



**Wachira v Seven Seas Technologies Group Limited & another (Cause E576 of 2021) [2024] KEELRC 13175 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13175 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E576 OF 2021  
L NDOLO, J  
NOVEMBER 21, 2024**

**BETWEEN**

**MARY GITHUI WACHIRA ..... DECREE HOLDER**

**AND**

**SEVEN SEAS TECHNOLOGIES GROUP LIMITED ..... JUDGMENT DEBTOR**

**AND**

**RENTWORKS EAST AFRICA LIMITED ..... OBJECTOR**

**RULING**

1. This ruling determines the Objector's application dated 23<sup>rd</sup> July 2024, which seeks the following orders:
  - a. That the Court be pleased to vacate the proclamation and/or attachment of the Objector's moveable assets listed in the Proclamation Notice dated 18<sup>th</sup> July 2024;
  - b. That the Court be pleased to permanently restrain the Decree Holder, acting through his agents, Icon Auctioneers or any other auctioneers from proclaiming, attaching and/or selling the Objector's properties as listed in the Proclamation Notice dated 18<sup>th</sup> July 2024, or any other property at all;
  - c. That the Court be pleased to raise, cancel, set aside, recall, lift and/or quash the Warrants of Attachment and Sale of Moveable Assets dated 17<sup>th</sup> July 2024 and the Proclamation Notice dated 18<sup>th</sup> July 2024, for listing goods that do not belong to the Judgment Debtor.
2. The application is supported by an affidavit sworn by the Objector's Finance and Administration Manager, Sarah Nyamache and is based on the following grounds:



- a. The Objector is the sole and exclusive owner of the proclaimed moveable goods and had only rented them out to the Judgment Debtor through a Master Roll Agreement dated 5<sup>th</sup> December 2012;
  - b. The goods, the subject matter of the proclamation, belong wholly and fully to the Objector and are only held by the Judgment Debtor under a rental agreement;
  - c. On 19<sup>th</sup> July 2024, the Decree Holder, through Icon Auctioneers issued Proclamation Notices against the moveable assets of the Objector, purporting to execute Warrants of Attachment and Sale issued in the suit herein;
  - d. The Objector is the sole and exclusive owner of the proclaimed moveable assets; therefore, the purported proclamation is not only unlawful but also illegal as the proclaimed goods do not belong to the Judgment Debtor;
  - e. The Judgment Debtor has no legal or beneficial interest in the Objector's moveable assets proclaimed and/or intended to be attached for sale in execution of the decree;
  - f. Despite the foregoing, Icon Auctioneers, while acting under the Decree Holder's express and/or ostensible instructions, have illegally and unlawfully issued a Proclamation Notice dated 18<sup>th</sup> July 2024, purporting to proclaim assets belonging to the Objector but in the possession of the Judgment Debtor, in execution of a decree issued on 9<sup>th</sup> December 2021;
  - g. Unless the Court intervenes, the Decree Holder will proceed either by themselves, their agents and/or servants, particularly Icon Auctioneers to illegally and unlawfully proclaim, attach and sell the Objector's moveable assets either by private treaty or public auction, causing the Objector irreparable damage and inconveniencing its business activities;
  - h. It is in the interest of justice that the Court grants the orders sought in the application.
3. In his affidavit in support of the application, the Objector's Finance and Administration Manager, Sarah Nyamache depones that on 5<sup>th</sup> December 2012, the Objector entered into a Master Rental Agreement with the Judgment Debtor, pursuant to which the Judgment Debtor would subsequently lease equipment and/or machinery from the Objector by executing rental schedules in respect of the equipment or machinery leased.
  4. Nyamache further depones that the rental term has been subsequently extended, and the moveable assets, the subject matter of the proclamation, belong wholly and fully to the Objector and are only held by the Judgment Debtor, subject to payment of rental dues.
  5. The Decree Holder opposes the Objector's application by his own replying affidavit sworn on 17<sup>th</sup> September 2024. He accuses the Objector of deception and insincerity, with the aim of denying him the fruits of his judgment.
  6. The Decree Holder asserts that an Objector bears the burden of proving that they are entitled to or have equitable interest in the whole or part of the attached property. He states that the Objector has failed to provide any proof of ownership of the proclaimed assets to warrant lifting and/or setting aside of the Warrants of Attachment and the Proclamation Notices.
  7. The Decree Holder avers that, based on the Master Roll Agreement and its attendant schedules attached to the Objector's supporting affidavit, there is no mention of the assets listed in the Proclamation Notices. He accuses the Objector of colluding with the Judgment Debtor to sabotage execution of the decree issued by the Court in his favour.



8. The Decree Holder points out that a thorough reading of the Master Rental Agreement and its attendant schedules indicates that the main objective of the Agreement was to lease out data, networking equipment and servers, none of which forms part of the items listed in the Proclamation Notices.
9. The Decree Holder further points out that the last rental schedule was executed on 25<sup>th</sup> May 2017, with a commencement date of 5<sup>th</sup> January 2017 for a term of 30 months to last until 2020. He asserts that the Rental Agreement is void and the Objector cannot rely on it as evidence of ownership of the proclaimed assets.
10. With specific reference to the proclaimed motor vehicles, the Decree Holder depones that the Judgment Debtor had elected to dispose of motor vehicles registration No KAT 816F and KCC 940P, to third parties in a bid to defeat execution.
11. In a supplementary affidavit sworn by the Objector's Finance and Administration Manager, Sarah Nyamache, she challenges the validity of the Decree Holder's replying affidavit filed by the firm of Syphurine & Partners Advocates, which is said not to be properly on record for the Decree Holder.
12. On the issue of legitimacy of the Rental Agreement, Nyamache depones that the contract term has been renewed severally, by virtue of the Judgment Debtor remaining in possession of the assets after the lapse of the term, as per the provisions of clause 17 of the Master Rental Agreement.
13. Nyamache concedes that the proclaimed motor vehicles do not belong to the Objector but adds that the Proclamation Notices list a majority of the Objector's assets.
14. The Objector's application is brought under Order 22 Rule 51(1) of the Civil Procedure Rules which provides that:
  1. Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all parties and to the decree-holder of his objection to the attachment of such property.
  2. Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.
15. Established jurisprudence is to the effect that an Objector bears the burden of proving legal or equitable interest in the assets that are the subject of their objection. In its written submissions dated 25<sup>th</sup> September 2024, the Objector cited the decision in *Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 4 others* [2014] eKLR where this basic principle was affirmed.
16. The present objection proceedings arise from two Proclamation Notices, both dated 18<sup>th</sup> July 2024. The first notice lists assorted office furniture while the second lists motor vehicles and assorted office furniture. By a supplementary affidavit sworn by the Objector's Finance and Administration Manager, Sarah Nyamache, on 25<sup>th</sup> September 2024, it is conceded that the Objector has no interest in the motor vehicles. This begs the question why the Objector would object to execution on account of motor vehicles in which it has no interest.
17. With respect to the other assets listed in the Proclamation Notices, the Objector relies on a lapsed Master Rental Agreement, which in any case did not specifically list the proclaimed assets.



18. In the circumstances, I find and hold that the Objector has failed to prove either legal or beneficial interest in any of the proclaimed assets. The objection presented by way of the application dated 23<sup>rd</sup> July 2024 is therefore without basis and is disallowed with costs to the Decree Holder.
19. The interim orders granted on 29<sup>th</sup> July 2024 are vacated.
20. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF NOVEMBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Mayende for the Decree Holder

Ms. Kale for the Objector

