



Kenya Petroleum Oil Workers Union v Desnol Investment Ltd & another; Okoth t/a Aneles Cafe' (Objector) (Cause 280 of 2018) [2022] KEELRC 1227 (KLR) (21 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1227 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 280 OF 2018
CN BAARI, J
JULY 21, 2022**

BETWEEN

KENYA PETROLEUM OIL WORKERS UNION CLAIMANT

AND

DESNOL INVESTMENT LTD 1ST RESPONDENT

CLIVE NATOME 2ND RESPONDENT

AND

ANNE AKINYI OKOTH T/A ANELES CAFE' OBJECTOR

RULING

1. Before Court is the Objector/Applicants' motion dated 4th March, 2022, brought pursuant to Order 22 Rules 51, 52, 53 and 54 of the [Civil Procedure Rules](#) and Sections 1A, 1B, and 3A of the [civil Procedure Act](#), seeking orders that:
 - i. Spent
 - ii. Spent
 - iii. The mode of execution adopted by the Decree Holder by way of attachment of the Objectors highlighted properties be set aside, and an order be issued prohibiting any such subsequent execution in enforcement of the Decree by way of attachment of the immovable properties listed as those of the Judgment Debtor and in particular the assorted supermarket goods and assorted kinds and types and sizes of gas cylinders and 10 plastic chairs and supermarket counters and shelves as they are the properties of the Objector and not those of the Judgment Debtor.



- iv. That the Plaintiff be ordered to bear the costs of this application and the Auctioneers be ordered to bear their own costs.
2. The application is supported by the grounds on the face thereof, the affidavit and Supplementary affidavit of Anne Akinyi, the Objector/Applicant herein. The motion is premised on the grounds that the Objector is a tenant upon the Judgment Debtor's property, whereon she operates a supermarket, and that the Decree Holder has obtained a decree and appropriate warrants of attachment and sale against the Judgment Debtor for the sum of Kshs.1,239,142.00.
3. The Objector/Applicant avers that the Auctioneer is in the process of execution of the warrants of attachment and sale in relation to which he has already proclaimed and intends to physically take possession of the proclaimed properties.
4. The Objector/Applicant states that not all of the proclaimed properties belong to the Judgment Debtor. The Objector/Applicant further avers that the assorted supermarket goods, assorted kinds, types and sizes of gas cylinders, 10 plastic chairs, supermarket counters and shelves belong to her and unless the orders sought are granted she stands to suffer immense prejudice as the property listed shall be attached and sold and monies dispatched to the Decree Holder.
5. The Claimant/Decree Holder opposed the application vide a replying affidavit dated 18th March, 2022.
6. Parties sought to canvass the application by way of written submissions. Both parties filed submissions in the matter.

The Objector/Applicant's Submissions

7. It is submitted for the Objector/Applicant that not all the proclaimed properties belong to the Judgment Debtor. The Objector/Applicant further submits that the assorted supermarket goods, assorted gas cylinders, 10 plastic chairs, supermarket counters and shelves belong to her. She sought to rely on the case of *Awo Shariff Abdirabim T/A Mohammed Investments v Abdulkadir Shariff Mohammed & Anor* (2006) eKLR where Kasango J. held that the burden of proof of the legal or equitable interest lay with the Objector.
8. The Objector/Applicant submits that she has on a balance of probability proved that she has a legal and equitable interest on the properties proclaimed, and her interests need to be protected by this Honourable Court. She had reliance in the case of *Akiba Bank Ltd v. Jetha & Sons Ltd* (2005) eKLR where the court opined:

“...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 a decree”

The Claimant/Decree holder's Submissions

9. It is submitted for the Claimant/Decree holder that the burden of proof of ownership of the proclaimed property lies on the Objector. The Claimant/Decree holder sought to rely on the holding in *Stephen Kiprotich Koech v. Edwin K. Barchilei; Joel Sitienei (Objector)* [2019] eKLR to buttress this position.
10. The Claimant/Decree holder submits that the Objector must adduce evidence to show that at the date of the attachment she had a legal or equitable interest in the property(s) attached. It is the Claimant's further submission that the single business permit exhibited was issued a day after the Auctioneers had proclaimed the properties and does not establish or ascertain the rightful owner of the saw mill at the date and/or time of attachment of the properties.



