



**Muumbo v Kilonzo t/a Kilonzo NM & Company Advocates; Lin-Cap Credit Limited
(Objector) (Cause 1247 of 2014) [2024] KEELRC 13278 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13278 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1247 OF 2014
B ONGAYA, J
NOVEMBER 28, 2024**

BETWEEN

CAROLYN MUUMBO CLAIMANT

AND

**NANCY MUKONYO KILONZO T/A KILONZO NM & COMPANY
ADVOCATES RESPONDENT**

AND

LIN-CAP CREDIT LIMITED OBJECTOR

RULING

1. The objector/applicant filed the notice of motion dated 16.10.2024 through Wilbur Antony & Company Advocates seeking the following orders:
 1. Spent.
 2. The Honourable Court be pleased to stay the execution of the Judgment and Decree issued against the respondent herein dated 23.04.2020, pending the hearing and determination of this application.
 3. This Honourable Court be pleased to raise the proclamation and/or attachment of Motor Vehicle Registration No. KDG 922Z registered in the name of the respondent and charged to the objector proclaimed by Samumu Auctioneers in execution of the Judgment and Decree herein.
 4. The costs of this application be awarded to the objector.
2. The application was made on the grounds set out therein and supported by the affidavit sworn by John Njogu on 16.10.2024. It was urged as follows:



- i. The objector is a microfinance institution that offers loans and other credit facilities to individuals and businesses.
- ii. On or about 29.07.2024, the respondent signed a loan agreement with the objector wherein the objector was to loan the respondent Kshs. 1,100,000/= to finance the acquisition of an asset. The loan was approved on 30.07.2024 and released to the respondent and or her assignee in accordance with the terms of the loan agreement. Pursuant to the loan agreement, the respondent was to pay the loan in 12 equal monthly instalments of Kshs. 137,667/=.
- iii. Simultaneous with the execution of the loan agreement, the respondent and the objector entered into a security agreement dated 29.07.2024, to secure the respondent's loan repayment obligation to the objector and pursuant to which the respondent granted the objector a security right over the subject motor vehicle.
- iv. Subsequently, the objector's security interest was registered as a charge on the registration certificate for the motor vehicle and the register kept by the registrar of motor vehicles.
- v. Since execution of the loan agreement and security agreement, the respondent has failed and/or neglected to service her loan with the objector and has fallen behind on two (2) monthly instalments. The objector has consequently provided a letter of instructions to its agent Springfield Auctioneers to repossess and proclaim the subject motor vehicle.
- vi. However, the objector has since established that the said motor vehicle was seized by the claimant and/or the claimant's agents, Samumu Auctioneers, for attachment and sale pursuant to warrants of attachment and sale issued by the Honourable Court. The Decree was issued on 23.04.2020 in favour of the claimant as against the respondent for the decretal sum of Kshs. 1,120,753.68/=.
- vii. The respondent remains indebted to the objector, and the objector has no other security right, in relation to the respondent's loan obligation, in any of the respondent's other assets to secure the respondent's repayment obligations.
- viii. Despite the objector's expectation that the claimant and/or the claimant's agent would reasonably establish, upon an application for a copy of records with the Registrar of Motor Vehicles, that the motor vehicle was charged to the objector, the claimant and/or its agent, Samumu Auctioneers, proceeded to attach the subject motor vehicle in total disregard of the objector's security right. Under section 15 of the *Movable Property Security Rights Act*, Cap. 499A Laws of Kenya, its security right in the motor vehicle is effective against the claimant as a third party by virtue of its registration with the Registrar.
- ix. The objector's security right in the subject motor vehicle overrides the claimant's right to attach and sale the motor vehicle for the exclusive purpose of satisfying the claimant's decree. The objector, as a secured creditor, therefore stands to suffer immense prejudice if the attached motor vehicle is eventually sold in satisfaction of the claimant's decree and the proceeds thereof paid to the claimant.
- x. Accordingly, it is in the interest of justice that the claimant/decree holder be prevented from proceeding with the anticipated sale of the proclaimed and/or attached motor vehicle; and that the attachment of the same be lifted forthwith; and the motor vehicle be unconditionally released to the objector.



