



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

Gachanja v Kazuri Beads 2000 Limited Workers; Skypac Consult Auctioneers (Respondent); Odd Birds Limited (Objector) (Cause 1172 of 2018) [2025] KEELRC 2074 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2074 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1172 OF 2018
HS WASILWA, J
JULY 10, 2025

BETWEEN

STEPHEN MWANGI GACHANJA DECREE HOLDER

AND

KAZURI BEADS 2000 LIMITED WORKERS JUDGMENT DEBTOR

AND

SKYPAC CONSULT AUCTIONEERS RESPONDENT

AND

ODD BIRDS LIMITED OBJECTOR

RULING

1. The Objector/Applicant filed a Notice of Motion dated 12th March 2025 seeking orders that: -
 1. Spent
 2. pending the hearing and determination of this application inter parties, the Honourable Court be pleased to stay the execution of the decree herein issued against the Judgment Debtor on 12/05/2023, the consequent Warrants of Attachment dated 4/03/2025 and Proclamation Notice dated 5/03/2025 and all other consequential orders and proceedings arising therefrom in this suit.
 3. this application be heard inter parties as a matter of urgency on such date and at such time as this Honourable Court may direct.



4. this Honourable Court be pleased to allow the objection proceedings herein and set aside the proclamation and/or attachment by Messrs. Skypac Consult Auctioneers vide its Proclamation Notice dated 5/03/2025 in execution of the Decree herein.
5. this Honourable Court be pleased to issue any further orders that may be deemed just and fair in the circumstances.
6. the costs of this Application be awarded to the Objectors.

Objector/Applicant's Case

2. The Objector avers that on 5th March 2025, Messrs Skypac Consult Auctioneers under the instructions of the Decree Holder purported to enter into its premises and attach its property including its office equipment as enumerated in the Proclamation Notice dated 5th March 2025 in execution of a decree issued on 12th May 2023 against the Judgment Debtor.
3. The Objector avers it is a stranger to the Decree and proceedings herein as it is neither a party to nor the Judgment Debtor in the proceedings thus the proclamation and execution proceedings commenced were illegal and unlawful.
4. The Objector avers that its application discloses reasonable cause of action in law against the Decree Holder and the Auctioneers execution of a decree against strangers.
5. It is the Objector's case that unless the interim orders are granted, it shall suffer substantial and irreparable loss since Messrs Skypac Consult Auctioneers shall at any time carry away and sell its property including its work equipment as enumerated in the Proclamation Notice without any lawful or legal reason.
6. The Objector avers that the Decree Holder's assets and means to repay any losses consequent to the impugned execution are unknown. Therefore, it is in the interest of justice that the proclamation and/or attachment be set aside.

Decree Holder/Respondent's Case

7. In opposition to the Application, the Decree Holder/Respondent filed a replying affidavit dated 28th March 2025.
8. The Decree Holder avers that he initiated execution proceedings against the Judgment Debtor as the decree in his favour against the Respondent has not been satisfied.
9. The Decree Holder avers that the Judgment Debtor having been his employer has assets which he directed the auctioneers to proclaim as it had refused to pay him his claim against it as ordered by the court.
10. The Decree Holder avers that the Objector claims to have bought the Respondent's assets through a sale agreement where it is indemnified of any claims including judgments. The Decree Holder contends that the objector should bring the Respondent for purposes of indemnity and not blame him.
11. It is the Decree Holder's case that he is not a stranger to the Judgment Debtor's properties and that this application is a conspiracy by the Judgment Debtor to deny him the fruits of the judgment and decree of this court by back door.



