



**Ouma v Bonito Hotels Limited t/a Tourist Hotel Bungoma & 2 others  
(Cause 4 of 2019) [2023] KEELRC 20 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 20 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
CAUSE 4 OF 2019  
JW KELI, J  
JANUARY 19, 2023**

**BETWEEN**

**MICHAEL OTIENO OUMA ..... DECREE HOLDER**

**AND**

**BONITO HOTELS LIMITED T/A TOURIST HOTEL BUNGOMA .. JUDGMENT  
DEBTOR**

**AND**

**BOB NYAKWARA ARIEMBA ..... 1<sup>ST</sup> OBJECTOR**

**GEORGE AMBROSE NJUBA ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. The Objectors issued notice of objection to the Judgment debtor dated 1<sup>st</sup> November 2022 under Order 22 Rule 51 of the *Civil Procedure Rules* and further filed the instant application by way of Notice of Motion dated November 1, 2022 seeking the following reliefs:-
  - a. That the application be certified urgent and the same be heard exparte in the first instance.
  - b. That there be a stay of execution of warrant of attachment of movable property in execution of a decree of money issued by this Honorable Court on October 24, 2022 pending the hearing and determination of the application.
  - c. That costs of this application be provided for.
  - d. Any other relief the Honorable court may deem fit and appropriate.
2. The application was grounded on the reasons that the objectors were the registered owners of Motor vehicles Registration numbers KCR 185M and KCH 346V respectively which had been proclaimed by the Decree Holder with a view of selling the same in realization of the decree issued by this court



on October 24, 2022. The proclamation notice by Dasemy Firm of Auctioneers was dated October 26, 2022. That the objectors are not agents of the Judgment Debtor and do not hold the suit motor vehicles listed in the proclamation notice on behalf of the Judgment Debtor. That the proclaimed motor vehicles belong to the objectors by dint of legal registration thus erroneously proclaimed. That the Claimant acted in bad faith by commissioning proclamation of the suit motor vehicles without verification and authentication of the ownership.

3. The application was supported by the affidavit of Bob Nyakwara Ariemba sworn on the 1<sup>st</sup> of November 2022 who was the 1<sup>st</sup> Objector stating they were authorized by the 2<sup>nd</sup> Objector to swear the same on their behalf too. The deponent annexed copies of the suit motor vehicles (BNA 1(a) and (b)) records. Annexure BNA 1( a) was motor vehicle record of KCR 185M Land Rover where the owner's name was indicated as Bob Nyakwara Ariemba and motor vehicle record of KCH 346V owner's name indicated as George Ambrose Njuba Dabani jointly with British American Insurance Co (Kenya) Ltd.
4. Annexure BNA 2 was the proclamation notice by Dasemy Auctioneers dated 26<sup>th</sup> October 2022 proclaiming the said suit motor vehicles among other goods.
5. Annexure BNA 3 was a printout of CR12 by the Registrar of Companies disclosing the names of the shareholders and directors of the judgment debtor. The objectors were not directors of the judgment debtor under the CR12.
6. The application was not opposed.
7. The application was canvassed by way of written submissions. Only the objectors filed submissions dated November 25, 2022 through the law firm of Onganda Otieno & Co. Advocates.

### **Determination**

8. The application was brought under the provisions of Sections 3A and 3 of the *Civil Procedure Act* and Order 22 Rule 51 and 52 and Order 51 Rule 1 of the *Civil Procedure Rules 2010*.
9. The applicable law on objection to attachment is as provided for under Order 22 rules 51 and 52 of the *Civil Procedure Rules 2010* to wit:- '51. Objection to attachment [Order 22, rule 51.] (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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 the 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.
  - (3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.
52. Stay of execution [Order 22, rule 52.] Upon receipt of a valid notice and application as provided under rule 51, the court may order a stay of the execution for not more than fourteen days and shall call upon the attaching creditor by notice in writing to intimate to the court and to all the parties in writing within seven days whether he proposes to proceed with the attachment and execution thereunder wholly or in part.
53. Raising of attachment [Order 22, rule 53.] Should the attaching creditor in pursuance of a notice issued under rule 52 either fail to reply to the court and the objector within the period



prescribed by the notice or intimate in writing to the court and the objector within the period prescribed by such notice that he does not propose to proceed with the execution of the attachment of the whole or of a portion of the property subject to the attachment, the court shall make an order raising the attachment as to the whole or a portion of the property subject to the attachment in accordance with the intimation received from the attaching creditor and shall make such order as to costs as it shall deem fit.”

