



**Mutai v Kisa & another; Kipkech & another (Objector) (Employment and Labour Relations Cause E002 of 2020) [2024] KEELRC 515 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 515 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E002 OF 2020**

**HS WASILWA, J**

**MARCH 7, 2024**

**BETWEEN**

**EDGAR KIPLANGAT MUTAI ..... CLAIMANT**

**AND**

**JAMES KIPKECH TOROITICH KISA ..... 1<sup>ST</sup> RESPONDENT**

**MOLO SOUTH BUDS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**YANO KIPKECH ..... OBJECTOR**

**MOLO SOUTH DAIRIES LIMITED ..... OBJECTOR**

**RULING**

1. Before me for determination is the Objectors' Application, Chamber Summons, dated 25<sup>th</sup> January, 2024, filed pursuant to Order 22 Rule 51 & 52 of the *Civil Procedure Rules*, 2010 and Section 63(e) of the *Civil Procedure Act*, seeking for the following Orders; -
  1. Spent.
  2. Pending hearing of this Application inter partes, the Honourable Court be pleased to issue a temporary injunction against the claimant, stopping him by himself, his servants and or agents from selling or offering for sale by auction or by private treaty the Objectors property as proclaimed in the proclamation of attachment dated 23<sup>rd</sup> December, 2023 or any other property belonging to the objectors in execution of the warrants of sale and attachment as variously issued by this Court.
  3. Pending the hearing and determination of this Application, the Honourable Court be pleased to issue a temporary injunction against the claimant, stopping him by himself, his servants,



and or agents from selling or offering for sale by auction or by private treaty the objectors' property as proclaimed in the proclamation of attachment dated 23<sup>rd</sup> December, 2023, or any other property belonging to the Objectors in execution of the warrants of sale and attachment as variously issued by this Court.

4. The Honourable Court be pleased to issue a permanent injunction against the claimant, stopping him by himself, his servants, and or agents from selling or offering for sale by auction or by private treaty the Objectors property as proclaimed in the proclamation of the Attachment dated 23<sup>rd</sup> December, 2023 or any other property belonging to the Objectors in execution of warrants of sale and Attachment as variously issued by this Court.
5. The Costs of this Application be provided for.
2. The Application is premised on the grounds on the face of the Application and the supporting affidavit of Yano Kipkech and Christopher Chetalam, the 1<sup>st</sup> Objector and the director of the 2<sup>nd</sup> Objector both sworn on the 25<sup>th</sup> January, 2024.
3. The objectors stated that the goods proclaimed on the 23<sup>rd</sup> December, 2023 are sole properties of the objectors and not for the judgement debtors.
4. He stated that they do not owe the Judgment debtors, neither did they consent to their properties being utilized for the satisfaction of the decretal sum.
5. It is averred that the 40 herds of cattle being cows and 20 sheep all belong to the objectors as evidence by the certificate issued by Kenya Livestock Breeders Association.
6. He expounded on the role of Kenya Livestock Breeders Association and averred that it is an independent farmer body that was formed to coordinate and promote livestock breeds improvements through consistent livestock recording, breed selection and genetic evaluation strategies. Further, that it runs livestock registration and performance recording schemes through livestock breed societies nationally and regionally. Therefore, that the certificate issued to them confirms ownership.
7. He reiterated that the cattle and sheep belong to the Objectors while the 1<sup>st</sup> Respondent only acted as a breeder. Therefore, that the judgement debtors/Respondents herein, do not have any legal or equitable interest in the properties proclaimed.
8. That unless the orders sought are granted, their animals will be sold to their detriment as they will suffer irreparable injury.
9. The Application is opposed by the Claimant who filed a replying affidavit deposited 14<sup>th</sup> February, 2024, stating that application has been filed in bad faith, aimed at stopping the claimant from enjoying the fruits of his judgement.
10. The affiant stated that in spite of the fact that the judgement herein was delivered way back on 25<sup>th</sup> May, 2022 the Respondent had refused to pay the decretal sum until October, 2023 when the Objectors proposed to pay the decretal sum in installment, which he accepted and received the first installment of Kshs. 150,000, but no payments were made on the subsequent months, leading to the execution proceedings.
11. The Claimant stated that the Objectors are merely stating that they own the said cattle and sheep but there is no evidence of ownership of the said goods provided in this Court and that the letter dated 23<sup>rd</sup> January, 2024, addressed to the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> objectors only contain list of cows without



