



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**  
**CAUSE NUMBER 593 OF 2014**  
**(Originally Nairobi IC Cause No. 115 of 2010)**

**BETWEEN**

**KAMLESH V. RAWAL ..... CLAIMANT**

**VESRUS**

**ACHELIS MATERIAL HANDLING LIMITED..... RESPONDENT**

**AND**

**ACHELIS KENYA LIMITED.....OBJECTOR**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Asige Kiverenge & Anyanzwa Advocates for the Claimant*

*Jacqueline Waihenya Maina & Company Advocates for the Objector*

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**RULING**

1. Judgment was delivered in favour of the Claimant on 24<sup>th</sup> February 2017. The Court ordered the Respondent to pay to the Claimant Kshs. 12,341,079.90 as commission; interest at 14% per annum on the principal from 12<sup>th</sup> February 2010; and costs.
2. The original file went missing soon after the Claimant sought to execute decree in September 2017. On the date of Judgment, an order for stay of execution of 40 days, was made in favour of the Respondent.
3. The Court directed its Registry to reconstruct the file on 24<sup>th</sup> November 2017. Between September and November 2017, Parties could not move the Court for any orders, as the file was missing.
4. The Respondent filed an Application for stay of execution pending Appeal, on 19<sup>th</sup> December 2017. The Application was declined on the same date.

5. 2 days later, on 21<sup>st</sup> December 2017, the Objector filed a Notice of Objection against proclamation or sale of items, listed by Auctioneers instructed by the Claimant, in the Proclamation of Movable Property. The Objector states it has legal and equitable interest in the proclaimed property. The Objector also filed on the same date, an Application under Certificate of Urgency, asking the Court to grant an order of injunction restraining the Claimant and the Auctioneer, from attaching and/or selling the proclaimed property.
6. An interim order of injunction was granted by the Court sitting at Nairobi during the vacation, on 29<sup>th</sup> December 2017, as sought by the Objector.
7. The Objector's Application is based on the Affidavit of Objector's Human Resources Manager, Martha Matinde Mwita, sworn on 20<sup>th</sup> December 2017.
8. The Claimant filed a Replying Affidavit sworn on 19<sup>th</sup> January 2018.
9. The Objection was heard in the presence of all the Parties on 7<sup>th</sup> February 2018.
10. The Objector's position is that proclaimed goods, which include motor grader, hydraulic excavator, generators, among others, belong to the Objector.
11. The Objector was not party to the Claim. It is a separate legal entity from the Respondent. Proclamation was done at Nairobi, in premises which are owned by the Objector. The Objector exhibited its Certificate of Incorporation, given on 13<sup>th</sup> December 1960, to show it is a separate legal entity from the Respondent, and is not a Party to the Claim. Exhibited also is a Certificate of Title, showing premises at Nairobi, where proclamation of property took place, belongs to the Objector.
12. Proclaimed items are used for day-to-day business operations of the Objector. Objector stands to suffer irreparable loss, if Objection is not upheld.
13. Exhibited Invoices, support Bills of Lading, showing goods from overseas were consigned to the Objector. They relate to furniture and equipment. The documents show the Objector has legal and equitable interest in the proclaimed property. There is no evidence showing Objector and Respondent have acted in collusion to defeat or delay execution of decree.
14. The Claimant submits Objection is mischievous, in bad faith and aimed at delaying and defeating execution of warrants lawfully issued, pursuant to a valid Judgment of the Court.
15. The Objector and the Respondent share the name 'Achelis.' The entities operate from the same premises, Achelis House, Mombasa Road.
16. Objector only came to Court, after Respondent's Application for stay of execution was declined. Proclamation was levied against the Respondent on 14<sup>th</sup> December 2017. Objection was filed on 21<sup>st</sup> December 2017.
17. Objection is a nullity and invalid in law. Objection proceedings were initiated during the Court Vacation. They were not initiated under Vacation Rules.
18. The Court granted an order of injunction on 29<sup>th</sup> December 2017. Objection proceedings validly filed, can only result in an order for stay of execution. The Court has no jurisdiction to grant injunction in objection proceedings.
19. The Objector has not shown proclaimed goods belong to it. Invoices exhibited by the Objector relate to items such as spray paint basin, tiles, carpets, and chairs. There is no relation between the items mentioned in the Invoices, and those listed in the Proclamation of Movable Property. Documents from KRA exhibited by the Objector have no relation to proclaimed items.

20. Lastly, the Claimant submits that an Affidavit sworn by Respondent's Counsel Wangari Kamau on 18<sup>th</sup> December 2017, states the Deponent was informed by Respondent's Director Gideon Mworira, that Auctioneers had gone to Respondent's premises and issued Proclamation Notice. The Respondent concedes proclamation was at Respondent's premises. The Objector is a dummy, used to delay and defeat execution of decree.

***The Court Finds:-***

21. The Objector has not established that it has equitable or legal interest, in the items listed in the Proclamation of Moveable Property.

22. The Invoices and Documents from KRA, exhibited by the Objector have not been shown to relate to the proclaimed items.

23. The Objector and the Respondent are related enterprises, operating from the same business premises, and acting in concert, to prevent or delay the Claimant, from recovering the decretal sum.

24. This is clear from the timelines relating to the commencement of execution proceedings; application for stay of execution; and filing of the Objection.

25. The Advocates for the Respondent confirm Proclamation took place at the premises where the Respondent conducts its business. The Advocates give a strong indication in the Affidavit of Wangari Kamau that indeed proclaimed items belong to their Client. It is doubtful stay of execution would have been sought under Certificate of Urgency, to protect the property of a stranger. The Certificate of Title in any case, relates to land ownership, not ownership of proclaimed property.

26. The argument raised by the Objector on the legal separateness of the 2 Achelises, is similar to the argument made by the Respondent during the hearing. The Court was told about German and Kenyan Achelises. The Court found the Respondent was just one cog, in a cross-border enterprise bearing the name Achelis. The Objector appears to the Court, to be another Company in the wider Achelis Enterprise.

27. The Objection is procedurally defective. It was made during the Court Vacation. No Vacation Rule is cited, justifying such filing. Nothing in the Motion, and the Certificate of Urgency mentions why the Objector should be heard during the Vacation. Lastly, an order of injunction, rather than stay of execution, issued on 29<sup>th</sup> December 2017. The Objection is incurably defective.

IT IS ORDERED

***(a) The Objection is declined.***

***(b) The order of injunction is discharged.***

***(c) Claimant is at liberty to proceed with execution.***

***(d) Costs of the Objection to the Claimant.***

Dated and delivered at Mombasa this 15<sup>th</sup> day of February 2018.

James Rika

Judge