been advanced to the respondent from

2006 to date and have been running for a long period beyond the date the decree herein was issued.

Save for the averments in Ndonga's Supporting Affidavit, there is no record of the alleged debentures. The affidavit is left bare.

The objector, as a banking institution, is highly regulated. Before advancing the respondent to various facilities, the alleged letters and facilities review with amalgamations should have sufficed. Importantly, the proclaimed goods and the related details in securing the advanced facilities were imperative to prove.

The rationale is that the evidential material to be considered by a court prior to granting an objector a release from warrants of attachment is quite simple. In **Grace Wanjiru Mbugua v Philip Karumi Matu [2009] eKLR** and **Precast Portal Structures v Kenya Penal Co. Ltd & 2 Others [1993] eKLR**, the courts held that:

The burden is on the objector to prove and establish his right to have attached property released from attachment. On the evidential material before the court, a release from attachment may be made if the court is satisfied:

(1) That the property was not when attached held by the judgement debtor for himself or by some other person in trust for the judgement debtor; or

(2) That the objector holds that property on his own account. But where the court is satisfied that the property was, at the time of attachment, held by the judgement debtor, as his own and not on account of any other person, or that it was held by some other person in trust for the judgement debtor or that ownership has changed, whereby the judgement debtor has been divested of the property in order to evade execution, on the change is tainted with fraud, the court shall dismiss the objection.

It is therefore not sufficient to file an affidavit with averments of various debentures and ambulation of facilities. Evidence and proof of such matters are necessary.

Indeed, as submitted by the auctioneer, the Warrants of Attachment were issued only on 26 January 2026, and the objector's instant application was filed on 5 January 2026. The objector's preemptive action, while the respondent has refused to attend these proceedings, directly impeaches their application seeking to insulate the respondent as the judgment-debtor.

The facilities advanced to the respondent as the judgment debtor are real. Proof of the same should have been easy. The stated relationship has been on for many years.

Without proof of interest, the attached goods;

1. Motor vehicle registration No. ZC2626 valued at Ksh. 8,500,000.
2. Motor vehicle registration No. KHMA 422E valued at Ksh. 9,500,000.
3. Motor vehicle registration No. ZD 9302 valued at Ksh. 9,000,000.
4. Computers valued at Ksh. 8,000,000.
5. Printers valued at Ksh. 2,000,000.

6. Work stations valued at Ksh. 5,000,000.

Shall remain available for execution.

Accordingly, the application dated 5 January 2026 is without merit and is hereby dismissed. The respondent shall meet the costs incurred by the claimant and the auctioneers.

Delivered in open court at Mombasa on this 19th day of March 2026.

M. MBARŪ

JUDGE