10. The objectors issued notice of objection dated November 1, 2022 and filed in court on the November 2, 2022 together with the application. That was in compliance with rule 51 of the [Civil Procedure Rules 2010](#) as outlined above. There was no evidence that the judgment debtor reacted to the said notice as envisaged under rule 52 of the [Civil Procedure Rules 2010](#).
11. The Judgment Debtor did not file response to this application and the notice as envisaged under rule 53 of the [Civil Procedure Rules 2010](#). The court was then called upon to decide on the merit of the application and the objection notice.
12. The objector bears the burden of proving legal or equitable entitlement to whole or part of the attached property under the proclamation notice as was held in the case of [Arun C. Sharma v Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 Others](#) (2014)eKLR .
13. The legal principles to be considered in objection proceedings are as settled in in [Chotabhae M. Patel v Chapraphi Patel](#) {1958} Ed 743 cited with approval by Justice R. Nyakundi in [Tawakal Airbus Limited v Irene Muthoni Njirati & another](#) [2020] eKLR where the Court held as follows:-
  - “(1). Where an objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to attachment the Court shall proceed to investigate the objection with the live power as regards examination of the objector, and in all other respects as if, he was party to the suit.
  - (2). The objector shall adduce evidence to show that at the date of attachment he had some interests in the property attached.
  - (3). The question to be decided is, whether on the date of attachment, the Judgment debtor or the objector was in possession, or where the court is satisfied that the property was in the possession of the objector, it must be found whether, he held it on his own account or in trust for the Judgment debtor. The sole question to be investigated is, thus, one of possession of and some interest in the property.
  - (4). Questions of Legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment debtor or some other person. To that extent the file may be part of the inquiry.”(Emphasis given)
14. The court adopts with approval the decision in [Chotabhae M. Patel v Chapraphi Patel](#) {1958} Ed 743(supra) to apply in the instant application. The objectors rely on the Motor Vehicle registration records to prove their legal entitlement to the property and on the CR12 of the Judgment debtor to prove that they are not agents of the judgment debtor and do not hold the suit motor vehicles in its trust.
15. On the question of possession and legal or equitable interest in the proclaimed motor vehicles, the court noted the proclamation notice was dated October 26, 2022. The suit motor vehicles records were as at 1<sup>st</sup> November 2022. Section 8 of the [Traffic Act](#) reads:- “The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.” The court finds and determines that the objectors have legal interest of ownership in the suit motor vehicles.



16. On whether the objectors held the property as agents or in trust for the judgment debtor, the court found that the judgment debtor was incorporated as a limited company and its directors as per filed CR12 (BNA 3) did not include the objectors. The judgment debtor is further a legal person as per decision in *Salomon v A Salomon & Co Ltd* [1897] AC 22. Lord Halsbury LC at page 22 stated, ‘Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon... If it was not, there was no person and no thing to be an agent at all; and it is impossible to say at the same time that there is a company and there is not.’ The court further found that objectors are neither shareholders or directors of the judgment debtor as per the CR12(Annexure BNA 3). There can never be any obligation on the objectors as to the liabilities of the judgment debtor by any imagination.
17. In the upshot the court finds the application dated November 1, 2022 merited. The court hereby grants an order of stay of execution of warrant of attachment of Motor vehicles Registration No. KCR 185M and KCH 346V respectively as listed in the proclamation notice dated October 26, 2022 in execution of the money Decree of the court dated February 2, 2022.
18. The objectors are jointly granted costs of the application.
19. It is so ordered.

**DATED, SIGNED AND DELIVERED AT BUNGOMA IN OPEN COURT THIS 19<sup>th</sup> JANUARY 2023.**

**J W KELI,**

**JUDGE.**

**IN THE PRESENCE OF :-**

**Court Assistant:- Brenda Wesonga**

**For Objectors: Ms Awuor holding brief for Onganda**

**For Decree Holder: Mr Tarus holding brief for Kadimba**

ruling in bgm cause no. 4 of 2019	0
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