



Ayombe v Nelliwa Building and Civil Engineering Limited & another (Employment and Labour Relations Cause E814 of 2023) [2025] KEELRC 2148 (KLR) (22 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2148 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E814 OF 2023**

**HS WASILWA, J
JULY 22, 2025**

BETWEEN

JACK OMONDI AYOMBE CLAIMANT

AND

NELLIWA BUILDING AND CIVIL ENGINEERING LIMITED .. RESPONDENT

AND

SIMON MBOSHA KAMUYU OBJECTOR

RULING

1. The Objector/Applicant filed a Notice of Motion dated 20th February 2025 seeking orders that: -
 1. Spent
 2. That upon hearing inter partes, this honourable Court do be pleased to grant a stay of execution pending the hearing and determination of this application.
 3. That upon hearing of this application inter partes, this honourable Court be pleased to raise any attachment of the objectors' goods.
 4. That costs of this application be provided for.

Objector/Applicant's Case

2. The Applicant avers that on the 14th February 2025 Brave auctioneers acting at the behest of the Claimant purported to proclaim all household goods together with the vehicle of the Applicant at Miotoni House Number 43 Karen.
3. That the proclamation did not comply with Rule 12(b) of the auctioneers' rules requiring a schedule indicating the value of the specific items and the condition of each item.



4. The Applicant avers that all the household goods in the objector's house belong to the objector and have nothing to do with Neliwa Builders and Civil Engineering Ltd.
5. The Applicant avers that he is not a director of the said Nelliwa Builders and Civil engineering Ltd therefore his goods cannot in law be attached in satisfaction of a debt owed by the said company.
6. He further avers that the house from which the said goods were purportedly proclaimed does not belong to Neliwa Builders and Civil Engineering ltd.
7. The Applicant avers that the aforesaid proclamation is null and void abinitio and should not be allowed to proceed any further as the objector is likely to suffer irreparable loss and damage.
8. The Applicant therefore urged the court to stay execution and the illegal attachment be raised as the same cannot withstand the scrutiny of law.

Claimant/Respondent's Case

9. In opposition to the Application, the Claimant/Respondent filed a replying Affidavit sworn on the dated 19th March 2025.
10. The Respondent avers that the application is fundamentally flawed, illegally untenable and seeks that the same be dismissed with costs.
11. The Respondent avers that the proclamation undertaken by Brave auctioneers on the 14th February 2025 was lawful and was in compliance with the applicable [auctioneers Act](#) and rules specifically Rule 12(b) of the Auctioneers' Rules.
12. The Respondent avers that the mere assertion that the household goods and vehicle belong to the objector is not sufficient proof of ownership and if the application is allowed the decree holder stands to suffer a miscarriage of justice irreparable loss and damage.

Applicant's Submissions

13. The Applicant submitted that a judgment was entered in favour of the plaintiff on the 16th June 2023 for a decretal sum of Kshs 582,285 and costs Kshs 154,240 in which suit the Objector/Applicant was not a party.
14. The Applicant submitted that he was not a party to the suit, did not testify on behalf of the defendant and is not a shareholder or director of the defendant.
15. He submitted that the Plaintiffs upon obtaining warrants of execution against the defendant, brave auctioneers proceeded to carry out a proclamation at the objector's private home on the 14th February 2025 at Mitamboni road, House number 43, Karen.
16. The Applicant submitted that it is a long-standing legal principle of company law that a company is a separate person distinct from its members as established in the landmark case of Salomon v. A. Salomon & Co. Ltd. [1897] AC 22. This principle dictates that the debts of the company cannot be directly imposed on its directors or shareholders unless a court has pierced the corporate veil and held individuals personally liable for the company's debts.
17. It is the Applicant's submission that Rule 12 of the Auctioneers Rules places a clear obligation on the auctioneer to ensure that the goods being attached belong to the judgment debtor but in the instant case the objector's personal property was unlawfully attached despite being clearly outside the scope of the judgment debtor's assets.



18. The Applicant submitted that the Plaintiff and the defendant failed to conduct due diligence to establish the connection between the objector and the defendant, as they would have established that the objector is not a director of the company.
19. The Applicant relied in the holding in *Paul M. Munyao & 2 Others v Civicon Limited (Judgment Debtor); AEA Limited & Another (Objectors)* [2021] eKLR, though dealing with different facts in objection proceedings, the court emphasized the importance of due diligence on the part of the Plaintiff (decree holder) in verifying the rightful ownership of assets before execution. The court held: "It is clear that the Plaintiff did not undertake due diligence to establish the legal ownership of the attached motor vehicles. In the upshot, it is my conclusion that where it is established that a property is jointly registered in the name of a Judgment Debtor and another person, a decree holder cannot attach the said property in execution of a decree of the court.
20. The Applicant submitted that corporate veil protects personal properties of directors, shareholders and individuals associated with the company in *Paul M. Munyao & 2 Others v Civicon Limited (Judgment Debtor); AEA Limited & Another (Objectors)* [2021] eKLR, though dealing with different facts in objection proceedings, the court emphasized the importance of due diligence on the part of the Plaintiff (decree holder) in verifying the rightful ownership of assets before execution. The court held: "It is clear that the Plaintiff did not undertake due diligence to establish the legal ownership of the attached motor vehicles. In the upshot, it is my conclusion that where it is established that a property is jointly registered in the name of a Judgment Debtor and another person, a decree holder cannot attach the said property in execution of a decree of the court.
21. It is the Applicant's submission that he is a stranger to any debts owed by the respondent. That the wrongful attachment of the objector's personal property is unrelated to the respondents' debts.
22. The Applicant submitted that the court should exercise its duty to protect the objector's property rights and set aside the unlawful attachment of the objector's property.

Respondent's Submissions

23. The Claimant/Respondent submitted that the respondent who is the judgment debtor failed to settle the decretal sum hence the issuance of warrants of attachment on 21st February 2025.
24. It was submitted that the auctioneers issued a proclamation notice on properties believed to belong to the judgment debtor and the objector has failed to establish equitable ownership of the attached properties.
25. The Claimant/Respondent relied in the decision by R.E Aburili in *Obadha v Omoro* 12|22t KEHC 332 (KLR) ,the Honourable Judge quoted the case of *Arun C Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 others* 2014 KEHC 2430 (KLR) where the court stated that "The objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The key words are, entitled or to have a legal or equitable interest in the whole or part of the property."
26. It is the Claimants/Respondent's submission that the auctioneers acted within their statutory mandate under Rule 12(b) of the Auctioneers rules which allows attachment of goods found within the premises associated with the judgment debtor.
27. It is the Claimant/Respondent's submission that the objector has not furnished the court with adequate and credible evidence to warrant lifting of the attachment and urges the court to dismiss



the application with costs and the attachment and execution process be allowed to proceed to full realization.

28. I have examined all the averments and submissions of the parties herein. The applicants seek stay of execution of the process averring that they have no relationship with the respondents and that they owe nothing to the claimant respondents and so their property cannot be subjected to execution.
29. The judgment debtor is a company herein. The decree holder has a duty to show nexus between the judgment debtor with the objector herein. Unfortunately, the decree holder has not demonstrated ownership of the attached goods to the judgment debtor and therefore execution cannot proceed as against the objector.
30. In the circumstances, I find the application is merited. The objection is upheld and the process of execution as against the objector is stayed forthwith. Any attachment in process against the objector is nullified forthwith. Costs to the objector.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