11. The Claimant/Decree holder further submits that most of the receipts attached by the Objector in her Supplementary Affidavit do not show the name of the person who purchased the goods, nor connect the Objector directly to the purchase to prove any legal or equitable interest. It is their submission that it is not easy for this court to rely on receipts that are not detailed and conclude that the Objector herein is the owner of the assorted proclaimed goods. They relied in the case of *Christian Geysmans & Another v George Njoroge Kamau & 2 Others; Alternative Pulse PLC (Objector)* [2020] eKLR for the holding that the old law that invoices are not proof of payment prevails.
12. It is submitted for the Claimant/Decree holder that the receipts and invoices produced in evidence do not cover or account for ownership of all the good/properties that were proclaimed by the Auctioneer. It is the Claimant/Decree Holder's submission that the Objector's application is meant to deceive this court to aid the Judgment Debtor escape justice.

Determination

13. I have considered the application, the grounds, the affidavits and the rival submissions. The issue for determination is whether the application meets the threshold for grant of the orders sought.
14. Order 22 rule 51(1) of the *Civil Procedure Rules* states as follows in regard to objection to attachment:

“ 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.”
15. It is now settled that it is the obligation of the Objector to prove that he/she has a legal or equitable interest in the goods proclaimed to justify a stay of execution. In the case *Stephen Kiprotich Koeh v. Edwin K. Barchilei & Joel Sitienei (Objector)* [2019] eKLR the court, while citing the case of *Arun C. Sharma versus Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 Others* [2014] eKLR stated;

“ 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. ”
16. To have a legal or equitable interest does not translate to the objector proving ownership to the goods. In *Dubai Bank (K) Ltd v Come-cons Africa Ltd and Impak Holdings Co. Ltd.* Odunga J Stated:

“ Although the law is that in the objection proceedings the court does not and cannot make a finding as to the ownership of the property subject of the objection proceedings but simply decide whether or not the Objector has interest legal or equitable in the attached property.”
17. The question for this court is whether the Objector/Applicant has established a legal or equitable interest in the goods subject of the attachment.
18. The Objector/Applicant produced a lease agreement between herself and the Judgment Debtor which shows that she indeed has rented business premises from the judgment debtor.
19. The single business permits and the Trade License produced in evidence is prove that the Objector/Applicant operates a supermarket. Further, through her supplementary affidavit, the Objector/Applicant produced invoices, cash sale receipts and delivery notes, most of which are addressed to her for purchase of supermarket stocks.



20. In my view, the documents referred to herein on a balance of probability, show that the Objector/Applicant has an interest on the supermarket stocks attached.
21. Section 44 of the *Civil Procedure Act*, provides that in execution proceedings, only the property belonging to the judgment debtor is subject to attachment.
22. Other than the supermarket stocks, the Objector/Applicant has not discharged the burden of proof in relation to the other goods subject of the attachment. No evidence has been adduced to prove an interest, legal or equitable on the gas cylinders and the chairs that are subject of the attachment. Nothing links the Objector/Applicant to the gas cylinders. The sales receipts produced, do not bear the Objector's name, nor do the till number on the receipts show that the number is registered to her. In *Precast Portal Structures v Kenya Pencil Company Limited and 2 Others* (1993) eKLR it was held that the burden of establishing that the attached goods belong to the Objector lies on the Objector.
23. I find and hold that the Objector/Applicant has proved a legal and equitable interest in the supermarket goods/stock subject of these proceedings.
24. Consequently, the court makes the following final orders:
 - a) That an order be and is hereby issued prohibiting the execution of the Objectors/Applicant's attached property; namely supermarket goods in enforcement of the Decree herein.
 - b) The status quo orders earlier issued are lifted.
 - c) The costs of the application shall be borne by the Judgment Debtor.
25. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 21ST DAY OF JULY, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Koganga h/b for Mr. Onyony for the Claimant/Decree Holder

N/A present for 1st & 2nd Respondents/Judgment Debtors

Ms. Miheso h/b for Mr. Ogutu for Objector/Applicant

Ms. Christine Omollo-C/A

