



**Amagove v Ultimate Manpower & General Supplies Limited; Mwangi
& another (Objector) (Employment and Labour Relations Cause
E343 of 2017) [2024] KEELRC 2561 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2561 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E343 OF 2017
BOM MANANI, J
OCTOBER 24, 2024**

BETWEEN

MILDRED AMAGOVE CLAIMANT

AND

ULTIMATE MANPOWER & GENERAL SUPPLIES LIMITED RESPONDENT

AND

GEORGE MICHAEL MWANGI OBJECTOR

PZ CUSSONS EAST AFRICA LIMITED OBJECTOR

RULING

1. The Claimant has a judgment in her favour against the Respondent. In a bid to enforce it (the judgment), she instructed court bailiffs to attach property of the Respondent.
2. Pursuant to the instructions, the court bailiffs proclaimed properties which they believed belonged to the Respondent. Particulars of the properties are set out in the proclamation form attached to the application dated 17th May 2022.
3. The properties comprise of assorted office equipment including computers, chairs, printers, desks and photocopiers. Also proclaimed are three motor vehicles registration numbers KCA 497S, KCK 994K and KCS 472S.
4. Following the proclamation, the Objectors filed the application dated 17th May 2022 to challenge the regularity of the process. They contend that the proclaimed assets do not belong to the Respondent.
5. The Objectors contend that all the office equipment which were proclaimed belong to the 2nd Objector. To support this contention, they assert that these items bear a barcode for the 2nd Objector.



6. The Objectors also contend that motor vehicle registration number KCS 472S belongs to the 1st Objector. To anchor this contention, they have attached an extract of ownership records held by the National Transport and Safety Authority (NTSA).
7. The Objectors further contend that motor vehicles registration numbers KCA 497S and KCK 994K are the property of the 2nd Objector. They have attached records from NTSA to support their contention.
8. Based on the foregoing, the Objectors argue that the Respondent has no equitable or legal property rights in the aforesaid assets. According to the Objectors, the assets belong to them.
9. The Objectors contend that they were not party to the dispute between the Claimant and Respondent. They aver that they are not party to the instant action except in their capacities as Objectors. As such, they contend that the Claimant cannot enforce the decree in the cause against them.
10. The Claimant has opposed the application. She contends that the motion was not filed together with a notice of objection to the attachment in line with Order 22 rule 51 of the Civil Procedure Rules. Therefore, the application is incompetent and ought to fail on this ground.
11. The Claimant further contends that the objectors have not demonstrated that at the time of proclamation, they had either a legal or equitable interest in the property in question. In her view, the Objectors are only keen to frustrate enforcement of the decree in the cause. As such, the court should reject the application.

Analysis

12. It is true that the Objectors in the instant action did not issue a notice of objection to attachment under Order 22 rule 51 of the Civil Procedure Rules. The effect of this omission has been the subject of litigation in a number of cases.
13. In some decisions, the court considered the failure to issue the notice as fatal to the objection proceedings (*Siso Limited v Caroline Wanjihia t/a C.W. Wanjihia & Co. Advocates & another* [2015] eKLR). Yet in others, the court was ready to excuse this failure. It was ready to consider it as a procedural defect which does not affect the substance of the proceedings (*New Look Estate Ltd & Another v Khira Omar Maalim & Another* [2013] eKLR).
14. In order to contextualize the consequence of failure to issue the notice of objection to attachment, it is important to understand the purpose of this notice. In my view, the notice is meant to draw the attention of the Decree Holder to the fact that title to the attached property is contested by a third party.
15. Once the Decree Holder has been made aware of this fact, he is expected to elect whether he will proceed with the execution process in respect of the impugned property or whether he will abandon it (the process). It is expected that the Decree Holder's decision will be informed by considerations as regards ownership of the impugned assets.
16. The foregoing being the purpose of the notice, the question which the court has to grapple with is whether a Decree Holder who was not served with the notice but has nevertheless become aware that the Judgment Debtor's title to the proclaimed property is contested by a third party can claim prejudice as a result of the non-issuance of the notice. I do not think so.
17. Proceeding on the foresaid premise, I do not consider that the Claimant in the instant action was prejudiced by the Objectors' failure to issue her with the notice contemplated under Order 22 rule 51



of the Civil Procedure Rules since she was subsequently made aware of the Objectors' claim to title to the proclaimed goods through the application dated 17th May 2022. As such, I do not think that it will serve the interests of justice to dismiss the objection proceedings on this ground. I will therefore determine the application on its merits.

18. Although the Objectors have laid claim over the office equipment which were proclaimed, they have not placed before the court proof of ownership of the said equipment. For instance, they did not produce the barcodes which they asserted demonstrated that the equipment belong to the 2nd Objector.
19. As such, I find that the Objectors have failed to establish their claim over the equipment. Consequently, the objection proceedings in this respect must fail.
20. On the other hand, the Objectors have placed before court proof of ownership of the motor vehicles that were proclaimed by the Claimant. Extracts of ownership records from NTSA were placed on record showing that motor vehicle registration number KCS 472S is registered in the names of the 1st Objector and motor vehicles registration numbers KCA 497S and KCK 994K are registered in the names of the 2nd Objector.
21. Absent evidence to the contrary, the court accepts the foregoing as proof that the property in the aforesaid motor vehicles vests in the Objectors. The Claimant has not shown that the Respondent has either a legal or equitable title over the three motor vehicles.
22. As such, I arrive at the conclusion that property in the three motor vehicles vests in the Objectors and not the Respondent. As such, the Claimant cannot attach the said motor vehicles to satisfy the decree against the Respondent in this action.

Determination

23. The upshot is that: -
 - a. The objection proceedings fail in respect of the proclaimed office equipment. As such, the Claimant is entitled to proceed with execution in respect of these specific items.
 - b. However, the objection proceedings succeed in respect of the three motor vehicles to wit: motor vehicles registration numbers KCK 994K, KCA 497S and KCS 472S. As such, the Claimant is prohibited from levying execution in respect of the three motor vehicles.
 - c. Each party to bear own costs.

DATED, SIGNED AND DELIVERED ON THE 24TH DAY OF OCTOBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

.....for the Objectors

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having



waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

