



REPUBLIC OF KENYA



Kenya County Government Workers Union v Nzoka; Express Agency Auctioneers (Interested Party) (Cause E046 of 2023) [2025] KEELRC 364 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 364 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E046 OF 2023
CN BAARI, J
FEBRUARY 13, 2025**

BETWEEN
KENYA COUNTY GOVERNMENT WORKERS UNION JUDGMENT DEBTOR
AND
JOSEPH MUUO NZOKA DECREE HOLDER
AND
EXPRESS AGENCY AUCTIONEERS INTERESTED PARTY

RULING

1. Before Court is the Judgment debtor/Applicant's Motion application dated 13th September, 2024, brought pursuant to Sections 1A, 1B, 3A & 44(1) of the *Civil Procedure Act*, Order 22 Rules 6, 22, 51 & 52, Order 40 Rule 1 and Order 51 Rules 1 & 3, all of the Civil Procedure Rules. The Applicant seeks the following reliefs:-
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That the Honourable Court be pleased to issue a declaration that the impugned warrant and proclamation issued to and by the Interested Party herein, are illegal, irregular, un-procedural, ill-motivated, and unlawful as the same are based on expired warrants of attachment and sale.
 - v. That this Honourable Court be pleased to set aside, vacate, and/ or annul the Warrants of Attachment and Sale given on 6th August, 2024 and the Proclamation of Attachment dated 12th September. 2024.



- vi. That the costs of this Application together with the Interested Party's charges, if any, be borne by the Decree Holder/Respondent and the Interested Party.
2. The Motion is supported by the grounds on the face and the supporting affidavit of Roba Sharu Duba, the General Secretary of the Applicant sworn on 13th September, 2024.
3. The Applicant avers that it recorded a consent with the Respondent herein, and which consent was duly adopted as an order of the Court on 6th August, 2024, in Court of Appeal Civil Application No. E526 of 2024:-Kenya County Government Workers Union -vs- Joseph Muuo Nzoka, which application emanated from this matter. It states further, that it was agreed in the said Consent order, that the Applicant herein would pay the Decree holder/Respondent the sum of Kshs. 400,000/= per month, starting from 10th August, 2024, until the decretal sum of Kshs. 10,700,000/= was fully settled.
4. The Applicant avers that the said consent was meant to amicably resolve the enforcement of the judgment debt arising from this Honorable Court's judgment and/or decree delivered on the 14th June, 2024.
5. It avers further, that in strict compliance with the consent order, it has already made two payments of Kshs. 400,000/= each, one in August, 2024, through (Cheque Number. 064989) and another issued in September, 2024 through (Cheque Number. 064911), which payments were each made on time as per the terms of the consent order dated 6th August, 2024.
6. It is the Applicant's assertion that despite the consent and the ongoing compliance by the Judgment Debtor/Applicant, the Decree Holder/Respondent obtained warrants of attachment from this Honourable Court on 6th August, 2024, the same date the consent was recorded in Civil Application E305 of 2024. It avers that the warrants of attachment were to expire on 9th September, 2024, making them unenforceable after this date.
7. The Applicant further avers that on 12th September, 2024, three days after the expiration of the warrants, the Respondent's Advocates, through their agents, the Interested Party, issued a Proclamation Notice dated 12th September, 2024, attaching the Applicant's movable goods.
8. It is their case that the proclamation was based on expired warrants, making the entire attachment process legally invalid and procedurally flawed.
9. That the Respondent's and Interested Party's actions in pursuing execution through attachment, directly violate the Consent Order recorded on 6th August, 2024 issued by the Court of Appeal, which consent order provided a structured payment plan, and did not authorize any form of execution as long as the Judgment Debtor/Applicant complied with the terms, which they have done.
10. It is the Applicant's position that the Decree Holder/ Respondent and Interested Party's unilateral action to execute the judgment while the Judgment Debtor/Applicant is faithfully making payments, is in bad faith, an abuse of the court process, and contrary to established legal principles.
11. The Applicant avers that should the unlawful attachment of its assets be allowed to proceed unabated, it could result in an unnecessary, punitive and substantial loss, given that it is fully compliant with the consent order.
12. That it is in the interest of justice and fairness that this Court intervenes to stop the unlawful attachment of the Applicant's assets since the Respondent and Interested Party have other lawful means to enforce the consent order if necessary.



13. The Decree holder/Respondent on its part, opposed the Motion vide grounds of opposition dated 30th September, 2024. He avers that it is clear from the exhibits produced by the Applicant that it had violated the terms of the consent order having made the payment after the timelines ordered by the Court.
14. The Interested Party neither entered appearance nor filed any reply or submissions on the motion.
15. Parties canvassed the motion by way of written submissions, and submissions were received from both parties.

