



**Otieno & 3 others v Bandari Football Club; Kenya Ports Authority  
(Objector) (Cause E078, E080, E077 & E079 of 2023 (Consolidated))  
[2024] KEELRC 13555 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13555 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E078, E080, E077 & E079 OF 2023 (CONSOLIDATED)  
M MBARŪ, J  
DECEMBER 18, 2024**

**BETWEEN**

**KENNETH ONYACH OTIENO ..... 1<sup>ST</sup> CLAIMANT  
DANIEL MNYARO MSHAMBA ..... 2<sup>ND</sup> CLAIMANT  
DAVID KINGATUA NJUGUNI ..... 3<sup>RD</sup> CLAIMANT  
WILSON ODUOR OBUNGU ..... 4<sup>TH</sup> CLAIMANT**

**AND**

**BANDARI FOOTBALL CLUB ..... RESPONDENT**

**AND**

**KENYA PORTS AUTHORITY ..... OBJECTOR**

**RULING**

1. The ruling herein consolidates similar applications by the Objector in Cause Nos. E080 of 2023, E077 of 2023, and E079 of 2023. The applications under these files, Cause No.E078 of 2023, will apply to all the consolidated files.
2. The objector filed an application dated 16 September 2024 seeking the following orders;
  - a. Spent.
  - b. pending hearing and determination of the Application inter-partes or until further orders of the Honourable Court, this Honourable Court be and is hereby pleased to order the stay of execution of the Judgement and Decree issued on 19th December 2023 and all other consequential orders, including the Proclamation Notice dated 19th August 2024 taken out by M/s Anfield Auctioneers against the property of the Objectors.



- c. the Judgement and consequential Decree issued herein, the Warrant of Attachment and Warrant of sale both dated 9th August 2024 and Proclamation Notice dated 19th August 2024 be recalled and/or set aside.
  - d. any property that may have been removed pursuant to the Proclamation Notice dated 19th August 2024 be returned to the Objector at the cost of the Decree holder.
  - e. the Decree holder be condemned to pay the Auctioneers costs and any other incidental cost arising thereunder.
  - f. costs of the Application be in the cause.
3. The application is supported by the affidavit of Michael Sangoro, the legal manager of the Objector, and because the Decree holder sued the Judgement debtor for breach of the employment contract— judgment and Decree against the Judgment debtor on 19 December 2023. The Decree holder sought to execute the against the Judgement debtor and obtained the Warrant of attachment and sale on 9 August 2024. Consequently, the Decree holder procured the services of Anfield Auctioneers to auction a list of proclaimed items and served a Proclamation Notice dated 19 August 2024 upon the Judgment debtor, which itemized some properties to be sold.
  4. In his Affidavit, Sangoro aver that all of the goods listed in the Proclamation Notice dated 19 August 2024 belong to the Objector. The goods are situated and stored at Mbaraki Sports Club, which belongs to the Objector. The Judgement debtor, at all material times, was an independent and registered football club under the *Sports Act* Cap. 223. The Judgement debtor only has the right to use the football pitch and other facilities. However, the Judgement Debtor does not have any proprietary interest in the property of the Objector that has been proclaimed.
  5. Sangoro aver that the Objector bears no liability to satisfy the Judgment and the Decree of the Court. The Objector was not a party to the proceedings that yielded the Judgement and Decree against the Judgment debtor. The Objector deserves to be awarded costs for being dragged into these proceedings by the execution levied against it. In the interest of justice and public policy, the proclaimed assets should be protected from execution because they are public facilities and equipment held in trust by the Objector. Under the provisions of the Kenya Ports Authority Cap. 391, the property of the Objector is not available for attachment in the execution of Court Decrees like the one emanating from this suit.
  6. The Objector stands to suffer substantial loss because the proclaimed assets are at the core of the Mbaraki Sports Club's operations and running.
  7. The Objector also filed a Supplementary Affidavit of Amakobe Sydney, Advocate and avers that the Objector has previously filed identical notices of motion dated 16.9.2024 in all four consolidated matters. The Objector deponed in the said motions to have a legal or equitable interest in the whole of the goods proclaimed for attachment by the agents of the Decree Holder, Anfield Auctioneers. The said interest of the Objector in the whole of the attached goods arises on account of the Objector having possession of the attached goods on their account and not on account of the Judgment debtor at the Objector's premises at the KPA Mbaraki Sports Club.
  8. The KPA Mbaraki Sports Club sits on a property known as Mombasa/Block XXIII/225, registered under Kenya Ports Authority, the Objector herein. The lease certificate was given to the Objector at the Mombasa District Registry on 23.6.1998. The Latin maxim quicquid plantar solo, solo credit provides that the Objector herein, being the owner of the land, becomes the owner of the soil and has all the objects permanently affixed or embedded thereto, including the building and structures that comprise the KPA Mbaraki Sports Club.



