



**Mudzomba v Bafangih Bakeries Limited; Ali (Objector) (Cause  
868 of 2017) [2023] KEELRC 805 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 805 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 868 OF 2017  
M MBARÚ, J  
MARCH 28, 2023**

**BETWEEN**

**MOHAMED MUNGA MUDZOMBA ..... CLAIMANT**

**AND**

**BAFANGIH BAKERIES LIMITED ..... RESPONDENT**

**AND**

**ABUBAKAR ALWI ALI ALIAS ABUBAKAR ALWY BAFAGIH ..... OBJECTOR**

**RULING**

1. The Objector, Abubakar Alwi Alia alias Abubakar Alwy Bafagih filed application dated 5<sup>th</sup> October, 2022 under the provisions of Order 51 rule 1, Order 42 rule 6, Order 22 rule 51 and 52 of the [Civil Procedure Rules](#) and seeking for orders that;
  1. Spent.
  2. The court be pleased to grant a temporary stay of any further execution of this court judgment dated 27<sup>th</sup> May, 2022 by way of attachment and sale of the moveable assets proclaimed on 25/07/2022 apart from Motor Vehicle Registration No.KCN 100N pending the hearing and determination of this application.
  3. This court be pleased to set aside the proclamation, attachment and/or sale of the moveable assets listed in the Proclamation Notice dated 25/07/2022.
  4. This court be pleased to permanently restrain the claimant/respondent whether by himself, his agents and/or servants from proclaiming, attaching and/or selling the movable assets listed in the Proclamation Notice dated 25/07/2022 apart from Motor Vehicle Registration No.KCN 100N.



5. Costs of this application be in the cause.
2. The application by the objector is supported by the Supporting Affidavit of Abubakar Alwi Ali and on the grounds that following judgment herein on 27<sup>th</sup> May, 2022 the agents of the claimant commenced execution through Makini Auctioneers Agencies who on 25<sup>th</sup> July, 2022 proclaimed its assets and bakery equipment apart from Motor Vehicle Registration No.KCN 100N found in the premises which was initially owned by the respondent. the claimant through the auctioneers are at the verge of selling the property proclaimed but the objector herein initially purchased the bakery equipment apart from the vehicle from an offer from the managing director, Kenya Industrial Estates Limited which offer was accepted on 26<sup>th</sup> October, 2000 and further a purchase was approved upon which payments were made on 3<sup>rd</sup> June 2005.
3. Other grounds in support of the application are that at the time of the proclamation, the objector was and still is the owner of the assets and bakery equipment apart from the vehicle and the proclamation by the claimant through the auctioneers being with regard to properties of the objector and Kenya Industrial Estates Limited respectively, as such do not belong to the respondent.
4. In his affidavit, Abubakar Alwi Ali avers that as the objector herein, following an offer made by the managing director of Kenya Industrial Estates Limited he accepted to purchase bakery equipment apart from motor vehicle KCN 100N and has since paid for the same. Following the purchase, he lent the same equipment and the shed apart from the vehicle to his brother Mohsen Alwi Mohamed who had opened a bakery under the name of Bafagih Bakeries Limited, the respondent to kick-start his business but without proprietary interests over the said equipment to date. the brother is the sole director of the respondent who is now deceased since 7<sup>th</sup> June, 2021 and after which the company went under and as such no business has been conducted by the respondent. The objector lent the same equipment to Almo Bakeries Limited a company registered on 7<sup>th</sup> July, 2021 without passing any proprietary rights to the said company which is still running to date.
5. Mr Alwi Ali also avers that it was brought to his attention by Almo Bakeries Limited that a on 27<sup>th</sup> July, 2022 auctioneers visited his business premises and proclaimed among other goods the bakery equipment and which the objector later leant related to the judgment herein against the respondent and leading to the instant application seeking that he is the owner of the bakery equipment and hence not available for proclamation apart from Motor Vehicle Registration KCN 100N. such assets cannot be sold in execution herein as these were found at the respondent's premises but not owned by the respondent.
6. In reply, the claimant filed his Replying Affidavit and avers that the objector does not disclose any cause of action as there is no letter of offer for the purported purchase of the bakery equipment from Kenya Industrial Estates Limited as alleged. The said letter of acceptance does not specify which items were allegedly bought from Kenya Industrial Estates Limited and the letter dated 3<sup>rd</sup> June, 2005 over alleged payments of mortgage for a shed is not a purchase of bakery machinery. There is therefore no evidence to prove that there is purchase of bakery machinery and that the objector was in a position to lend the same to the respondent.
7. The claimant also avers that the respondent is a corporate entity capable of being sued in its name and the death of the director does not bar it from meeting its obligations under the law. there is no evidence that the respondent has gone under and its operations are ongoing and in fact, on 29<sup>th</sup> June, 2021 the respondent issued cheque No.006673 for Kshs. 31,380 as part payment of the decretal sum but the same was not honoured by the bank and hence, the respondent has been evading to settle the decretal sum through false promises to settle by instalments.



