



Mwikali & 2 others v Jam Hotels Limited & another; Vertland Gardens Hotel Limited (Objector) (Cause 1137 of 2015) [2025] KEELRC 833 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 833 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1137 OF 2015
AK NZEI, J
MARCH 14, 2025**

BETWEEN

**RUTH MWIKALI 1ST CLAIMANT
JONATHAN MUSYOKA KYUMA 2ND CLAIMANT
NICHOLAS ONDIEKI MOSE 3RD CLAIMANT**

AND

**JAM HOTELS LIMITED 1ST RESPONDENT
JAM RESCUE RESTAURANT LIMITED 2ND RESPONDENT**

AND

VERTLAND GARDENS HOTEL LIMITED OBJECTOR

RULING

1. According to the Court's record herein, Judgment was delivered in favour of the 2nd and 3rd Claimants on 29th January, 2024. Party and Party Costs were taxed by the Court's Deputy Registrar, sitting as a taxing officer, on 6th June, 2024. Thereafter, execution proceedings were taken out, and proclamation of movable properties was subsequently done by Mbusera Auctioneers in execution of this Court's decree.
2. On 27th August, 2024, the Objector herein, Vertland Gardens Hotel Limited, filed an Objection to Attachment dated 26th August, 2024, objecting to attachment of the proclaimed movable properties on ground that the Objector is the legal and equitable owner of the said properties.
3. The said objection to attachment was filed contemporaneously with an evenly dated application whereby the Objector sought the following Orders:-



- a. That the application be certified urgent and be heard ex-parte in the first instance on priority basis.
 - b. That execution of the decree and order of the Court issued on 29th January, 2024 be stayed pending the hearing and determination of the application inter-partes.
 - c. That the Objector's goods as per the Proclamation Notice dated 21st August, 2024 be unconditionally released and/or discharged to the Objector.
 - d. That costs of the application be provided for.
4. The said application sets out on its face the grounds on which it is based, and which are amplified in the supporting affidavit of Francis Kinuthia Njuguna sworn on 26th August, 2024. It is deponed in the said affidavit:-
- a. that the Objector is the Leasee of the premises in which the goods were proclaimed and not the Judgment debtor as purported; having informally leased the property from Grand Photolab East Africa Limited.
 - b. that the Objector fully runs the business premises and has obtained all the necessary regulatory approvals from the County Government of Nairobi for the business at the premises since 2023 when the Objector took over the business.
 - c. that the premises and entire surrounding area is called Jam Rescue, but the instant business premises is not in any way whatsoever associated with the Judgment debtor companies as its (sic) trades through the Objector company.
 - d. that on 21st August, 2024, Mbusera Auctioneers, being an agent of the Decree holders, went to the Objector's premises located on LR. 209/93/25 at Makadara along Jogoo Road and wrongly left a Proclamation Notice dated 21st August, 2024 in execution of a decree issued by this Court on 29th January, 2024.
 - e. that the goods in question are property of the Objector herein, and cannot be legally proclaimed by the Decree holders.
 - f. that the Objector is not a party to the suit herein, and will suffer irredeemable loss should execution proceed.
5. Documents annexed to the said supporting affidavit are copies of the Objector's Certificate of incorporation, a letter by Grand Photolab East Africa Limited (dated 20th August, 2024) stating that it was the owner of Plot No. 209/93/25 (Jogoo Road, Hamza Makandara Nairobi), that it had previously leased the property to the Judgment Debtors upto 30th March, 2023 and that the Objector had leased it from 1st April, 2023. Other documents included a Single Business Permit in the Objector's name (dated 10th April, 2024).
6. The application is opposed by the Decree holders vide a replying affidavit of Namada Simoni Advocate sworn on 30th October, 2024. It is stated in the said replying affidavit that the aforesaid letter exhibited by the Objector does not reflect a valid contractual relationship between the Objector and Grand Photolab East Africa Limited, and that the Objector had failed to exhibit a formal lease or documentation that would substantiate their claim. It is further deponed:-
- a. that approvals from the County Government of Nairobi do not confer rights over goods that are legally owned by the Judgment debtors.