Objector/Applicant's Submissions

12. The Objector submitted on three issues: whether the Objector/Applicant have legal and equitable interest of the attached properties; whether this Honourable Court should allow the objector proceedings herein and set aside the proclamation and/or attachment by Messrs Skypac Consult Auctioneers vide the Proclamation Notice dated 5/03/2025 in execution of the Decree; and which party shall be awarded costs of the Application.
13. On the first issue, the Objector submitted that Order 22 Rule 51 places the burden to prove and establish its rights to have the attached goods released from attachment on the Objector. The threshold to be met by Objector it relied in *Tawakal Airbus Limited v Irene Muthoni Njirati & another* [2020] KEHC 2079 (KLR) where the court cited the principles in *Chotabhae M. Patel v Chaphaphi Patel* [1958] Ed 743 as follows:
 - “(1) Where an objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to attachment the Court shall proceed to investigate the objection with the live power as regards examination of the objector, and in all other respects as if, he was party to the suit.
 - (2) The objector shall adduce evidence to show that at the date of attachment he had some interests in the property attached.
 - (3) The question to be decided is, whether on the date of attachment, the Judgment debtor or the objector was in possession, or where the court is satisfied that the property was in the possession of the objector, it must be found whether, he held it on his own account or in trust for the Judgment debtor. The sole question to be investigated is, thus, one of possession of and some interest in the property.
 - (4) Questions of Legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment debtor or some other person. To that extent the file may be part of the inquiry.”
14. It is the Objector's submission that it is undisputed that the proclaimed goods are in its premises and at the time of the subject proclamation, it had absolute control and dominion over the proclaimed goods. The Objector has produced the Sale Agreement dated 28th August 2023 demonstrating the purchase of goods from the Judgment Debtor together with the receipt demonstrating payment of consideration. At the time of the proclamation, it had full ownership, possession and control of the goods effective on the hand over date of 1st November 2023.
15. The Objector submitted that it has demonstrated to the required threshold its interest in the proclaimed goods. Additionally, it is a separate and distinct entity from the Judgment Debtor with different directorship and it has interest in the proclaimed goods in the terms set out in the Agreement for Sale. In contrast, the Decree Holder has failed to demonstrate that the proclaimed goods belong to the Judgment Debtor contrary to Section 107 of the *Evidence Act* which provides that any party that desires the court to find that a particular fact exists bears the burden to prove as much through evidence.



16. The Objector submitted that in the absence of evidence to support the Decree Holder's averments that the attached goods are the property of the Judgment Debtor, the same remain mere allegations that fail to meet the evidential threshold required and therefore cannot hold water.
17. On the second issue, the Objector submitted that the warrants of proclamations are illegal as the proclaimed goods are the property of the Objector who is a stranger to the suit.
18. It is the Objector's submissions that this court should proceed to make an order setting aside the proclamation, attachment and sale of the proclaimed goods since it is likely to suffer a miscarriage of justice, substantial and irreparable loss if the execution is not set aside as the attachment and sale will be illegal.
19. On costs, that the Objector submitted that it is trite that costs follow events. The Objector having successfully established that it has legal ownership and possession of the proclaimed goods should be awarded costs payable by the Decree Holder since it has been dragged into the suit unnecessarily by the Decree Holder who failed to conduct due diligence on the ownership of the goods before proceeding with the threatened execution.

Decree Holder/Respondent's Submissions

20. The Decree Holder submitted that the application is brought in bad faith, is misconceived, mischievous and an abuse of the court process. That the application is intended to defeat justice and is a conspiracy between the Judgment Debtor and the Objector to defeat justice. He contends that he was an employee of the Judgment Debtor and he knows all its assets and what was proclaimed belongs to his former employer.
21. The Decree Holder submitted that clause 7.13 of the Sale Agreement between the Judgment Debtor and the Objector provides that the vendor agrees to indemnify the purchaser on a full and unqualified basis from any and all reasonable losses, action, claims, proceedings (criminal or civil), costs, legal expenses, liabilities, judgments, damages or other sanctions arising directly or indirectly from or in relation to any breach or non-performance by the vendor of its obligations. Therefore, the Objector is required to immediately call upon the Judgment Debtor to indemnify; alternatively, the Objector can pay the claim then seek compensation from the Judgment Debtor.
22. The Decree Holder submitted that had the Objector bought the proclaimed assets, it would have changed ownership particulars, otherwise, the Objector is guaranteed full indemnity by the Judgment Debtor and ought to pay and claim from the Judgment Debtor.
23. The Decree Holder submitted that the judgment in this suit was delivered on 12th May 2023 whereas the alleged sale agreement took place on 20th August 2023, three months after the judgment on favour of the Decree Holder had been delivered. Thus, the alleged transaction was done to defeat justice to the detriment of the judgment creditor on concealment of its properties. Further, the sale agreement is not registered or stamp duty paid as required by the law.
24. The Decree Holder submitted that the Objector has not dispensed with the burden of prove that it owned the proclaimed properties hence the application should be dismissed with costs.
25. I have examined all the averments and submissions of the parties. The objector contends that the proclaimed goods are not the JDS but his and that he has no relationship or case with the decree holder to warrant attachment of his goods.



26. In support of his application, the objector relied on a supporting affidavit deponed upon on 12th March 2025 by Rachael Waiga the objector's operations and production manager. She deponed that the assets attached were sold to the objector by the judgment debtor way back on 28/8/23.
27. The proclamation was also done at the objector's premises which has no correlation with the judgment debtor. The decree holder has failed to disclose how the attached goods belong to the objector given the premises where the attachment was done and which premises are in control and possession of the objector.
28. The finding of this court in the circumstances is that the application is merited and is therefore allowed and orders issued staying the execution of the decree herein as per the proclamation notice dated 5/3/2025 and all other consequential orders and proceedings arising therefrom.
29. There will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

