



**Hantex Garments (EPZ) Limited v Jacob; Twaweza Apparel (EPZ) Limited (Objector)
(Appeal E070 of 2022) [2024] KEELRC 2637 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2637 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E070 OF 2022
AK NZEI, J
OCTOBER 25, 2024**

BETWEEN

HANTEX GARMENTS (EPZ) LIMITED APPELLANT

AND

PATIENCE KWEKWE JACOB RESPONDENT

AND

TWAZEZA APPAREL (EPZ) LIMITED OBJECTOR

RULING

1. This Court delivered its Judgment on 1st February, 2024, partly allowing the Appellant’s appeal and upholding an award of Kshs.161,314.5 in favour of the Respondent. Each party was ordered to bear its own costs of the appeal; with the Respondent being awarded costs of proceedings in the trial court and interest on the sum decreed by the trial court and upheld by this court, to be calculated from the date of the trial court’s Judgment.
2. On 14th March, 2024, the Objector herein, Twaweza Apparel (EPZ) Limited, filed a Notice of Objection to attachment pursuant to Order 22 Rule 51 of the *Civil Procedure Rules*, objecting to attachment and sale of movable properties proclaimed on 4th March, 2024 in execution of this Court’s decree.
3. The Notice of Objection, dated 6th March, 2024, was filed contemporaneously with an evenly dated Notice of Motion whereby the Objector sought the following Orders:-
 - a. That the application be certified urgent, and service be dispensed with in the first instance.
 - b. That pending inter-partes hearing and determination of the objection, there be a temporary stay of execution of the Judgment delivered on 1st February, 2024, the decree, warrants of



attachment and sale given on 29th February, 2024 and proclamation served on the objector on 4th March, 2024.

- c. That warrants of attachment and sale given on 29th February, 2024 and proclamation of attachment dated 4th March, 2024 be lifted and/or set aside.
 - d. A permanent injunction restraining the Respondent/Judgment Creditor, Patience Kwekwe Jacob, from attaching or otherwise interfering with the property of the Objector/Applicant in the execution of or in relation to the Judgment delivered on 1st February, 2024.
 - e. That costs of the Objector application be provided for.
4. The application is based on the supporting affidavit of Aye Aye Soe, the Objector's General Manager, sworn on 6th March, 2024. It is deponed in the said supporting affidavit:-
- a. That the objector is a limited liability company operating as an Export Processing Zone at Go-down A to Go-down E in Block B within Kingorani (EPZ) Complex on LR. No. 567/V/MV under licence No. 002918.
 - b. That the objector operates under a lease for a term of 6 years through offer letter dated 3rd November, 2020.
 - c. That the objector is not the Judgment debtor; and that the attached property belongs to the objector.
 - d. That the attached properties became the property of the objector through a deed of assignment dated 23rd November, 2020 conveying the said properties from the Appellant/Judgment debtor to the objector for a consideration of Kshs.20,000,000/=, paid off partly by offsetting the Kshs.20 million against an outstanding loan of Kshs.19 million which the Judgment debtor owed the objector.
 - e. That among the properties proclaimed are trade goods, namely sewing machines, assorted processing machines, assorted overlock machines, office desks and assorted computers, assorted air conditioning and other tools of trade.
 - f. That the attachment and threatened sale is unlawful as the objector was not party to the proceedings between the Appellant and the Respondent in the suit, and is not obligated to pay any money to the Respondent. That there is no judgment against the objector.
5. The Respondent opposed the application vide her replying affidavit sworn on 3rd May, 2024. It is deponed in the said replying affidavit:-
- a. That the application herein is re-judicata as a similar application between the same parties was determined by the trial court prior to the Appellant pursuing an appeal.
 - b. That soon after delivery of the trial court's judgment on 14th September, 2022, the objector filed an application on 4th November, 2022 alleging that the items that had been proclaimed, including assorted sewing machines, assorted clothes and sewing threads belonged to them and not to the Appellant, since the parties had allegedly signed a deed of assignment for consideration of Kshs.19,000,000/=.
 - c. That the trial court issued a Ruling on 6th April, 2023 dismissing the Objector's application for reasons that they had failed to prove their allegations.



- d. That the Objector did not prefer an appeal against the trial court's decision, which remains unchallenged and therefore valid.
- e. That the Objector is engaging in forum shopping, having failed to obtain favourable orders in the trial court.
6. The Objector filed a further affidavit, sworn by the aforesaid Aye Aye Soe on 24th May, 2024 stating, inter alia, that the Respondent/decreed holder had not complied with Order 22 Rules 52, 53 and 54 of the *Civil Procedure Rules* which required her to file a written intention to proceed with attachment together with a replying affidavit, hence the attachment should be lifted.
7. In Objector proceedings, an objector is required to demonstrate ownership of, or equitable interest in the attached and/or proclaimed properties. I have perused the documents annexed to the Objector's aforesaid replying and further affidavits, and I have not seen anything to show that ownership of the proclaimed movable properties at any given time passed from the Appellant/Judgement debtor to the Objector. The deed of assignment referred to in the supporting affidavit of Aye Aye Soe makes general reference to machinery and motor vehicle stock without any specific description that can be used to identify any specific machine or number and type of machines.
8. Further, although computers and other office equipment and furniture are shown to have been proclaimed in execution of the decree herein, the said properties are not shown to have been the subject of the alleged deed of assignment. Further, I have not seen any proof of any payment of consideration by the Objector to the Appellant/Judgement debtor, and I have not seen any proof of any debt owed by the Appellant/Judgement debtor to the Objector as alleged by the Objector. No proof of payment of the alleged Kshs.20,000,000/= or any part thereof was demonstrated by the objector.
9. It is my finding that the Objector has not demonstrated that it either owns the proclaimed properties or has equitable interest in them. It was stated as follows in the case of *Capital Corporation Limited v Ann Wamani & another* (2018) eKLR:-
- “In this case, the Objector did not provide any receipt to show that it was the person who purchased the attached items. Indeed, the Objector did not provide any document which would enable the Court to verify the Objector's legal or equitable interest in the attached goods. All we have was a statement by Kinuthia Njoroge, saying that the attached movable property vests in Clean World Limited. In my considered view, the bare statement cannot be the basis of an objective determination by the court, as to whether or not the attached goods belonged to the Objector. Therefore, I find and hold that the Objector has failed to demonstrate that it has either a legal or an equitable interest in the attached property.”
10. Further, the Objector did rebut the Respondent/Decree holder's deposition and demonstration that indeed, the Objector in 2022 filed similar objector proceedings (application) before the trial court, and regarding execution of the decree which was the subject matter in the appeal herein. The trial court heard and dismissed that application, and the Objector did not appeal against the trial court's Ruling dismissing its objector application dated 4th November, 2022. To that extend, the Objector's application herein is res-judicata, and therefore incompetent and an abuse of this court's process.
11. The Objector's Notice of Motion dated 6th March, 2024 is hereby dismissed with costs to the Respondent/decreed holder.
12. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 2024



AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

.....Appellant

.....Respondent