3. In response, the claimant filed her replying affidavit sworn on 11.11.2024, wherein she averred that the objection motion application dated 16.10.2024 has been overtaken by events and should therefore be dismissed with costs. The claimant further urged as follows:
- a. Judgment in the matter was entered in the claimant's favour and the respondent then deliberately refused to settle the decretal sum despite having been given an opportunity to do so by the Deputy Registrar before the execution process was initiated.
 - b. The Warrant of Attachment and Sale of Movable Property was thereafter issued to Samumu Auctioneers on 23.07.2024 but the same expired and had to be renewed to enable the sale of the respondent's Motor Vehicle Registration No. KDG922Z. The Warrant was thereafter extended on 03.09.2024 and was said to expire on 07.10.2024.
 - c. The respondent's said motor vehicle was proclaimed on 26.07.2024 prior to the expiration of the Warrant. At the time of proclamation, the said motor vehicle had been parked outside the respondent's residence, that is, Embakasi, Nyayo Estate, Gate D, Court No. 289, House No. 15. The respondent never raised any objection after the said motor vehicle was proclaimed.
 - d. Prior to proclamation of the subject motor vehicle, the respondent had been seen driving and/or in actual possession and/or control of the said motor vehicle on numerous occasions. There was therefore sufficient reason to believe that the motor vehicle belonged to the respondent.
 - e. To establish the registered owner of the subject motor vehicle, the claimant carried out a motor vehicle search on 29.07.2024 and the Government Ownership Records revealed that Motor Vehicle Registration No. KDG 922Z belonged to Hazera Motors Company Limited. She then carried out an official search at the Companies Registry and established that the Directors of Hazera Motors Company Limited were Hossain Ikbal, Islam Shafiqul and Zakir Hossain with Martin Mwangombe Munga as the Secretary.
 - f. The subject motor vehicle was attached on 26.08.2024 in the presence of the respondent who handed over the vehicle's key to the Auctioneers. The respondent did not raise any objection after the said motor vehicle was attached.
 - g. On 27.09.2024, the subject motor vehicle was advertised in the People Daily for sale through public auction on 05.10.2024. On the same 27.09.2024, the claimant wrote to the respondent forwarding a copy of the newspaper advert to inform her of the said sale. The correspondence further requested the respondent to urgently respond to the letter dated 30.07.2024 or in the alternative, settle and/or pay the decretal sum in full plus the Auctioneer's costs in order to avert the Auction Sale. However, the said letter also did not elicit any response from the respondent.
 - h. After the subject motor vehicle was sold by public auction on 05.10.2024, the purchaser of the vehicle paid the claimant Kshs. 1,200,000/= in settlement of the decretal sum in the matter. The claimant is aware the said motor vehicle was sold for Kshs. 1,750,000/= and the other monies paid directly to Samumu Auctioneers.
 - i. The respondent entered into a loan agreement and a security agreement with the objector on 29.07.2024 knowing very well that the subject motor vehicle had already been proclaimed by Samumu Auctioneers on 26.07.2024.
 - j. At the time the respondent signed the said loan agreement with the objector, the Government Records indicated that the subject motor vehicle belonged to Hazera Motors Company Limited and not the respondent herein but who was in actual possession and control of the



vehicle. Furthermore, the records from the Registrar of Motor Vehicles did not show and/or indicate that the respondent was a joint owner and/or co-owner of the said motor vehicle.

- k. Consequently, the respondent was obligated to divulge all these facts to the objector before and/or even at the time of signing the loan and security agreements but she deliberately refused and/or failed to do so in order to encumber the subject motor vehicle with the sole objective and/or intention of defeating and/or frustrating the execution process in these proceedings.
 - l. The Registration Certificate that was subsequently issued by the Registrar of Motor Vehicles on 07.08.2024 indicating the respondent as the owner of the subject motor vehicle and the objector as the charge came therefore came too late in time, as the vehicle had been proclaimed.
 - m. The said loan agreement, security agreement and the registration certificate are of no consequence and cannot undo and/or defeat what has already been done concerning the subject motor vehicle before the objector came into the picture. Moreover, the objector has not provided this Court with a copy of its bank account statement for Equity Bank Account No. 1180280385630 to prove that the respondent has not been servicing the loan as was required of her under the loan offer letter dated 29.07.2024.
 - n. The objector is not absolutely without a remedy as it wants this Honourable Court to believe. At page 2 of the Loan Application Form, Florence Mutinda Mwangangi is clearly indicated as the guarantor and has undertaken to guarantee the loan repayment for the respondent herein. Alternatively, the objector can also pursue other assets belonging to the respondent and/or sue the respondent for recovery of their money.
 - o. Given the foregoing, this Court should find and/or declare that Samumu Auctioneers acted within the law and discharged their mandate as had been directed of it.
4. The Court has carefully considered the material on record for and against the application and finds as follows:
- a. The motor vehicle subject of the impugned proclamation was sold in the auction on 05.10.2024 and the proceeds of the sale paid the claimant by the auctioneers the same date in satisfaction of the decretal sum.
 - b. The application was dated 16.10.2024 and filed on 18.10.2024 and an order purporting to stay the execution was issued, albeit, belatedly.
 - c. The Court finds that the application was obviously overtaken by the concluded execution proceedings and the same cannot be granted even if the charge over the motor vehicle amounted to an overriding interest over the execution. The objection proceedings are found to have been belated and overtaken accordingly. The Court is precluded from acting in vain.
 - d. The Court considers that the application is liable to dismissal with no orders to costs. Orders to issue accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 28TH NOVEMBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

