

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CIVIL APPEAL NO E173 OF 2021**

**ICM SPA LIMITED - KENYA**  
**BRANCH.....APPELLANT**

**VERSUS**

**JAMES MAINA KIMANI.....1<sup>ST</sup>**  
**RESPONDENT**

**IQBAL TRANSPORTERS.....2<sup>ND</sup>**  
**RESPONDENT**

**MAL TAURO LIMITED.....3<sup>RD</sup>**  
**RESPONDENT**

**IGARE AUCTIONEERS.....4<sup>TH</sup>**  
**RESPONDENT**

*(Being an Appeal arising out of the order that was made by Hon. L.  
Kassan (CM) on 28<sup>th</sup> May 2021 in Eldoret CMCC No. 44 of 2018)*

**BETWEEN**

**JAMES MAINA KIMANI.....PLAINTIFF/DECREE HOLDER**

**VERSUS**

**MAL TAURO LIMITED.....1<sup>ST</sup> DEFENDANT/JUDGMENT**  
**DEBTOR**

**IQBAL TRANSPORTERS.....2<sup>ND</sup> DEFENDANT/JUDGMENT**  
**DEBTOR**

**AND**

**ICM SPA LIMITED - KENYA BRANCH.....**  
**OBJECTOR**

**AND**

**IGARE AUCTIONEERS.....INTERESTED**  
**PARTY**

**Coram: Before Justice R. Nyakundi**  
**M/s Munene Wambugu & Kiplagat Advocates**

**M/s Alwanga & Co Advocates**

**JUDGMENT**

1. The brief background of this appeal is that the Appellant herein who was the Objector at the trial Court filed a Notice of Motion Application dated 11<sup>th</sup> November 2021 premised under Order 22 Rules 51 & 52 and Order 51 Rule 3 of the Civil Procedure Rules for orders: -
  - a. *Spent*
  - b. *That there be an order staying execution of the judgement and the decree that was passed in this matter on 26<sup>th</sup> May 2020 pending interpartes hearing these Objection proceedings and thereafter pending the hearing and determination of these proceedings.*
  - c. *That the leave be granted for IGARE AUCTIONEERS to be enjoined as an Interested Party in these objection proceedings.*
  - d. *That the Proclamation of Attachment dated 9<sup>th</sup> November 2020 by the Interested party herein on the Objector's movable property be declared unlawful and the same be raised and/or lifted.*
  - e. *That this Honourable Court be pleased to issue a mandatory injunction barring the Plaintiff and/or Interested Party either in person or through their agents, assigns and/or employees from proclaiming, attaching and/or engaging in any actions that may amount to attaching, advertising, auctioning, selling or offering for sale or in any other way transferring ownership of the Objector's properties/movable goods.*
  - f. *That the costs of this application be borne by the Plaintiff and the Interested Party.*
2. The grounds of the application were that on 9<sup>th</sup> November 2020, the Plaintiff/Decree-holder through Igare Auctioneers moved and proclaimed various items at the Objectors premises in execution of warrants that were issued by this Court on 26<sup>th</sup> October 2020; that the items that have been proclaimed do not belong to any of the judgement debtors but the

same belong to the Objector; that the Objector has no relationship and is a stranger to any entity called Maltauro Company Limited and Iqbal Transporters and that unless prevented by an order of Stay of Execution, the Decree-holder through the Interested Party shall move and cart away the items that have been proclaimed and may thereafter sale the same causing the Objector irreparable loss and damage.

