



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 789N OF 2009

(Before Hon. Lady Justice Maureen Onyango)

FRANCIS MBUGUA MUTHIGA.....CLAIMANT

VERSUS

ECHUKA FARM LIMITED.....1ST RESPONDENT

ECHUKA INVESTMENTS LIMITED.....OBJECTOR

RULING

1. By an application dated 25th May 2021, the objector seeks the following orders –
 - (i) *That the present application be certified as urgent and as a conservatory measure prayer 2 be granted on interim ex parte basis;*
 - (ii) *That there be stay of execution of the judgment/ decree made on 20th April 2018 and the proclamation made by Fantasy Auctioneers pm 19th May 2021 pursuant thereto, pending the hearing and determination the present application;*
 - (iii) *That the attachment of the applicant's properties proclaimed in execution of the judgment/decree made on 20th April 2018 be raised/set aside;*
 - (iv) *Any other or further appropriate order.*
2. The grounds upon which the orders are sought as set out on the face of the application are that –
 - (a) *The objectors properties have been wrongly attached in purported execution of a decree;*
 - (b) *The objector was not a party to the proceedings from where the decree resulted;*
 - (c) *There is no nexus with respect to the liability of the judgment debtor and the objector;*
 - (d) *The objector shall incur irreplaceable loss if its properties are wrongly sold in execution of the decree.*
3. The application is supported by the affidavit of THUO CEGE, a director of the Objector in which he deposes that on 19th May 2021, an auctioneer trading as Style Fantasy Auctioneers came into the Objector's property and attached a 10,000 litres Stainless Steel Milk Tank.
4. That apparently the proclamation was done pursuant to a warrant of attachment indicative of a decree made on 20th April 2018 against Echuka Farm Limited.
5. The Affiant states that there has never been any court case between the Objector and the Claimant that would render the Objector's property liable for attachment. That the Affiant is aware that Echuka Farm Limited, the Respondent herein is situated in Nyahururu in Laikipia County while the Objector is situated in Limuru, Kiambu County where attachment was done. He has attached a copy of the certificate of incorporation of Echuka Investments Limited to support his averments.
6. He prays for the annulment of the attachment against the Objector's property.

7. The application is opposed by the Claimant who filed a replying affidavit sworn on 7th September 2021. He states that there was a previous attachment on 6th March 2020 but the warrants expired before they were executed.

8. With respect to the warrants dated 4th August 2020, the Claimant states that the Objector has not proved the ownership of the attached items. Specifically, that tractor Registration Number KAV 831K is owned by the Respondent.

9. He urged the Court to dismiss the objection on grounds that it lacks merit.

10. The Objector filed a further affidavit sworn on 11th November 2021 in which THUO CEGE deposes that the attached 10,000 litres stainless steel milk tank is the property of the Objector.

11. The application was disposed off by way of written submissions. Both parties filed and exchanged their respective submissions.

Analysis and Determination

12. The issues for determination are whether the proclamation was lawful whether the Applicant/Objector is entitled to the orders sought.

13. Objection to attachment is provided for under Order 22 Rule 51(1) of the Civil Procedure Rules as follows –

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

14. In the case of **Precast Portal Structures v Kenya Pencil Company Ltd & 2 others [1993] eKLR** where the court expressed itself thus:

“The burden is on the objector to prove and establish his right to have the attached property released from the attachment. On the evidential material before the Court, a release from attachment may be made if the Court is satisfied.

(1) that the property was not, when attached, held by the judgment debtor for himself, or by some other person in trust for the judgment debtor; or

(2) that the objector holds that property on his own account.”

15. In the case of **Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector) [2019] eKLR** cited by the Claimant, 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 execution of a decree?”

16. The burden of proving that the attached property belongs to the Objector lies with the Objector.

17. In the objection application, the only evidence adduced by the Objector to prove ownership of the attached 10,000 litres stainless steel tank is a valuation report titled *“Echuka Investments Limited Valuation Report for Dairy Equipment”*.

18. A valuation report is not evidence of ownership. Further the report does not have a date, does not indicate who did it or for what purpose. The fact that it refers to a 10,000 litres tank does not connect it to the stainless-steel tank that was attached.

19. I find that the Objector has not proved that the 10,000 litres stainless steel milk tank that was attached is its property.

20. The application is accordingly dismissed with costs to the Claimant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 2ND DAY OF FEBRUARY 2022

MAUREEN ONYANGO

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 15th March 2020 and subsequent directions of 21st 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 **Civil 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.

MAUREEN ONYANGO

JUDGE