

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**COMM. CASE NO. E222 OF 2022**

**BETWEEN**

**LETS DO BUSINESS LIMITED.....**  
**PLAINTIFF**

**AND**

**ALBINA GICHUKU**  
**KOSKEY.....DEFENDANT**

**AND**

**FREE STYLE SHOPPING CENTER LIMITED.....**  
**OBJECTOR**

**RULING**

**Introduction and Background**

1. By a Notice of Objection and Notice of Motion dated 19<sup>th</sup> August 2025, the Objector seeks a declaration that the attachment/proclamation of all the properties proclaimed by *Baseline Auctioneers* at the premises on the 3<sup>rd</sup> Floor at LR No. 209/22273 along Olenguruone Road, Nairobi is unlawful and that

the proclamation notice dated 18<sup>th</sup> August 2025 should be set aside. The Objector also seeks an order releasing the attached properties to it and costs of the application.

2. The application is supported by grounds set out on its face and the supporting affidavit of GRACE AWINO, the Objector's General Manager, sworn on 19<sup>th</sup> August 2025. It is opposed by the Defendant through her replying affidavit sworn on 23<sup>rd</sup> September 2025. The application has been canvassed by way of written submissions that I have considered and I will be making relevant references to the same in my analysis and determination below.

### **Analysis and Determination**

3. Having gone through the pleadings and the submissions, I find that the court is being called to determine whether the proclamation ought to be set aside and whether the proclaimed goods ought to be released to the Objector.
4. It is not in dispute that **Order 22 Rule 51** of the **Civil Procedure Rules** provides for objection to attachment of property as follows:

*(1) 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.*

5. A reading of **Order 22 Rule 51** above places the Objector with the burden of proving that it is entitled to or has a legal or equitable interest on the whole or part of the proclaimed/attached goods. This position has been buttressed by the court in a plethora of decisions including that of **Chotabhai M. Patel v Chaprabhi Patel [1958] EA 743**, where it was held 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 in trust for the Judgment Debtor or some other person. To that extent the title may be part of the inquiry.*

6. The Objector relies on a Letter of Offer to Lease to show that it occupies the premises, however, I am in agreement with the Defendant that a lease agreement does not, by itself, prove ownership of movable property found on the premises. The Objector did not produce invoices, receipts, delivery notes, asset registers or bank payment records that would have been necessary to discharge the burden of proving ownership or interest in the specific proclaimed items. This was the position by the Court of Appeal in **Zingo Investment Limited v Miema Enterprises Limited [2015] KECA 246 (KLR)** as cited by the Objector.
7. It was also deponed by the Defendant and not disputed by the Objector that the Objector and the Plaintiff share office space and that the proclaimed items were found in the Plaintiff's director's office, not exclusively in the Objector's portion. Even if I am to consider the Objector's submission that Clause 12 of the Lease prohibited subletting or sharing, that is a matter between the Objector and its Landlord. It does not constitute conclusive evidence that the goods belonged to the Objector, nor does it disprove the auctioneer's factual observations on the ground. What is clear is that the

Objector did not provide a fixed asset register, show how or when it acquired the items and explain why the Plaintiff's director was allegedly present in the premises with the proclaimed goods.

8. The Objector has also invoked **section 44(1)(ii)** of the **Civil Procedure Act** which provides as follows:

**44. Property liable to attachment and sale in execution of a decree**

*(1) All property belonging to a judgment debtor, including property over which or over the profits of which he has a disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree:*

*Provided that the following shall not be liable to attachment or sale—*

*(i).....*

*(ii) the tools and implements of a person necessary for the performance by him of his trade or profession;*

9. Reading through the aforementioned provision, I find that the exemption applies only if the items belong to the Judgment

Debtor and are necessary for their trade or profession. However, in this case, since ownership was not proved, the exemption argument does not help the Objector and its argument that the items such as office chairs, desks, computers, laptops, photocopiers are tools of trade exempt from attachment under **section 44(1)(ii)** of the **Civil Procedure Act** misses the point.

10. It is also not lost to me and I agree with the Defendant's submission that the advocates on record for the Plaintiff are the same ones who filed the present application for the Objector. In objection proceedings, this overlapping representation is highly unusual and supports an inference that the objection is not a genuine third-party claim but rather a delaying tactic orchestrated by the Plaintiff to shield its assets from execution. My summary finding is that the Objector has failed to discharge the evidentiary burden placed on it by **Order 22 Rule 51** and the various authorities.

### **Conclusion and Disposition**

11. The upshot is that the application dated 19<sup>th</sup> August 2025 is dismissed with costs being borne by the Objector.

**DATED SIGNED AND DELIVERED virtually at NAIROBI this**

**8<sup>th</sup> DAY of MAY 2026**

.....  
**J.W.W. MONGARE**  
**JUDGE**

**IN THE PRESENCE OF**

1. N/A for the Decree Holder
2. Ms. Okomo for the Judgment Debtor
3. N/A for the Objector
4. Amos- Court Assistant

ORIGINAL