Submissions by the Judgment Debtor/Applicant

16. It is submitted for the Applicant that by the time the Interested Party purported to proclaim the Applicant's movable goods on 12th September, 2024, the warrants had expired. It is further submitted that by dint of the expiration of the warrants, no lawful execution or proclamation could issue or ensue from the expired warrants.
17. It is the Applicant's submission that the proclamation notice dated 12th September, 2024 having been issued by the Interested Party herein pursuant to this Honorable Court's warrant of attachment given on 6th August, 2024, and returnable on 9th September, 2024, the said proclamation notice is irregular, unlawful, and illegal. Reliance was placed in the case of *Arun C Sharma v. Ashana Raikundalia TIA A. Raikundalia & Co. Advocates & 4 others* {20141 eKLR} to buttress this position.
18. It is the Applicant's further submission that where a party has accepted a benefit under a contract, judgment, or any legal process, it cannot adopt an inconsistent position to the detriment of the other party.
19. The Applicant submits that having demonstrated that the warrant of attachment upon which the impugned proclamation was made had expired by the time of the proclamation, the entire execution process is tainted with illegality, and submits further that it is on fair and just grounds that this Honourable Court stays the execution of the said warrants, and restrains the sale of the proclaimed goods.

Submissions by the Decree Holder/Respondent

20. It is the Respondent's submission that the Court lacks jurisdiction to entertain the current application in light of the consent of the parties filed and adopted before the Court of Appeal on 06/08/2024. He submits further that the said consent settled the issues between the parties including timelines for compliance, as such, any issues touching on the said consent can only be addressed by the Court of Appeal and not this Court.
21. The Respondent submits that the Applicant has admitted being in breach of the consent order of the Court of Appeal and that the consent order is self-enforcing as the aspect of breach and consequences thereof are evident on its face.

Analysis and Determination

22. I have considered the Motion, the grounds and affidavit in support and the grounds of opposition filed by the decree holder/Respondent and the rival submissions. The issues for determination are:
 - i. Whether the Warrants of Attachment were valid at proclamation
 - ii. Whether the Applicant merits the reliefs sought.



23. The Applicant's contention is firstly, that the warrants of attachment pursuant to which the Interested Party proclaimed her assets had expired, and that by dint of the expiration of the warrants, no lawful execution or proclamation could issue or ensue from the expired warrants.
24. The warrants of attachment subject of this motion was issued on 6th August, 2024. The last paragraph of the said warrant required in no uncertain terms that it be returned on or before 9th September, 2024 with an endorsement certifying the manner in which it has been executed or detailing the reason(s) why it has not been executed. This forms the basis for the Applicant contesting the proclamation.
25. Having proceeded to proclaim the Applicant's movable assets on 12th September, 2024, after the return date, thus goes to confirm that the proclamation was unprocedural. The judgment creditor/ Respondent ought to have sought the renewal of the warrants of attachment as there were none to be executed.
26. Gikonyo J in *Arun C Sharma v. Ashana Raikundalia TIA A. Raikundalia & Co. Advocates & 4 others* {20141 eKLR, held thus:-
- “ ... The auctioneer acted inequitably and no mercy should be shown on him. The auctioneer has not proved under section 107 of the *Evidence Act* that there were valid warrants of attachment after the previous ones expired. The expired warrants were never renewed and none has been produced in court which means there were no warrants of attachment. The entire attachment was illegal. The auctioneer was negligent ”
27. In the premise, I find the proclamation of the Applicant's movable assets unprocedural and unlawful.
28. On whether the Applicant is entitled to the reliefs sought, it is already clear that having proceeded to proclaim the Applicant's assets based on expired warrants of attachment the Judgment Creditor/ Respondent acted unlawfully. Secondly, the presence of a consent order on the satisfaction of the decree in this matter, further compounds the facts that the execution of the warrants of attachment earlier issued was unnecessary.
29. I note from the Consent Order that the monthly instalments were agreed to be made on the 10th day of every month until payment in full. I further note that the Judgment debtor/Applicant issued the first cheque on 7th August, 2024 and the second one on 11th September, 2024. The assertion by the Respondent that the Applicant was in breach of the Consent Order, does not in my view warrant the action of both the Decree holder/Respondent and the Interested Party in proceeding with the proclamation based on a one day delay of payment.
30. In the end, the Applicant's Motion succeeds and orders granted in the following terms: -
- i. A declaration that the Warrants of Attachment and proclamation by the Interested Party herein, is illegal, irregular and unprocedural, and therefore unlawful.
 - ii. That the warrants and the proclamation of 12th September, 2024 is hereby vacated.
 - iii. The Decree holder/Respondent shall bear the Judgment Debtor/Applicant's costs of this application.
 - iv. I make no orders on costs in respect of the Interested Party (Auctioneer) since it did not defend the motion.
31. It is so ordered.



SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Oginga present for the Judgment Debtor/Applicant

Mr. Abidha present for Decree holder/Respondent

N/A for the Interested Party

Ms. Esther S-CA.