8. The auctioneers properly served the proclamation notice upon the respondent as the judgment debtor and the goods proclaimed belong to the respondent and the application herein is filed in bad faith intended to prevent the claimant from enjoying the fruits of his judgment and which should not be in vain and the same should be dismissed with costs.
9. The objector filed his Further Affidavit and avers that upon the offer to purchase bakery equipment from Kenya Industrial Estates on 26<sup>th</sup> July, 2000 he accepted the same and his late brother Mohsen Alwi Mohamed the sole proprietor of the respondent was running the business until his demise on 7<sup>th</sup> June, 2021 and the cheque issued to the claimant dated 29<sup>th</sup> June, 2021 must have been post-dated.
10. The proclamation notice was not served upon the respondent but on Almo Bakeries Limited the company that the objector has rented out the business premises after the respondent stopped operations.
11. Parties attended and agreed to address the application by way of written submissions.
12. The objector as the applicant submitted that under order 22 rule 51(1) of the Civil Procedure Rules a person claiming to be entitled to or to have equitable interests in the whole of or part of any property attached in execution of a decree has a right to object through proceedings such as herein done and as held in *Arun C Sharma v Ashana Raikudalia t/a A. Raikundlla & Co. Advocates & 4 others* [2014] eKLR that the objector bears the burden of proving that he is entitled to or has legal or equitable interests in whole or part of the attached property. In *Precast Postal Structures v Kenya Pencil Company Ltd & 2 others* [1993] eKLR that the attached property did not belong to the judgment-debtor and which was held by the objector and in this case, without establishing ownership by the respondent, the claim over he proclaimed goods by the objector should be upheld by this court.
13. On the evidence presented to show the ownership of the bakery equipment, there is a *prima facie* evidence of ownership by the objector to justify these proceedings as held in *Francis Ndirangu Mwangi v William Kiplangat Sigilai & 2 others* [2018] eKLR. to allow execution to proceed against the objector's property will be contrary to justice and shall lead to irreparable loss and damage which is not justified and on the balance of convenience, taking into account the objector had lent the respondent the bakery equipment which is now lent to Almo Bakeries Limited, the orders sought herein should issue.
14. The claimant submitted that the objector has not produced any title documents to prove that he is the legal owner of the proclaimed good or any receipts to prove that the goods belong to him as alleged. There is no evidence that the objector executed the legal document referenced in the letter of offer date 20<sup>th</sup> July, 2000 and as held in *Duncan Kabui v Samuel Bede Igembo & another* [2014] eKLR that without any evidence of ownership or a sale agreement over the proclaimed goods, the attachment was proper. In *Randon SA Implementors Eparticipacoes v RT (East Africa) Limited; Jovan H Kariuki (Applicant); Multiple Hauliers (EA) limited & another (Objectors)* [2021] eKLR the court held that on the clear and probative value to invoices in as far as the objections to proclaimed properties are concerned, such did not constitute sufficient legal proof of ownership. Without proof of any legal and or equitable interests in the attached goods the objections made are not justified and should be dismissed with costs to the claimant.
15. The essence of objection proceedings is to allow an objector show that at the date attachment took place, there was a legal or equitable interests in the properties, goods, assets or belongings attached. This



is aptly addressed in the case of *Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector)* [2019] eKLR where the court held that;

"The core of objection proceedings, the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached."

16. As correctly submitted by the objector in the case of *Arun C. Sharma v Ashana Raikundalia t/aA. Raikundalia & Co. Advocates & 4 others*[2014] eKLR, in objection proceedings, 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 proof of a legal or equitable interest in the whole or part of the property is imperative.
17. In this regard, the objector asserts that the bakery equipment belongs to him on the basis that there was offer by the managing director of Kenya Industrial Estates Ltd to purchase the bakery equipment apart from Motor Vehicle No. KCN 100N through letter of acceptance dated 26<sup>th</sup> July, 2000 and which he attached as "AAA-1" to his Supporting Affidavit dated 5<sup>th</sup> October, 2022 save, the acceptance offer is not a record of ownership or primary proof of any legal or equitable interests in the whole or part of the property attached. Even in a case where such acceptance offer was to be construed as such, which is not the case here, the Acceptance Offer to Purchase
18. Bakery Equipment is without particulars as per the Auctioneers notice dated 25<sup>th</sup> July, 2022 where the following items were proclaimed being;
  - a. Motor vehicle KCN 100N;
  - b. Two mixers
  - c. 4 oven baking machines
  - d. One big generator;
  - e. Three slices machines;
  - f. One compaser set;
  - g. Sixteen trolleys;
  - h. Assorted crates and tins; and
  - i. Assorted scrap metal.
19. Without evidence as to the relationship between annexure "AAA-1" and these items, the court finds no proof of any legal or equitable interest in the whole or part of the same to justify the objection proceedings herein with regard to the attachment process in execution of the judgment herein.
20. The court takes into account that the respondent did not participate in these proceedings. The respondent is a corporate entity as correctly submitted by the claimant and even with the demise of the director, the entity is alive and the issuance of a cheque dated 29<sup>th</sup> June, 2021 No.006673 for Ksh. 31,380 in part payment of the decretal sum is just but proof that the entity is trading. The averments by the objector that the cheque issued was post-dated contradicts the date of allocation which primary evidence of the date of issue on 29<sup>th</sup> June, 2021 is after the demise of the director on 7<sup>th</sup> June, 2021. Where such cheque was issued and post-dated, which is not the case, the objector with knowledge of



the respondent's affairs did not stop such issuance meaning this cheque emanated from the respondent in part fulfilment of its obligation towards settling the decretal sum herein.

21. On the allegations that the respondent company has gone under, the objector is not the owner of the respondent if his objections are to be taken as presented. For a company such as the respondent to go under, there are motions secured in law to address such matter. There is no evidence submitted by the objector in this regard.
22. Accordingly, without any proof of a legal or equitable interest in the whole or part of the properties attached on 25<sup>th</sup> July, 2022 in execution of the judgment herein, application dated 5<sup>th</sup> October, 2022 is found without merit and is hereby dismissed. the respondent shall bear all costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 28<sup>TH</sup> DAY OF MARCH, 2023.**

**M. MBARÚ JUDGE**

In the presence of:

Court Assistant: Japhet Muthaine

