



REPUBLIC OF KENYA



**KENYA LAW**  
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**Koech v Kondol; Kibos Sugar and Allied Industries & another (Objector) (Cause 128 of 2018) [2022] KEELRC 13536 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13536 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE 128 OF 2018**  
**HS WASILWA, J**  
**DECEMBER 15, 2022**

**BETWEEN**

**KIPLAGAT ARAP KOECH ..... CLAIMANT**

**AND**

**DALSIT KONDOL ..... RESPONDENT**

**AND**

**KIBOS SUGAR AND ALLIED INDUSTRIES ..... OBJECTOR**

**SHEM INYUMILI SHIMEJERO ..... OBJECTOR**

**RULING**

1. This ruling is in respect of the objectors notice of motion dated June 29, 2022, filed pursuant to order 22 rule 53 & 54 of the [Civil Procedure Rules](#), seeking for the following orders:-
  - a. Spent.
  - b. That there be a stay of sale of the Objectors motor vehicles registration number KCP 104S, Toyota, Saloon, white in color; KAP 905 S Toyota S-wagon, maroon and Households items.
  - c. That there be a release of the said motor vehicles; KCP 104S, Toyota, Saloon, white in color; KAP 905 S Toyota S-wagon, maroon and Households items such as Television/Cabinet, Sofa set/tables computer and Fridge to the objector herein.
  - d. That the attachment of motor vehicles KCP 104S, Toyota, Saloon, white in color; KAP 905 S Toyota S-wagon, maroon and Households items such as Television/Cabinet, Sofa set/tables computer and Fridge is unlawful
  - e. That the costs of this application be paid by the Decree holder and Direct “O” services auctioneers.



2. The application is premised on the grounds set out in the face of the application and the supporting affidavit of Shem Inyumili Shimejero, the 2<sup>nd</sup> Objector. In the said affidavit the affiant avers that on June 24, 2022, persons identified as Direct 'O' auctioneers proclaimed the objectors' vehicles and household items on the claim that they are satisfying a decree issued by this Court.
3. That the objectors are strangers to the case herein, neither do they have any relations with the judgement debtor to warrant the attachment herein.
4. That the costs arising out of the said attachment, should be paid by the decree holder together with the auctioneers because they failed to carryout due diligence before the said attachment. They herein attached search records showing the objectors as the owner of motor vehicles registration number KAP 905K and KCP 104S respectively.
5. Thy prayed for the attachment on their vehicles and household items to be lifted unconditionally as it is proceeding against the wrong parties.
6. The claimant /decree holder herein opposed the application and filed a replying affidavit deposed upon on the July 26, 2022. He avers that the attachment was carried out in accordance with the law and in strict adherence to procedure and rules governing execution therein. On that basis the decree holder stated that the auctioneers proceeded to the Residence of the judgement debtor where they were received by one Mrs. Kondola, the wife of the judgement debtor where they attached the two motor vehicles and household goods in satisfaction of the decree issued by this court.
7. It is stated that the objectors have not tabled any evidence before this Court showing that the vehicles and the household goods belong to them as such that the move is a ploy by the objectors working in cahoots with the judgement debtor to deny him the fruits of his judgement.
8. He prayed for the application to be disallowed for being misconceived.
9. Directions were taken for the application to be disposed of by way of written submissions with the applicants/objectors filing their submissions on the October 26, 2022, while the Respondent/decree holder opted to rely on his replying affidavit.

#### **Applicant's Submissions.**

10. The gist of the objectors' submissions is that they are empowered under order 22 rule 51(1) of the [Civil Procedure Rules](#) to bring this application to object the illegal attachment of their properties by the decree holder who has attachment their vehicles and household goods without carrying out due diligence to establish the owners of the said properties before attachment. It was submitted that the vehicles attached as evidence in the search records produced in Court belong to the objectors who are not part of the suit herein and therefore not liable to satisfy the decree herein and thus their properties have been illegally attached.
11. They he urged this Court to allow the application and lift the attachment unconditionally.
12. I have examined the averments of the parties herein. The gist of the objector's submission is that the proclaimed goods belong to him and not the Judgment Debtor.
13. In support of this application, the objector attached exhibit SIS "1" copies of log books. KCP 104 S, & KAP 905X which indicate the current owners being Kibos Sugar & Allied Industries Ltd & Shem Inyumili Shimejero respectively.
14. Indeed the owners are not Daljit Knodola the Judgment Debtor herein. The ownership is in the names of the objector herein. It is therefore proved for purpose of execution that the objector Shem Shimejero



- owns one car and not the Judgment Debtor and therefore execution cannot proceed as against that motor vehicle in question.
15. As concerns motor vehicle KCP 104S which is in the name of Kibos Sugar & Allied Industries Ltd, there is no affidavit before Court by the said owner.
  16. The only affidavit on file is one sworn by Shem Inyumili Shimejero and he has not averred he has a relationship with 2<sup>nd</sup> objector nor has authority to swear an affidavit on behalf of the 2<sup>nd</sup> objector.
  17. In my view then, the 2<sup>nd</sup> objector has not by way of affidavit objected to the attachment of motor vehicle KCP 104S herein and the attachment remains valid.
  18. As concerns other items attached being household items TV Set and cabinet, sofaset, tables, computer and fridge there is also no evidence from the objector that they belong to them.
  19. In the circumstances, this application for objection succeeds in part and fails in part and I allow stay in respect of attachment for motor vehicle KAP 905 S owned by Shem Inyumili Shimejero only.
  20. Execution may however proceed in respect of the other attached good unless the judgment debtor offers to make good judgment debt or there is payment in any other form.
  21. Costs in the cause.

**RULING DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF DECEMBER, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Munene holding brief for Chege for Claimant – present

Mongereri for Applicant – present

Court Assistant - Fred

