



REPUBLIC OF KENYA



**Obuto Caleb Ombati t/a Al-Khair Royal School v Odha (Appeal  
E032 of 2022) [2023] KEELRC 1938 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1938 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E032 OF 2022**

**M MBARŪ, J  
JULY 27, 2023**

**BETWEEN  
OBUTO CALEB OMBATI T/A AL-KHAIR ROYAL SCHOOL ..... APPELLANT  
AND  
WAYU HATIBU ODHA ..... RESPONDENT**

*(Being an appeal from the ruling of the Hon. D.O Mbeja Principal  
Magistrate on 20 May 2022 in Mombasa CMCC ELRC No.580 of 2019)*

**JUDGMENT**

- 1 The appellant filed this appeal following the ruling in CM ELRC No 580 of 2019 delivered on May 20, 2022 with regard to an application dated February 16, 2022 seeking stay of execution proceedings against all movable property attached and proclaimed pursuant to the proclamation served on the objector on February 10, 2022 and which application was dismissed with costs.
- 2 Aggrieved, the appellant's appeal is on five (5) grounds that;
  1. The learned magistrate erred in law and in fact by failing to lift the Proclamation of movable property itemised as No.1 to 11 attached in the proclamation dated February 10, 2022.
  2. The learned magistrate erred in finding that the Objector and the judgment debtor were one and the same person when indeed the two are separate entities.
  3. The learned magistrate erred in finding that the objector and judgment debtor shared the postal address as a proof that they were one and the same person when indeed they are two separate entities.
  4. The learned magistrate erred in finding that the appellant as the objector had not discharged their onus of proof.



5. The learned magistrate misdirected himself on the applicable principles of law by failing to take into consideration and appreciate.
- 3 On the appeal, the appellant submitted that upon judgment, the respondent in execution obtained a proclamation dated February 10, 2022 of the movable properties itemised as No 1 to 11 the property of the objector, the appellant herein and who is a separate legal entity from the judgment debtor but the learned magistrate declined to allow the objections hence this appeal seeking to lift the same since the appellant is not the same as the judgment debtor. The only link that the trial court addressed was a shared postal address which does not create legal title to the proclaimed properties to the judgment debtor. A shared postal address is not sufficient ground to find ownership.
- 4 The appellant is an individual trading as Al-khair Royal School and the documents that were produced, none of them belong to the judgment debtor. The property proclaimed by the respondent belong to the appellant and the objection proceedings should have been allowed and the proclamation lifted. The appellant relied on the case of Civil Appeal No 10 of 1977 *Brar v Wareng Quarry & Achare Construction*; Mombasa Appeal No 66 of 2017 *Chai Trading Co Limited v Muli Mwanzia & 2 others*. That any person claiming to be entitled to or to have legal or equitable interest in the whole or part of any property attached in execution of a decree can file objection proceedings to challenge any attachment of such property in satisfaction of a decree.
- 5 The respondent submitted that the proclaimed properties listed as No 1 to 11 attached to the proclamation dated February 10, 2022 were properly found to belong to the judgment debtor and not the appellant as the objector. The respondent filed his Memorandum of Claim against Liwatoni Muslim Academy, also known as Al Khair Royal School and who filed a response. The claim then proceeded in the absence of the respondent who failed to attend court despite being served.
- 6 Upon execution, the postal address of Liwatoni Muslim Academy is 99497-80100 Mombasa the same address for the appellant, Al-Khair Royal School. The appellant is trying to defeat the course of justice by hiding behind the judgment debtor. The appellant has filed a lease agreement with the judgment debtor to evade liability as held in *Marie Stopes (K) Limited v Cecilia Jadva Parbat & Co (EPZ) Limited* [2016] eKLR.
- 7 The respondent was employed by Liwatoni Muslim Academy. This is the respondent against who judgment was delivered against by the lower court on July 2, 2021. the letter and notice of summary dismissal dated February 22, 2019 is by the same entity, Liwatoni Muslim Academy.
- 8 The decree of the lower court is against Liwatoni Muslim Academy aka Al Khair Royal School.
- 9 The Decree of the court dated January 28, 2022 is different and distinctly separable from the judgment of the trial court delivered on July 2, 2021.
- 10 An amendment to the judgment cannot arise *suo motto* after judgment has been delivered. Whatever amendment was found necessary post-judgment, reason demanded that the respondent to move the court and issue notice to the judgment debtor accordingly. Such matter alone, ought to have applied in persuading the learned magistrate that the objection proceedings by the appellant were justified.
- 11 In execution, the respondent proclaimed various properties and in response, the appellant filed objection proceeding through application dated February 16, 2022 on the grounds that items No 1 to 11 belonged to them and not the judgment debtor.
- 12 In his ruling delivered on May 20, 2022 the learned magistrate only linkage of the appellant and the judgment debtor was the single fact that both shared a postal address and for this reasons, a subsidiary of the respondent and hence, as a parent corporation can control the judgment debtor.



- 13 As correctly submitted by the appellant, in objection proceedings, what an objector has to demonstrate are the principles laid out under Order 22 rule 51(1) of the Civil Procedure Rules which provides that;
- 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.
- 14 A shared postal address is not sufficient evidence of having legal or equitable interest in whole, in part or in whatever manner possible to link two legal entities. A postal address is not in any manner proof of title.
- 15 The moment judgment issued in Mombasa CM ELRC No 580 of 2019 against the judgment debtor and not the appellant as the objector, the decree thereof was not capable of amendment to bring the appellant on board after the fact of the judgment.
- 16 The learned trial magistrate erred in fact and in law in finding that the appellant as the objector had its property properly proclaimed to satisfy the decree against the judgment debtor on the sole reasons that there was a shared postal address. Such is not cannot find justification in law.
- 17 Accordingly, the appeal herein is found with merit and the ruling in Mombasa CM ELRC No 580 of 2019 delivered on May 20, 2022 is hereby set aside. The Proclamation against the movable properties of the appellant as the objector there from is hereby set aside in whole. The Appellant is awarded costs.

Delivered in open court at Mombasa this 27 day of July 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and .....