3. On 13<sup>th</sup> November 2020, the trial court through the trial Magistrate Hon R. Odenyo gave an interim order which was coached as follows: *An order staying execution of judgment and the decree that was passed in this matter on 26<sup>th</sup> May 2020 be and is hereby issued pending the hearing and determination of this application.* There after the trial court rendered its ruling dated 28<sup>th</sup> May 2021 in which it held as follows: -

***This is an application for stay of a decree for the main reason that the judgement debtors are not the owners of the proclaimed goods. The Objector attached a certificate of assets as a proof that it owned the goods but instead the decree holder attached certificate of searches.***

***The application fails fatally. A certificate or records of assets of an entity cannot be taken as proof of ownership by the Courts. It can only be used by the entity and cannot supersede official certificate of search.***

***The application is dismissed with costs.***

4. The Appellant herein ICM SPA LIMITED – KENYA BRANCH being aggrieved by the Order emanating from the Ruling of the trial court which was delivered on 28<sup>th</sup> May 2021 appealed to this Honourable Court against the order vide a Memorandum of Appeal dated 21<sup>st</sup> day of December 2021 on the following grounds: -

*a. That the Learned Trial Magistrate failed to appreciate the nature of the application that was before him, the facts surrounding the application and the law that is applicable in Objection proceedings.*

- b. That the Learned Trial Magistrate completely failed to appreciate that the Appellant and the 2<sup>nd</sup> Respondent herein were and are different legal entities and the assets that had been proclaimed belonged to the Appellant and not the 2<sup>nd</sup> Respondent.*
  - c. That the Learned Trial Magistrate misapprehended the evidence of ownership as presented by the Applicant and further failed to make distinction between what is owned by the Appellant and what is owned by judgement debtors.*
  - d. That the Learned Trial Magistrate failed to notice that the properties as set out in the asset register were office items and equipment's and proof of ownership by certificates of searches was in applicable for office equipment's and electronic gadgets.*
  - e. That the Learned Trial Magistrate failed to consider the fact that the Certificate of searches as produced proved that the said motor vehicles were actually owned by the Appellant and not the judgement debtors.*
  - f. That That the Learned Trial Magistrate failed to holistically consider the evidence as presented by the Appellant and the submissions filed and rendered erroneous ruling.*
  - g. That the Learned Trial Magistrate rendered a ruling that does not meet the minimum standards set in law for a considered ruling and decision by a court of law.*
5. The Appellant sought the following prayers from the Memorandum of Appeal;
  - a. This Appeal be allowed and the Ruling of the Learned Trial Magistrate be set aside.*
  - b. This Honourable Court does proceed and consider the Appellant's Notice of Motion dated 11<sup>th</sup> November 2020 and allows the same.*
  - c. This Honourable Court does issue such further orders or directions as it may deem fit.*

*d. The costs of this appeal be awarded to the Appellant.*

6. The Appeal was canvassed by way of Written Submissions.

### **Appellant's Submissions Summary**

7. The Appellant filed its written submissions dated 8<sup>th</sup> day of July 2025 through learned counsel Mrs. Langat who submitted that the appeal arises from the ruling in Eldoret CMCC No. 44 of 2018 delivered on May 26<sup>th</sup> 2021 regarding an application dated 11<sup>th</sup> November 2020 seeking stay of execution proceedings against all movable property attached and proclaimed pursuant to the proclamation served on the objector on November 9<sup>th</sup> 2020 and which application was dismissed with costs.
8. Counsel submitted that upon judgment, the 4<sup>th</sup> Respondent in execution obtained a proclamation of the movable properties of the Appellant itemized on the said notice, the Appellant herein and who is a separate legal entity from the judgement debtors but the learned magistrate declined to allow the objections raised by the Appellant hence this appeal is seeking to lift the same since the Appellant is a stranger to the primary suit and the judgement debtors herein.
9. Counsel made reference to Order 22 Rule 51 & 52 of the Civil Procedure Rules 2010 and submitted that the Appellant and the 2<sup>nd</sup> Respondent were and are completely different legal entities and the assets that were proclaimed belonged to the Appellant and not the 2<sup>nd</sup> Appellant as alleged. It was further added that the Objector was ICM SPA limited-Kenya Branch whereas the Judgement Debtors are Maultaro Company Limited and IQBL transporters and cited the case of **Salmon Vs Salmon (1897) A.C. 22 (H.L)**
10. Counsel further submitted that the evidence of ownership was completely misapprehended by the trial Magistrate noting that the Appellant provided an asset register that provided the list of office items owned by the Appellant herein and failed to make a distinction between the properties owned by the Appellant and what is owned by the judgement