any corresponding details of ownership. Further that the citation of the 2<sup>nd</sup> Respondent in the said letter is clear indication of interest of the 1<sup>st</sup> Respondent over the said cows.

12. He reiterated that the objectors herein have been introduced in these proceedings in a nefarious scheme to evade payment of the decretal sum awarded by this Court.
13. On 8th February, 2024, Mr. Mayende Advocate for the 1st and 2nd Respondents, informed this Court that the Respondents are not opposed to the Application as such they did not file any response to the Application.
14. The Application was canvassed by written submission with the Claimant's filing on 28<sup>th</sup> February, 2024 and the Respondent filed their submissions on 4<sup>th</sup> March, 2024.

### **Claimant's Submissions.**

15. The claimant submitted on two issue; whether the objectors have established legal and/ or equitable interests over the proclaimed goods and whether the objectors have meet the conditions for grant of an injunctive relief.
16. On the first issue, the claimant submitted that the Objector did not in any way prove that they own the proclaimed cattle and sheep as such the application should not be allowed. To support this, they relied on the case of *Yasmin Mobammed Aliiv RBS Limited; Bhupesh Lakihani & Another (Objectors)* [2019] eKLR where the Court held that;-

“The application simply contains long arguments of alleged violation visited upon the Objectors by the proclamation but makes no attempt to prove what is required by Order 22 Rule 51 of the *Civil Procedure Rules*. That Rule provides...Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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... There was no attempt by the 2<sup>nd</sup> Objector to prove that it had a legal or equitable interest in the proclaimed goods. There were no receipts or any other proof of ownership of those items by the Objectors. In my view and in my finding this was an application that was made to simply derail the execution process. It is without merit and is dismissed. The costs will be borne by Bhupesh Lakhani”

17. The claimant submitted that an objector in such proceedings is the one that bears the burden to prove entitled to proclaimed goods as reiterated in the case of *Arun C Sharma V Ashana Raikundalai t/a Raikundalia & Co Advocates & 4 Others* [2014] eKLR.
18. To buttress its submissions, the Claimant cited the case of *Precast Portal Structuresv Kenya Pencil Company Limited & 2 Others* [1993] eKLR where the Court held that; -

“The burden is on the objector to prove and establish his right to have the attached property released from the attachment. On the evidential material before the Court, a release from attachment may be made if the Court is satisfied; that the property was not, when attached, held by the judgment-debtor for himself, or by some other person in trust for the judgment-debtor; or that the objector holds that property on his own account. But where the Court is satisfied that the property was, at the time of attachment, held by the judgment – debtor as his own and not on account of any other person, or that it was held by some other person in trust for the judgment-debtor, or that ownership has changed whereby the judgment – debtor has been divested of the property in order to evade execution or the change is



tainted with fraud, the Court shall dismiss the objection. The Court takes into account the grounds of objections raised, and the contentions of the respective parties to the objection proceedings. Any special features evident in the proceedings which throw light on the controversy must be regarded.”

19. On that basis, the Claimant urged this Court to find that the objectors have not established any legal or equitable interest in the proclaimed property and that the objection herein is merely interposed to scuttle execution of the judgement and decree.
20. It was further submitted that the Objectors have not meet the threshold for grant of injunctive Orders. This he argued is because upon issuance of the decree by this Court, the Applicants approached the claimant and made proposal for payment of the decretal sum in instalments of Kshs 150,000, which they paid the first installment in October, 2023 and stopped remitting the said installments leading to the execution proceedings. Moreover, that the Objectors have not given particulars of the loss they will incur or proposed any security for costs, as such the stay orders sought cannot issue.
21. In conclusion, the Claimant urged this Court to dismiss the Application.

