



Mundusi Investments Ltd v M'Mugambi & 2 others; M'Anampu (Objector) (Environment and Land Appeal 1 of 2021) [2024] KEELC 1113 (KLR) (28 February 2024) (Ruling)

Neutral citation: [2024] KEELC 1113 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 1 OF 2021
CK NZILI, J
FEBRUARY 28, 2024**

BETWEEN

MUNDUSI INVESTMENTS LTD APPELLANT

AND

PATRICK KIMATHI M'MUGAMBI 1ST RESPONDENT

DAVID MUTHEE M'MUGAMBI 2ND RESPONDENT

JOHN M'MBIJIWE T/A BEALINE AUCTIONEERS 3RD RESPONDENT

AND

JOSEPH MWEBIA M'ANAMPU OBJECTOR

RULING

1. The court is asked to stop the auction of the applicant's proclaimed properties in execution of costs awarded to the respondent. The grounds are listed on the face of the application and a supporting affidavit sworn by Joseph Mwebia M'Anampiu on November 20, 2023.
2. The appellant, as an objector to the proclamation notice, avers he is the sole owner of the movables proclaimed by the respondent on November 15, 2023, that he was not a party to the suit where costs were awarded to the 1st & 2nd respondents, against the appellant and that the 1st & 2nd respondents are being malicious since the appellant has already paid Kshs.100,000/= out of the decreed costs of Kshs.178,000/=; yet the proclamation is for the whole amount.
3. In the supporting affidavit the objector avers the 1st & 2nd respondents are greedy and had previously proclaimed the same grounds in the primary suit and were supplied with receipts and a letter to confirm the ownership of the same. He attached copies of the proclamation, a bundle of receipts and logbook, a copy of a payments forwarding letter dated 10.11.2023, and a receipt from the respondent's counsel dated November 10, 2023, all marked as annexure JMN 1 (b), respectively.



4. The application is opposed by a replying affidavit of Patrick Kimathi M'Mugambi sworn on November 22, 2023. While acknowledging payment of Kshs.100,000/= as per the letter dated November 20, 2023, from his advocates on record, he averred the applicant was told to negotiate over the auctioneer's fees and bring the first installment forward. Additionally, he averred that instead of making a counter-proposal, the applicant moved to this court. The 1st respondent, therefore, termed the application an afterthought aimed at evading payments of the auctioneer's fees since there was no auction due on November 22, 2023. The 1st respondent averred that the appellant and the applicant were the same thing and were fond of hiding behind the alleged company, which is a one-person show, created and managed solely by him. The 1st respondent averred that the applicant, if willing, should pay as proposed in the advocate's letter.
5. There is no dispute that the Deputy Registrar of this court issued a certificate of costs for Kshs.178,000/= in favour of the respondent on October 31, 2023, following which warrants of attachment were issued on 9.11.2023 to Bealine Auctioneers for Kshs.181,500/=. Proclamation against the judgment debtor's property took place on November 15, 2023, and the goods were to be moved after 14 days from 15.11.2023. An auctioneer's fee note of Kshs.64,290/= was issued.
6. From the record, it appears Kshs.100,000/= was paid to M/s J.W Ondieki & Co. Advocates on 10.11.2023, which was before the proclamation took place, and was a day after the warrants of attachments were issued to the auctioneers. In the letter dated 31.10.2023 as marked as annexure JMM "3," there is an admission of a proclamation dated 27.10.2023 and an issue raised of the identity of the judgment debtor.
7. Order 22 rule 51 of the *Civil Procedure Rules* relate to the procedure on objection to attachment by a third party who is not a judgment debtor but whose property has been attached. The law requires that the party give notice in writing to the court, all other parties and the decree-holder of his objection to the attachment of such property. rules 52 & 54 thereof relate to stay of execution, raising of attachment and notice of intention to proceed with the execution.
8. In this file, I have not come across any notice of objection that was filed by the objector before the application dated November 20, 2023 was filed and duly served upon all the parties and the judgment debtor.
9. There is no notice to act for the objector filed by his advocates. What we have is an application brought by M/s Gichunge Muthuri & Co. Advocates acting for both the objector and the judgment debtor. Whereas a party has a right to choose who to represent him, in this instance, legally, the application is incompetent for non-compliance with the cited provisions of the law. The response by the decree-holder and the judgment debtor after the formal notice of objection was filed is lacking.
10. For the above reasons, I find the application dated November 10, 2023 incompetent and so is the response by the decree-holder. The same is struck out with no order as to costs. Parties are at liberty to move the court in accordance with the law.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 28TH DAY OF FEBRUARY 2024

In presence of

C.A Kananu

Mugo for the objector

Applicant



Ondieki for the respondents

HON. CK NZILI

JUDGE