debtors while putting reliance in the case of **Arun Vs C. Sharma Astana Raikundaha T/A Raikundaha & Co Advocates & 4 Others (2014) eKLR**. It was counsel's submissions also that the Appellant had established legal and equitable interest in the properties listed for proclamation and as such the proclamation was unwarranted and that the Appellants produced the certificate of searches for motor vehicles which clearly proved that the Motor vehicles belonged to the Appellant and not the judgement debtors.

11. Furthermore, counsel submitted that the Appellant has demonstrated direct relation with the attached properties to justify the objection proceedings herein and cited **Michira Messah & Co Advocates Vs Katana Kalume Ndurya; Kalume Kenga Katana (Objector) Civil Miscellaneous Application 14(B) of 2019 [2021] KEHC 7882 (KLR)**. Counsel added that the 1<sup>st</sup> Respondent herein did not sue the Appellant but the Judgement Debtors hence it cannot realize the fruits of the judgement therein against the Appellant. It was counsel's submissions that the decree served upon the Appellant herein clearly list the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents as the Judgement debtors as such this should be the guiding principle in determining the instant appeal cited the case of **Spinners & Spinners Limited Vs Kimilili Wholesalers Limited; Jayantilal Uniforms Kenya Limited (Objector) Civil Suit 7 of 2020 [2024] KEHC 12935 (KLR)**
12. It was the learned counsel's final submissions that the Appellant did discharge the evidential burden regarding the issue of ownership of the proclaimed assets noting that the Appellant was in possession of the properties thus enjoying proprietary interest in them prior to the attachment and urged this Honourable Court to set aside the Ruling of the trial court and proceed to allow the application dated 11<sup>th</sup> November 2020 with costs to the Appellant.

## **Respondent's Submissions Summary**

13. A look at the court's record and Case Tracking System indicate that the Respondents did not file submissions to canvass the appeal. However, I will determine the appeal on its merits.

### **Analysis and Determination**

14. This matter is about objection proceedings arising out of a decision that the learned trial magistrate annexed to the record in which the court pronounced itself as follows:- " *This is an application for stay of a decree for the main reason that the judgement debtor are not the owners of the proclaimed goods. The object. The objector attached a certificate of assets as proof that it owned the goods but instead the decree holder attached certificate of searches. The application fails fatally. A certificate or records of assets of an entity cannot be taken as proof of ownership by the courts. It can only be used by the entity and cannot supersede official certificates of search. The application is dismissed with costs.*

15. This is the borne of contention between the parties to this appeal. The genealogy of it arises from the judgement of the same court presided over by learned magistrate Charles Obulutsa dated 26.5.2020 in which he pronounced himself as follows:- " *The court has considered the Plaintiff's authorities. They give comparable injuries. Taking into account inflation and in the absence of the defendants submission the court finds that an award of 1,500,000 appropriate. There was submission made for 700,000/=as future medical expenses based on the recommendation by Dr. Sokobe who said there was need to remove the implants and replacement of the left knee. The same will be allowed and special damage of 6,000/= as pleaded and proved. Judgment will be entered for 2,206,000 plus costs of the suit and interest*

16. It is from this decision the winner of the dispute moved the court to commence execution of the judgment by way of attachment of goods.