### **Respondent’s Submissions**

22. The Respondent submitted on two issues, whether the objectors have established legal and equitable interests over the proclaimed goods and whether the objectors have met the conditions for grant of an injunctive relief.
23. On the first issue, it was submitted that the application herein is premised on Order 22 Rule 51 and reiterated by the Court in the case of *Stephen Kiprotich Koech v Edwin K Barchilei; Joel Sitienei(Objector)* [2019] eKLR where the Court held that; -

“The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached.”
24. The Objectors also relied on the case of *Arun C. Sharma ve Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] eKLR where the court held as follows;

“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 to or to have a legal or equitable interest in the whole or part of the property. H as the objector proved it is entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree?.”
25. Accordingly, that from the foregoing, the objector is only required to established equitable interest in attached goods. Similarly, that the objectors have sworn affidavits indicating that the goods attached belong to them and that they do not owe the Respondents. Therefore, they should not be compelled to satisfy the judgement debtors’ debt. The Objectors maintained that the document attached is a certificate of ownership of the 40 cows and 20 sheep issued by the Kenya Livestock Breeders Association.
26. In light of the foregoing, the Respondent urged this Court to allow the Application as prayed to protect their interest in the attached goods.



27. I have examined the averments and submissions of the parties herein. The objectors have contended that the goods attached belong to them and they have no debt with the Respondent and hence unless the prayers sought are granted they stand to suffer.
28. The objectors contend that the attached goods being 40 cows and 20 sheep listed in the proclamation of attachment belong to them as evidenced by the certificates issued by the Kenya Livestock Breeders Association. They contend that the cows and sheep belong to Molo South Dairies Limited and the 1<sup>st</sup> objector and the 1<sup>st</sup> respondent is only a breeder.
29. The supporting affidavit of Christopher Chetalam dated 25/1/2024 have no annexure. However the affidavit Yano Kipkech dated 25/1/2024 has an annexure of YCK-1 at pages 3-78, letter dated 23<sup>rd</sup> January 2024 and a certificate of registration of the various cattle from the Kenya Livestock Breeders Association. I note that this registration was done on 23/1/2024 whereas the goods were proclaimed on 23/12/2023. It is apparent that at the time of the proclamation the cows and sheep were not legally owned by the objectors as it were.
30. The certificate from the Livestock Breeders Association dated 25/1/2024 is also addressed to Molo South Dairies Limited and Yano C. Kipkech indicating a list of cows. There is no evidence that the list is owned by the objectors and is the one proclaimed by the auctioneer. Evidence of ownership by the objectors has not been exhibited by the objectors.
31. The objectors avers that the 1<sup>st</sup> respondent is just but a breeder but ownership is in the objectors. That agreement of breeding has also not been submitted before this court to establish this position.
32. In *Arun C. Sharmav Ashana Rikundalia T/A A. Raikundalia & Co. Advocates and 4 others* (2014) eKLR, it was held 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 to or to have a legal or equitable interest in the whole or part of the property. Has the objector proved it is entitled to or to have a legal or equitable interest in the whole of part of any property attached in execution of a decree?”
33. This same position was held in *Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (objector)* (2019) eKLR as follows:
- “The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached.”
34. In the circumstances of this case, it is my finding that the applicant objector has failed to establish ownership of the attached goods as envisaged. The application must fail and is therefore dismissed. The Decree Holder is free to pursue execution as proclaimed or in any other manner if the Decree Holder is not able to pay.
35. Costs to the Decree Holder.

**RULING DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF MARCH, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**



**JUDGE**

