



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mumanyi v Travel Associates Ltd (Cause 482 of 2017)  
[2023] KEELRC 1078 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1078 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 482 OF 2017  
AN MWAURE, J  
APRIL 28, 2023**

**BETWEEN**

**STEPHEN ANEKEYA MUMANYI ..... CLAIMANT**

**AND**

**TRAVEL ASSOCIATES LTD ..... RESPONDENT**

**RULING**

1. The objector filed a notice of motion application dated 25<sup>th</sup> October 2022 and is making the following prayers:
  1. Spent
  2. That pending the hearing and determination of this application inter partes this honourable court be pleased to stay execution of the decree dated 10<sup>th</sup> March 2022.
  3. That his honourable court be pleased to issue any other order that it deems fit.
  4. That cost of this application be awarded to the objector
2. The objector avers he is the owner of the goods proclaimed by Hebros – Auctioneers attachments.
3. He says the Respondent/Applicant has no interest in these items and further the objector is not a party to these proceedings.
4. The claimant in his replying affidavit dated 24<sup>th</sup> October 2022 states that the objectors application is incurably defective as no prayers for lifting the proclamation, warrants of attachment and notification of sale by Hebros Auctioneer has been pleaded by the objector.
5. Further the claimant states that a party is bound by its pleadings and cannot be granted that which they have not prayed for.



6. Further the claimant says the objector paid kshs 200,000 is part of the decretal sum and so is estopped denying he was party to the suit.
7. He also says that the application is overtaken by events and further he has not brought evidence of legal or equitable interest in the attached properties. He prays that the objector's application should be struck out with costs.
8. The court considered the supporting affidavit deponed by Gurjit Sehmi Kaur Director of the objector company and dated 24<sup>th</sup> October 2022.
9. He says Hebros auctioneers proclaimed his goods on 24<sup>th</sup> September 2022 and yet he has never been a party to these proceedings.
10. In his submissions dated 25<sup>th</sup> January 2023 he avers that the goods proclaimed by the claimant/respondent were his and they never belonged to the respondent/claimant.
11. He says he has an agreement of lease and a signage shows he was the owner of the premises. He relies on the case of *Michire messah & Company Advocates v Kasama Kalume (objector)* [2021] eKLR where court held:
 

“An objector has proved on a balance of probabilities that the subject motor vehicle reg No KCR 491L belonged to him at the time of the decree.”
12. He further says that the fact that he paid part of the decretal sum would not prevent him from securing his goods which are in the process of being proclaimed. He says he paid the ksh 200,000/- to protect his goods from being attached. He therefore prays that the orders prayed be granted.

#### **Claimants/applicant's submissions**

13. The claimant is relying on the case of *Ziugo Investment Limited v Miema Enterprises LDM* (2015) eKLR where court held that:
 

“it was correctly held tht for an objector to succeed in his objection he must exhibit evidence of his legal or equitable interest in the whole or part of any property attached in execution of decree.”
14. In the submissions dated 25<sup>th</sup> January 2023 the claimant further state that there is no evidence to show the items proclaimed belonged to the objector. There is no certificate of ownership or receipts and further certificate of incorporation and lease agreement has no value on proof of ownership of the goods. He prays therefore that the application be declared to have no merit and be dismissed with orders as to costs.

#### **Analysis and Determination**

15. The prayers for the objector is for stay of decree dated 16<sup>th</sup> March 2022. The proclaimed items are as attached to the proclamation form and include office assets and they have no identification documents whatsoever except the form reads Travel Associates Ltd the respondent. The warrant is dated 23<sup>rd</sup> September 2022 and was to expire after 7 days from the date of proclamation.
16. The court has considered the evidence and the pleadings and furthermore is cognisant that the objector has not adduced proof of the ownership of the goods proclaimed by the Hebros Auctioneers.



17. There are several authorities on this subject that establish that the objector must lender proof that the proclaimed goods belong to him. The cases of *Patel K. Ayiro v Mash Bus Service Limited & Another* [2015] eKLR the court held that the objector must discharge the duty to establish the goods belong to him.
18. Similarly in the case of *Zingo Investment v Muema Enterprises Limited* [2015] eKLR the court held that objector must exhibit evidence that the goods belong to him.
19. The case at hand the objector failed to give any documentary evidence like a receipt or a certificate or letter or any other form of ownership documents to prove ownership of these assets.
20. The court cannot make orders in abstract in the absence of support of such claim.
21. The goods were proclaimed in September 2022. There is no stay of execution and chances are the application is overtaken by events. The objector did not pray for lifting of proclamation or lifting of warrants of attachment. He prayed for stay of execution of decree issued on 10<sup>th</sup> March 2022. The proclamation then was effected in September 2022. Clearly the application was overtaken by events.
22. The court finds that as provided under order 22 Rule 31(1) of the *Civil Procedure Rules* an objector who claims goods attached in execution of decree belong to him and not to the judgment debtor must discharge the evidential burden placed upon him.
23. The court finds the objector did not discharge that burden and did not prove that the goods attached belonged to him. It is also curious that he paid kshs 200,000/- as part of the decretal sum to decree holder.
24. The court finds the objector has failed to prove he has interest in the goods proclaimed and furthermore he has failed to prove the application for issuance of a decree to stay the execution is still not overtaken by events. The objector's application therefore dated 25<sup>th</sup> October 2022 is unmerited and is dismissed. Each party will meet their costs of this application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL, 2023.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the *Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the *Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.



**ANNA NGIBUINI MWAURE**  
**JUDGE**

