



**Thoya v Ennio Limited (Appeal E014 of 2024)
[2024] KEELRC 2687 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2687 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
APPEAL E014 OF 2024
M MBARŪ, J
OCTOBER 31, 2024**

BETWEEN

THOYA BAYA THOYA APPELLANT

AND

ENNIO LIMITED RESPONDENT

*(Being an appeal from the ruling of J. Ongondo delivered
on 13 March 2024 in Malindi CM ELRC E024 of 2022)*

JUDGMENT

1. The appeal arises from the ruling delivered on 13 March 2024 in Malindi CM ELRC E024 of 2022. The appellant is seeking that the ruling be set aside, the warrants of attachment and the proclamation be reinstated and the appellant allowed to proceed with execution and payment of costs.
2. The challenged ruling of 13 March 2024 has the background of a claim filed by the appellant against Devon Management Limited t/a Hotel Barracuda Inn on the basis that he was an employee but his employment was unfairly terminated in October 2020. He claimed terminal dues and in the judgment of the trial court delivered on 17 May 2023 with an award of Kshs 458, 900. A decree was issued on 24 May 2024. A certificate of costs was issued dated 20 July 2023 for Kshs 88, 800.
3. The appellant obtained an application for execution for a total sum of Kshs 547, 700 against his former employer Devon Management Limited t/a Hotel Barracuda Inn. He further obtained warrants of attachment and sale and a proclamation was issued.
4. Through an application dated 7 September 2023, the respondent filed Objection proceedings on the basis that the attached goods were its property and are an entity separate and distinct from Devon Management Limited t/a Hotel Barracuda Inn. The application by the Objector was supported by Giuseppe Bonasera, a director who was confirmed to be the registered owner of Plot No 20 Watamu



- within Watamu in Kilifi County where there is Barracuda Inn and all the moveable properties in the premises belong to the objector.
5. The learned magistrate in his ruling held that the respondent as the objector had proved on a balance of probabilities that the attached goods legally belonged to them at the time the decree of the court was issued.
 6. Following the ruling of the trial court on 13 March 2024, aggrieved, the appellant filed three (3) main grounds of appeal;
 1. That the learned magistrate erred in law by finding that the respondent had proved on a balance of probabilities that the subject goods as identified belonged to it at the time of the decree.
 2. The learned magistrate erred in law and fact by finding that the proclamation and attachment were unlawful, illegal and procedural and proceedings were set aside.
 3. The learned magistrate erred in law by ignoring the replying affidavit and submission and evidence by the appellant.
 7. Both parties attended and agreed to address the appeal by way of written submissions.
 8. The appellant submitted that the objections made by the respondent to the execution process were not justified. The trial court erred in holding that the Certificate of Title for the property on which the Judgment Debtor was located belonged to the respondent, and hence, the good therein could not be attached. The court disregarded the appellant's Replying Affidavit because the property in the hotel was not proclaimed and did not form part of the attached goods. Proving ownership of the land is not similar to proof of ownership for the goods belonging to Hotel Barracuda Inn. In the case of *Zingo Investment Limited v Mirema Enterprises Limited* [2015] KECA, the court held that the title documents or ownership of premises are insufficient in objection proceedings. There must be documentation of ownership of the attached items.
 9. The respondent did not file any documents to prove ownership of the goods which belong to Devon Management Limited t/a Hotel Barracuda Inn, the Judgment Debtor. At the time of the proclamation, the attached goods were held by the Judgment Debtor and not the respondent as alleged. The trial court failed to address these facts. Under Section 44(1) of the *Civil Procedure Code*, the property belonging to a judgment debtor including property there is profit is subject to attachment as held In the case of *Mutai v Kisa & another; Kipkoeh & another (Objector)* ELRC Cause No E002 of 2020.
 10. The appellant submitted that Ennio Limited and the Judgment Debtor are the same but are keen to defeat justice through objections to the execution proceedings. The Certificate of Registration of Ennio Limited and Devon Management Limited reveal that they have the same postal address but hiding under the corporate veil. Such veil should be lifted to demonstrate that the Judgment Debtor and the respondent are all related and should not be allowed to frustrate the orders of the court as held in *Rishi Prakash Aggarwal v Scanard (Scan Group) Kenya Limited* [2020] eKLR.
 11. The appellant submitted that the appeal should allow the warrants issued reinstated to allow execution to conclude with costs.
 12. The respondent submitted that there is a demonstration that it had legal and equitable interests in the properties proclaimed in the Proclamation dated 30/08/2023. There was no dispute that the proclamation by the Auctioneer was conducted inside the Respondent's premises known as Barracuda Inn/Hotel because the Appellant did not dispute the Title Documents availed by the Respondent. Under paragraph 3 of his Replying Affidavit, the Appellant confirmed the association of the hotel with



the Respondent and only handed over the running and control of the hotel to the Judgment Debtor. Hence did not claim that the respondent parted with the ownership of the hotel and/or the properties therein.

Determination

13. The learned magistrate in the ruling delivered on 13 March 2024 considered the respondent's application as the objector and also put into account the Replying Affidavit filed by the appellant dated 9 November 2023.
14. The respondent's case as the objector was that the property in Plot No 20 Watamu, Kilifi County wherein Barracuda Inn was established was its property together with all goods therein. A Certificate of Title is filed to support such ownership.
15. The attached moveable goods included items such as;
 - a. Two commercial freezers;
 - b. Two commercial generators;
 - c. One commercial pizza oven;
 - d. Plus other moveable and attachable chattels registered in the name of the Judgment Debtor.
16. The essence of execution proceedings is to satisfy the decree of the court. Execution proceedings must therefore relate to the respondent and not a third party.
17. In the Objector's application dated 7 September 2023, the respondent admitted to ownership of the proclaimed goods. This would mean that at the time of proclamation and attachment, the respondent held the legal and equitable interest of the property and moveable items in Plot No 20 Watamu, Kilifi County.
18. The appellant in his Replying Affidavit of 7 September 2023 aver that he was working for Barracuda Inn Watamu which was being run by a company called Ennio Limited, the Objector. Under paragraph (4) he avers that;
19. I continued working so until the year 2020 when the said objector [Ennio Limited] handed over the control and running of the hotel to another company called Devon Management Limited which company became out employer.
20. These averments give credence to the respondent's objections. They held that legal or equitable interest in the whole of the attached property.
21. In the case of *Palace Investments Limited v Geoffrey Kariuki Mwenda & Dollar Auctions* [2015] KECA 616 (KLR), the court held that where there was no evidence of sale but general use of an asset, such did not confer legal title subject for attachment. The owner of the property was justified in taking objection proceedings to secure its property from sale against a third party. See *Joel Muga Opinja v East Africa Sea Food Ltd* [2013] eKLR the court held that to prove ownership, the basic document is the Certificate of Registration.
22. In this case, the court finds the analysis by the learned magistrate took into account the records filed by the respondent as the objector and also considered the appellant's Replying Affidavit. The findings cannot be faulted.
23. Accordingly, the appeal is without merit and is hereby dismissed. For the appeal, each party to bear its costs.



DELIVERED IN OPEN COURT AT MOMBASA ON THIS 31ST DAY OF OCTOBER 2024.

M. MBARŪ,

JUDGE

