



Shikanga t/a Apollo Ambutsi & Co Advocates v Munene; Aturukan Hotel Limited (Objector) (Environment and Land Miscellaneous Application E008 of 2024) [2025] KEELC 648 (KLR) (19 February 2025) (Ruling)

Neutral citation: [2025] KEELC 648 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2024
CK NZILI, J
FEBRUARY 19, 2025

BETWEEN

**APOLLO AMBUTSI SHIKANGA T/A APOLLO AMBUTSI & CO
ADVOCATES APPLICANT**

AND

ANTHONY MUNENE RESPONDENT

AND

ATURUKAN HOTEL LIMITED OBJECTOR

RULING

1. Before the court are two applications dated 6/12/2024 and 11/12/2024. In the 1st application, the applicant sought a stay of execution and declaration that the warrants of sale and proclamation of attachment issued against their client were illegal. The application was supported by an affidavit sworn by Anthony Munene dated 6/12/2024. It was deponed that on 3/12/2024, M/S Eshikoni Auctioneers served a warrant of sale and proclamation of attachment and a bill of cost, which he termed irregular since a certificate of costs was not capable of being executed. He attached the same as annexures marked AM 1(a), (b) and (c).
2. In the 2nd application, an objector is the applicant. It seeks a mandatory injunction compelling the respondent to release motor vehicle Reg No. Kxx 9xxE (unconditionally) to the objector, Aturukan Hotel Limited. The 2nd prayer was for a stay of execution of the certificate of costs. The third and sixth prayers were for a temporary and permanent injunction stopping or restraining any levying or execution, attachment or sequestration against the assets of the objector or interfering with its quiet and uninterrupted possession, occupation enjoyment, and use of its assets and, more particularly, motor vehicle Reg. No. Kxx 9xxE, Kxx 0xxQ, Kxx7xxU and KMxx 0xxF.



3. The last prayer is for the lifting of any attachment of all the motor vehicles or movable assets belonging to the objector situated on its property or goods listed in the proclamation notice dated 3/12/2024, to execute for certificate of costs and declaration of the same as a nullity.
4. The grounds are set out on the face of the application and in a supporting affidavit of Erick Odhiambo dated 11/12/2024. Briefly, the objector states that it has a legal right or interest in the attached items as the registered owner, while the entity is separate from the applicant, who is a mere director and shareholder of the objector, which has no relation with the case or any party thereof. He attached copies of the logbooks as annexure EO-‘1(a) and (b)’.
5. The objector avers that the bill of costs was filed against the respondent who is a shareholder and director as per CR-12 attached, attached as EO’2’. Being so and as a separate entity, the objector says that its property cannot be attached to offset personal debts of its directors or shareholders unless the objector company allows it.
6. The objector termed the warrants of attachment and sale as against its interests or illegal since the objector is not a party to the suit and was done without a decree passed against it. It urges the court to find the alleged execution duly illegal and unprocedural. Further, the objector avers that the auctioneer was informed of the same but ignored, and therefore, being one of the largest hotels in the region, it stands to suffer irreparable loss.
7. When this matter came up for interpartes on 16/12/2024 the court ordered for the release of motor vehicle Reg. No. Kxx 9xxE. Parties also intimated that they were working on a possible consent. Come 16/12/2024 and 17/1/2025, the court was informed that they were unable to agree. The applications are opposed through a replying affidavit sworn by Appollo Ambutsi Shikanga, terming the failure to apply and obtain the decree as an irregularity curable by the court and the application as lacking merits. From the court record, it appears a ruling on the advocate-client bill of costs was rendered on 26/9/2024. A certificate of assessed costs was thereafter issued, alongside warrants of attachment and sale of the property to M/S Eshikhoni Auctioneers on 3/12/2024.
8. After the certificate of a bill of assessed costs is issued in an advocate/client bill of costs, Section 51(2) of the *Advocates Act* provides that a court may enter judgment on taxed costs in favor of an advocate. Rule 7 of the *Advocates Remuneration Order* provides that the court may impose interests at 14% per annum until payment in full.
9. In *Otieno Ragot & Co. Advocates -vs.- Kenya Airports Authority* [2021] eKLR, the court said that once a certificate of costs is issued and there is no reference against the tax master’s ruling or the certificate of costs set aside, entry of judgment may be done without any need to file a suit for recovery of the costs. Conversion of a certificate of costs to a decree must, therefore, be requested by the holder of the certificate of costs, after which a decree of the court can be issued for execution to proceed.
10. In this applicationS, the respondent and the objector fault the execution by way of warrants of sale and attachment based on a certificate of costs and not a decree of the court. A certificate of assessed costs is not a decree-worthy execution. The applicant failed to move the court for adoption of the certificate of assessed costs as a judgment and a decree of this court. See *Lubullelah & Associates Advocates v N.K. Brothers Ltd* [2014] eKLR.
11. It follows, therefore, that the warrants of sale and execution issued to M/S Esikhoni Auctioneers were illegally and unprocedurally obtained. No decree is in existence that was drawn, approved, signed, and sealed by the court following a judgment. See *Rubo Kimngetich Arap Cheruiyot v Peter Kiprof Rotich* [2008] eKLR. A certificate of assessed costs is not an executable legal instrument until it is adopted as



a judgment and decree of the court. See *Njuguna Matiri & Co. Advocates v National Bank of Kenya*, Misc. Appl. No. 148 of 2014.

12. The upshot is that I declare the warrants of sale and attachment dated 3/12/2024 as a nullity ab initio. Any subsequent attachment, sale, and costs thereof were illegal and unlawful. The respondent and the auctioneer shall bear the costs of the same.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 19TH DAY OF FEBRUARY 2025.

In the presence of:

Court Assistant - Chemutai

Miss Koskei for the Respondents present

Ambutsi for Applicant absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