This attachment gave rise to the objection proceedings anchored in law under Order 22 rule 51 of the Civil Procedure Rules which expressly states as follows: “ *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, 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, Such notice of objection and application shall be served within seven days from the date of filing on all the parties.*

17. In matters of objecting to the attached goods or assets to satisfy the decree of the judgement creditor one of the key pillars to be established by the court is that the objector must demonstrate existence of a legal and beneficial interest in the property. This is what the court addressed in the case of **Precast Portal Structures v Ken a Pencil Com and Limited & 2 Others (1993)**

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 *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 judgment - 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 judgment-debtor, or that ownership has changed whereby the judgment - debtor has-been divested of the property in order to evade execution or the change is tainted with fraud, the Court shall dismiss the objection. The Court takes into account the grounds objections raised, and the contentions of the respective parties to the objection proceeding Any*

*special features evident in the proceedings which throw light on the controversy must be regarded.*

18. In terms of discharging the burden of proof under Section 107(1) & 108, and 109 of the Evidence Act it is wholly vested with the objector. This is what the court said in the cases of **Stephen Kiprotich Koech v Edwin K Barchilei & Joel Sitienei (Objector) (2019)** and **Arun C Sharma v Ashana Raikundalia T/AA Raikundalia & Co Advocates & 4 Others** held as follows: “ *The objector bears the burden of proving that he is entitled to or has legal 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.*”
19. The test to be applied by the court is founded in the case of **Chotabhai M. Patel v Chaprabhi Patel (1958) EA 743**, it was stated that:
- a) *Where an objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to attachment the court shall proceed to investigate the objection with the like power as regards examination of the Objector, and in all other respects as if he was party to the suit.*
  - b) *The Objector shall adduce evidence to show that at the date of attachment he had some interest in the property attached.*
  - c) *The question to be decided is, whether on the date of attachment, the Judgment Debtor or the Objector was in possession, or where the court is satisfied that the property was in the possession of the Objector, it must be found whether he held it on his own account or in trust for the Judgment Debtor. The sole question to be investigated is, thus, one of possession of, and some interest in the property.*
  - d) *Questions of legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on*

- account of or instruct for the judgment Debtor or some other persons. To that extent the title may be part of the inquiry*
20. The objector when confronted with the execution and attachment of goods moved the court appropriately and averred as follows in the affidavit in support of the motion dated 11.11.2020 that :
- a) *THAT I am an adult male of sound mind and I have been employed by the Objector as a Logistics Manager thus duly authorized and competent to swear this affidavit.*
  - b) *THAT on 9th November 2020 the Plaintiff/Decree-holder herein through Igare Auctioneers, moved and proclaimed various items at the Objectors Premises in execution of warrants that were issued by this court on 26th October 2020. Copies of the warrants and proclamations are hereto attached and marked as exhibit1 and*
  - c) *THAT the items that have been proclaimed do not belong to any of the judgment debtors but the same belong to the Objector. Attached hereto is an asset register of the Objector that proves that it owns the said goods. The same is marked as exhibit 4.*
  - d) *THAT the Objector has no relationship and is a stranger to an entity called Maltauro Company Limited and Iqbal Transporters.*
  - e) *THAT the Objector was not party to these proceedings and as such the proclamation of its goods and assets is erroneous and unlawful and I pray that the same be raised and/or lifted by this court.*
  - f) *THAT in the meantime the Objector is exposed to execution and unless prevented by an order of Stay of execution, the Decree-holder through the Interested Party shall move and cart away the items that have been proclaimed and may thereafter sale the same causing the Objector irreparable loss and damage.*
  - g) *THAT it is in the interest of justice for interim orders of stay to issue pending the hearing of this application inter parties.*

- h) *THAT unless the Objector's Application herein for stay is allowed, it stands to suffer loss and irreparable damage should the Interested Party be allowed to sell goods and it shall have no way of recovering the same from the Judgement-debtor as it is not aware of his hereabouts.*
- i) *THAT it is therefore my prayer that this Honourable Court does allow this application as prayed*
- j) *THAT what is deponed to herein about is true to the best of my knowledge, information and belief save as to where stated to be on information the sources and grounds of which have been fully disclosed*