9. Amakobe aver that there is no evidence to controvert the above evidence by the Objector. Further, there is no evidence demonstrating the alleged interest of the Judgment debtors in the attached goods.
10. In reply, the claimant filed his Replying Affidavit and averred that, upon obtaining judgment herein, he instructed the auctioneers who visited the respondent's premises, which have an office and training facilities. A Proclamation Notice was issued with a list of the properties due for attachment and consistent with the properties in use by a football club. The respondent has no business with the listed items and has not established ownership or evidence that they do not belong to the respondent.
11. The Certificate of Title produced by the Objector does not indicate the ownership of the attached goods. Proof of ownership by the entity of the Objector as a public entity should be through receipts as required under the Public Procurement Act. The application by the Objector is meant to delay the claimant from enjoying the fruits of its judgment and should be dismissed with costs.
12. Both parties attended court and made oral submissions, and the Objector filed skeleton written submissions. The findings analyze and address these.

Under Order 22 rule 51(1) of the Civil Procedure Rules:

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 to the decree-holder, of his objection to the attachment of such property.

13. Execution against a judgment debtor is lawful and legitimate. This follows a judgment and decree of the court as held in *Accredo AG, Salama Beach Hotel Limited, Hans Juegen Langer & Zahra Langer v Steffano Uccelli & Isaac Rodrot* [2019] KECA 385 (KLR). The court should not stop a lawful execution process unless an objector can demonstrate that the attached property belongs to it. The objector must demonstrate that it holds lawful or equitable title or interest to the attached goods.
14. In the case of *Joel Muga Opinja v East Africa Sea Food Ltd* [2013] eKLR the court held that;

We agree that the best way to prove ownership would be to produce to the Court a document from Registrar of motor vehicles showing who the registered owner is but when the abstract is not challenged and is produced in Court without any objection, the contents cannot later be denied.
15. In the case of *Palace Investments Limited v Geoffrey Kariuki Mwenda & Dollar Auctions* [2015] KECA 616 (KLR) the Court of Appeal reiterated these principles and held that where an objector seeks to stay the execution, the court must be satisfied that it holds ownership through legal or equitable interest.
16. In the case of *Arun C Sharma v Ashana Raikundalia T/A. Raikundalia & Co. Advocates, Nishit Raikundalia, Sapphire Trading & Marketing Ltd, Asl Credit Ltd & Vinodchamadra Devj & Mradulaben Devji* [2014] KEHC 1412 (KLR) the court held that the objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The key words are; entitled to or to have a legal or equitable interest in the whole or part of the property. Has the objector proved it is entitled to or to have a legal or equitable interest in the whole or part of any property attached in the execution of a decree?
17. In this case, the objector holds that it bears the title to the land, where the attached goods are held in trust for all its employees at Mbaraki Club. It also holds the lease over the land and everything attached to it.



18. The objector is a public body registered under the [Kenya Ports Authority Act](#). Unlike an individual like the claimant, a public body is regulated by the law concerning its property and assets. The attached goods are not minor assets that can be sourced by the objector casually and stated that they go with the ownership of the land it holds title to. Not at all. Ownership must be through records of purchase, procurement, and acquisition.

No such evidence is produced.

Ownership cannot be through inference.

19. There needs to be more than the title documents for the premises of the Mbaraki Club. There must be ample documentation on ownership of the attached items. The objector has not sufficiently explained all these things, and one may be tempted to agree with the claimant that these objection proceedings are a scheme by the judgment debtors to defeat the execution process.

20. Of interest was that the respondent did not participate in these proceedings. They cannot hide behind the application by the objector. As judgment debtors, accounts must be rendered in these proceedings and satisfy the court decree.

21. Accordingly, the application by the objector is without merit and is hereby dismissed. Costs to the claimant.

The ruling to apply in the consolidated files;

Cause No.E080 Of 2023

Cause No.E077 Of 2023

Cause No. E079 Of 2023

**DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