- b. that the Auctioneers executed a lawful proclamation in accordance with the Court's decree herein.
 - c. that the proclaimed goods are owned by the Judgment debtors and were lawfully attached in execution of the Court's decree.
 - d. that allowing the Objector's application could undermine enforcement of lawful Court orders and the Decree holders' rights.
7. The Claimants filed a supplementary replying affidavit sworn on 4th November, 2024 and annexed photographs demonstrating that the premises in which the proclaimed goods were belong to the Judgment debtors and not to the Objector as alleged.
 8. On the other hand, the Objector filed a further affidavit of the said Francis Kinuthia Njuguna sworn on 19th December, 2024. Annexed to the said further affidavit are what is shown to be a debit note No. 013 issued to the Objector by Grand Photolab East Africa Limited on 31st June, 2024 and what is shown to be receipt No. 018 issued to the Objector by Grand Photolab East Africa Limited on 9th July, 2024 for the 3rd quarter (July to September) 2024. Also annexed to the said affidavit are similar documents for the third quarter of 2023.
 9. Order 22 Rule 51 of the Civil Procedure Rules 2010 provides as follows:-
 1. Any person claiming to be entitled to or to have a legal or equitable interest in the whole 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. The notice shall be accompanied by an application supported by an 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.”
 10. In the (Notice of) Objection filed herein by the Objector pursuant to the foregoing Rule, the Objector states that it is the legal and equitable owner of the property enumerated in the Proclamation of attachment dated 21st August, 2024. According to the said proclamation, a copy whereof the Objector annexed to its supporting affidavit, the proclaimed properties include office tables, office computers, filing cabinets, reception table, assorted sofas, Bar tables, Bar stools, assorted alcoholic drinks, assorted soft drinks, music system, long tables, 3 golden umbrellas and 8 plasma TVs.
 11. The Objector states as follows in paragraphs 3 and 4 of the supporting affidavit of Francis Kinuthia Njuguna sworn on 26th August, 2024:-
 3. The Objector fully runs the business premises and has obtained all the necessary regulatory approvals from the County Government of Nairobi for the businesses at the premises since 2023 when the Objector took over the business.
 4. The premises and entire surrounding area is called Jam Rescue but the Instant business premises is not in any way whatsoever associated to the Judgment Debtor companies as its trades (sic) through the objector company.”
 12. The foregoing depositions point to an intricate, and possibly deliberately concealed business connection and/or association between the Judgment Debtor companies and the Objector. Indeed,



although the Objector alleges to have taken over the business at which the proclaimed properties/goods were proclaimed by the Auctioneer from the Judgment Debtor companies in 2023, no document and/or legal document regarding the alleged business take-over has been exhibited.

13. Further, the Objector has not exhibited any lease document, registered or unregistered, to demonstrate a legal relationship between itself and Grand Photolab East Africa Limited which is alleged to have leased to the Objector the business premises where the attachment/proclamation in issue was done. In the absence of a duly executed lease, there cannot be said to be a legal connection between the business premises indicated on the Single Business Permit, the letter by Photolab East Africa Limited dated 20th August, 2024 and the alleged debit notes and receipts alleged to have been issued by the said company, on one part, and the subject business (where the proclamation/attachment occurred) on the other part.
14. Indeed, the Court has taken note of the fact that the alleged debit notes and receipts, shown to have been issued by Grand Photolab East Limited, do not bear the said company's legal/tax details, like the Kenya Revenue Authority (KRA) Pin Number, despite the colossal sums indicated thereon. Further, the said company's postal and physical address and telephone numbers as appearing on the alleged debit notes and receipts are different from those on the said company's letter dated 20th August, 2024. This casts a heavy cloud of doubt over the narrative being advanced by the Objector and Grand Photolab East Africa Limited. The Court has also not been shown the said company's certificate of incorporation.
15. Further to the foregoing, the Objector has not in any way demonstrated ownership, legal or equitable, of the proclaimed properties/goods. No receipts regarding ownership/purchase of any of the proclaimed goods/properties have been exhibited by the Objector. Although the proclaimed properties/goods are shown to include assorted alcoholic drinks, the Objector has not demonstrated that it is licenced to sell such drinks and therefore owns the proclaimed alcoholic drinks. No liquor licence, issued pursuant to the provisions of the *Alcoholic Drinks Control Act* 2010, has been exhibited.
16. The upshot of all the foregoing is that the Objector has, on a balance of probability, failed to establish legal or equitable ownership of the goods/properties proclaimed by Mbusera Auctioneers on 21st August, 2024, or any part thereof. It was stated as follows in the case of *Capital Corporation Limited - vs - Ann Wamani & Another* [2018] eKLR:-

“In this case, the Objector did not provide any receipt to show that it was the person who purchased the attached items. Indeed, the Objector did not provide any document which would enable the Court to verify the Objector's legal or equitable interest in the attached goods. All we have was a statement by Kinuthia Njoroge, saying that the attached movable property vests in Clean World Limited. In my considered view, the bare statement cannot be the basis of an objective determination by this Court, as to whether or not the attached goods belonged to the Objector. Therefore, I find and hold that the Objector has failed to demonstrate that it has either a legal or an equitable interest in the attached property.”

17. I find no merit in the Objector's Notice of Motion dated 26th August, 2024, and I hereby dismiss the same with costs.
18. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025

AGNES KITIKU NZEI



JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Ameba for the Claimant

No appearance for the Respondent

Mr. Oketch for the Objector.