21. The trigger to this affidavit is an annexure referenced as GRUPPO MICM containing the following assets inventory.

*Lg 42 tv Screen*

*Von 2 door Fridge*

*Conference table and chairs*

*8 Filing cabinets*

*Dell desktop computers*

*Office desk plus chairs*

*Utax clp 3521 printers (2)*

*Von hot point cannon machine*

*Meet up camera*

*Black TV Stand*

*Hot Point water dispenser*

*LG grill M/Wave*

*Magic espresso machine*

*8 filing cabinets @ 8000*

*Dell desktop computer*

*Cannon Office printer cs 62351*

*2 office desks plus Charis @ 30,000*

*Round conference table*  
*HP desktop computer*  
*HP desktop computer 2 black office @ 5000*  
*Ramtoms fan*  
*Metallic filling*  
*Wooden filling cabinet and glass doors*  
*4 filing cabinet*  
*Cannon printers cs 52351*  
*4 office desks and chairs and 25,000*  
*2 HP desktop computers @ 15,000*  
*Dell desk computer*  
*Blue reception chairs @ 5,000*  
*Small reception desk*  
*Wooden filling cabinet and glass doors*  
*Dell desktop*  
*Fire extinguisher (reception)*  
*HP desktop printer*  
*GT 2500 printers*  
*Ramtoms fan*  
*3 filling cabinets @ 1000*  
*Metallic filing cabinet*  
*Black office chairs @ 500*

22. This inventory by the objector has not been controverted by the Judgement creditor. In the circumstances, it was urged before the learned magistrate to consider it but may be he was looking for standard of proof of ownership of beyond reasonable doubt. These are immovable assets purchased from various sources some of them might not even have some cash sale receipts because it is not a must in such purchases to hold in custody the supplier, the time, and the year or month such a

property was taken possession by the objector. I do not think the law envisages that in the future one's properties or assets may be a subject of a court case so that any receipt or delivery note should be kept in the permanent safe to be produced at such an opportune time following a decree issued by the court. There are no reasons given by the learned trial magistrate why he summarily rejected the objection notwithstanding the affidavit evidence and the inventory to that effect.

23. The duty of a Judge or Magistrate to give reasons for their decisions is a fundamental principle of natural justice, ensuring transparency, accountability, and the ability of the aggrieved party to file an appeal to a superior court. Failure to provide adequate reasons can render a judgement or administrative decision void as it is the case in the instant appeal. It is a constitutional imperative under Article 47 of our very own constitution 2010 that the right to be given written reasons for a judicial decision or administrative is not dispensable by any such tribunal, quasi judicial body or the court itself. In the admiration of justice there is a mandatory contract between the Judges, Magistrates, and Chairman of Tribunals with the citizens particularly the disputants that upon exercising discretion the duty to give reasons must accompany the decision. For instance in the impugned ruling the learned trial magistrate briefly pronounced himself as follows:-

That the objector attached the certificate of assets and the decree holder

24. From this ruling the only property capable of being excluded from the objection proceedings are the ones referenced as Motor vehicle Registration Nos KCS 054W and KBS 794W whose copies of records were shared with the court during the trial of the objection proceedings. For avoidance of doubt I have gone through the record of the trial court I am yet to have a glance of other copies of record capable of impeaching the inventory shared by the objector. This means that the other assets ownership details was dismissed riding on the protocol of the two copies

of the record from NTSA. That to me was not enough to dismiss the entire objective proceedings.

25. For those reasons, the objection succeeds substantially save for the two motor vehicles aforementioned above elsewhere in this judgment as the ones which one could say they could be free and capable of being attached to satisfy the decree of the court. In the premises the appeal is allowed and the residual effect of it is that those goods or assets wherever they are ought to be returned to the objector with costs to be met by the Judgement Creditor. It is so ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 31<sup>ST</sup>  
DAY OF MARCH 2026**

.....  
**R. NYAKUNDI**  
**JUDGE**