



REPUBLIC OF KENYA



KENYA LAW
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Don Woods Company Limited v Katumbi & another; Nextgen Auctioneers (Interested Party) (Cause 348, 349, 350, 351, 352, 353, 354, 355, 357, 358, 359, 360, 361, 1018, 1019, 1020, 1022, 1023, 1024, 1025 & 1026 of 2018 (Consolidated)) [2025] KEELRC 567 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 567 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 348, 349, 350, 351, 352, 353, 354, 355, 357, 358, 359, 360, 361, 1018, 1019, 1020, 1022, 1023, 1024, 1025 & 1026 OF 2018 (CONSOLIDATED)

B ONGAYA, J

FEBRUARY 27, 2025

BETWEEN

DON WOODS COMPANY LIMITED OBJECTOR

AND

WAMBUA KATUMBI DECREE HOLDER

AND

ATHI RIVER MARBLE & GRANITE LTD JUDGMENT DEBTOR

AND

NEXTGEN AUCTIONEERS INTERESTED PARTY

RULING

1. The objector filed a notice of objection to execution herein under order 22 rule 51(1) of the [Civil Procedure Rules 2010](#) dated 15.07.2024 and through Kang'ari Ngandu Advocates. The objector objected to access, attachment and sale of all goods within the property known as Title No. Kajiado/ Noonkopir Township/28 situated at Kitengela, Miriams road and previously owned by Athi River Marble & Granite Ltd, the Judgment Debtor, and, in satisfaction of a decree issued by the Court on 21.02.2023 and all consequential orders. The objection was urged upon the following grounds:
 - a. The objector is the registered owner of machinery and fixtures on the property Title No. Kajiado/ Noonkopir Township/28 situated at Kitengela, Miriams road.
 - b. The objector was not a party to the consolidated suits subject of the decree for execution proceedings herein.



- c. The judgment debtor or respondent has no beneficial or secondary rights to the said property and the said property cannot be attached and sold in satisfaction of the decree.
 - d. The objector has exhibited the agreement dated 27.07.2017 by it purchased from the judgment debtor the property known as Title No. Kajiado/ Noonkopir Township/28 situated at Kitengela, Miriams road. The purchase included the plant and machinery attached to the land. The property has since been transferred to the objector and a certificate of lease issued on 21.09.2017 as exhibited. The execution process should therefore be set aside and as commenced by the interested party, auctioneer.
 - e. The objector has exhibited the evidence that due stamp duty was paid upon purchasing the property per exhibits on the further supporting affidavit of Donald Kiboro, Director, sworn on 24.10.2024.
2. The decree holder John Caleb Yonge opposed the application by filing his replying affidavit and further replying affidavit in person. He urged as follows:
- a. He had authority to swear the affidavits on behalf of the claimants in the consolidated suits.
 - b. Final judgment was delivered on 27.09.2022 by Onyango J with respect to the consolidated suits. Decree issued and interested party was instructed to undertake the execution of the decree which had not been satisfied despite it being served upon the judgment debtor.
 - c. The sale agreement and transaction of the property as exhibited is fraudulent and calculated to defeat the execution process. Despite the sale of the property no business is conducted on the premises. Further the purchase price of Kshs.75 million appears not genuine considering the locality of the property.
 - d. The 1st respondent believes that the judgment debtor is in hiding in the UK and colluded with the objector to defeat the execution through the sale of the property.
 - e. The judgment debtor says that the arguments raised herein are res judicata as the Court has already decided a similar objection to execution *Don Woods Company Limited v John Caled Yonge and Athi Marble and Granite C. Ltd and 1 Others* being Judgment in ELRCA/ E151/2024 delivered by Abuodha J on 11.10.2024.
3. As at the time of delivering this ruling, it is true that the Judgment by Abuodha J of 11.10.2024 dealt with a similar objection proceeding in *Don Woods Company Limited v Yonge & 2 others* (Appeal E151 of 2024) [2024] KEELRC 2488 (KLR) (11 October 2024) (Judgment) Neutral citation: [2024] KEELRC 2488 (KLR). The Court found as follows:

“ 32. This court agrees with the lower court for the reasons that the Appellant did not join the Primebank Kenya Limited in these proceedings as an interested party having financed the property at Kshs 75,000,000/=, no valuation report by government valuer was led to show the property was for that amount charged, no proof of stamp duty payment or Appellant’s bank statement to show how it has been making repayments to the Bank for the financed amounts. 33. In addition, the court notes that the Appellant never sought the approval from Competitions Authority as per section 41 and 42 of the *Competition Act*. The fact that the Appellant has not taken real possession of the property as alleged by the 1st Respondent and that the movable property



is rotting which fact was not rebutted, the Appellant is to the Court, a proxy used by the Judgment debtor to hide the truth.

34. The court therefore agrees with the trial court that the change of ownership was done in a hurry to defeat execution of decrees in the said Primebank Kenya Limited was said to be engaged in mediating the matter on behalf of the Claimants to pay them their dues but failed and went on charging the property with the Appellant where it had initially charged it with the judgment debtor for the same amount. It is interesting that the Judgment debtor has failed to take part in these proceedings in order to avoid execution despite being served.
35. The appeal therefore is found without merit and is hereby dismissed with costs to the 1st Respondent.”

4. The Court finds for decree holder that by that Judgment by Abuodha J, the issues were substantially similar. The Court finds that the findings on the issues having been determined in that recent case, it would be an abuse as sitting on appeal on its own findings. The findings in the Judgment by Abuodha J should apply to the instant case whereby parties are involved in exactly similar execution proceedings and claiming in same right and interest with respect to the impugned execution proceedings as was in the Judgment by Abuodha J and for which the objector has not indicated that an appeal was preferred. The objection proceedings will collapse. The Court considers that the appropriate procedure would be for the objector to appeal the findings by Abuodha J, now upheld herein, as applicable to the impugned execution proceedings herein. In that consideration, a temporary stay of execution will be granted up to 14.03.2024 to allow the objector chance to take appropriate further steps as may be deemed appropriate.

In conclusion the objection proceedings are hereby determined with orders as follows:

- a. The notice of objection to execution dated 15.07.2024 is hereby dismissed with costs.
- b. There be a temporary stay of execution of the decree herein in view of the commenced execution proceedings herein until close of 14.03.2025.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 27TH FEBRUARY, 2025

BYRAM ONGAYA

PRINCIPAL JUDGE

