



REPUBLIC OF KENYA



**Panyako v IEBC & 2 others (Election Petition E001 of 2022)
[2025] KEHC 5607 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
ELECTION PETITION E001 OF 2022
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

SETH AMBUSINI PANYAKO PETITIONER

AND

IEBC 1ST RESPONDENT

**JUMA ODOUR JOSEPH (IEBC CONSTITUENCY RETURNING
OFFICER) 2ND RESPONDENT**

HON. MOSES MALULU INJEDI 3RD RESPONDENT

RULING

1. What coming up for determination is the objection proceedings brought by way of chamber summons October 19, 2023 by Caroline Wanjiku Wanjohi (the Applicant)
2. It seeks orders as follows;
 1. Spent
 2. Spent
 3. That there be a declaration that the objector acquired the suit property for valuable consideration to be used as her matrimonial home and therefore the decree holder cannot execute against her.
 4. That the alleged proclamation purported to have been carried home in the objector's home on 13102023 be declared null and void as the same never took place.
 5. That the auctioneers pay of Kshs. 440,000 as charge be quashed as the same is exorbitant and unenforceable and based on a fictitious proclamation exercise.



6. That this application operation as leave to include Kennedy Kweyo Shikuku ta Eshikhoni Auctioneer as Respondent in the suit.
7. That the costs of this application be borne by the Respondent.

The Applicant's case.

3. The Application is supported by the grounds appearing on the face of the application as well as the Affidavit of the Applicant.
4. The Applicant's case is that Eshikhoni Auctioneers have purported to carry out a proclamation of goods at her Matrimonial home erected on title No. IsukhaShirere 6373. A copy of title bearing the names of the Applicant is attached; she states that the judgment debtor is her spouse but the house, textures, fittings; furniture and movable properties belong to her.
5. She further states that the items listed in the proclamation notice are in any event, fictitious as some of the items listed are non-existence.
6. She states that she was not a party to the suit giving rise to the proclamation and as such, her property should not be proclaimed to satisfy the decree.
7. She faults the Auctioneer's fee of Kshs. 440,000, terming the amount too high and unconscionable; that the items constitute matrimonial property and should not be attached to satisfy a decree.

The Respondent's case.

8. The application is opposed by the 3rd respondent. The respondent states that the burden is on the objector to prove that she has a legal or equitable interest in the subject property a burden that she has not discharged.
9. It is further stated that if the judgment alleges that she does not own the items listed in paragraph 5 of her Affidavit, then it follows that she has no reason to object to the proclamation of the said items.
10. It is also stated that the proclamation was carried out in accordance with the law.

The Applicant's submissions.

11. The Applicant reiterates that no proclamation was done as majority of the items listed on the proclamation Notice are not in her house; that no certificate in lieu of her failure to sign the proclamation was issued by the Auctioneer.
12. On the fees charged by the Auctioneer, it is argued that the fees are exorbitant and illegal as no proper proclamation took place.
13. She states that she is an astute business woman in Kakamega town where she operates hotels, a supermarket and poultry farming, as well as being the owner of the land upon which the said Matrimonial home is erected.
14. She submits that in accordance with the decision in Aruh Sharma Vs Ashena Raikindana & 4 Others (2014) EKLK and Electro watts Ltd Vs Countrywide Suppliers Ltd & Anor (2021) eKLR, She has demonstrated that she has a legal and equitable interest in the proclaimed properties. She submits that her equitable interest is based on the fact that she is the spouse of the judgment debtor and that she has demonstrated that she had had the means to contribute to the purchase of the proclaimed items.



Respondent's submissions.

15. The Respondent submits that the objector must show a legal or equitable interest in the property and has relied on the decision of Stephen Kiprotich Koech Vs Edwin K. Barcheli (2019) eKLR. It is submitted that legal interest must be demonstrated by cogent evidence; that there are no receipts to prove that the respondent purchased the television, fridge, cookers and other household items, and there are no logbooks or search in respect of the attached motor vehicles.
16. The respondent further submits that, the role of an objector is limited to the objection only and not to question the validity of the proclamation notice; that in any event this issue was not raised in the pleadings so as to give a chance to the respondent to respond to it and finally, that in any case there is no requirement for certificate, separate from the proclamation Notice. On the Auctioneer fee, it is argued that the fees are not payable by her and hence she has no locus standi to oppose it.

Analysis and determination.

17. I have considered the pleadings and parties submissions and I have identified the following issues for determination;
 - a). Whether the objector is merited\
 - b). Whether the Auctioneers fees is illegal and exorbitant\

Whether the objector is merited.

18. The applicant states that the judgment debtor is her spouse; that she is the owner of the land upon which the matrimonial home stands, and that the items proclaimed belong to her.
19. It is trite law that in objection proceedings the objector must prove legal or equitable interest in the property, [See
Dubai Bank (K) Ltd Vs Come-Cons Africa Ltd (2012) eKLR.
Stephen Kiprotich Koech Vs Edwin BArchile (2019) eKLR cited by the Respondent and Eletrowatts Ltd Vs Countrywide Supplier Ltd & Anor (2021) eKLR cited by the Applicant.
20. The applicant's case is that the attached goods belong to her not the judgement debtor. However, she has not submitted any piece of evidence to prove her claim. I agree with the Applicant however, that to insist on receipts for every item in her house is not practical as a matter of common notoriety. Most people don't retain receipts for purchase of electronics or furniture and Sufuria's in the house. In most cases, the items bought survive long after the receipts have been thrown away. This is the reality that the court cannot ignore.
21. However, the items proclaimed include Motor vehicles particulars of which are available either by way of logbooks or certificates of searches from the motor vehicles Registry. The Applicant has stated that motor vehicle KCQ 490H is not hers and it is charged to Credit Bank. This statement alone implies that she has records of the subject motor vehicle. She has not produced its ownership documents in evidence however.
22. Further even if the proclamation of the other vehicles was fictitious as claimed by her, the searches at the vehicle registry are still accessible. She could have carried out searches on the particulars of these vehicles and submit them in evidence to back up her claims. In the case of Dubai (K) Ltd Vs Come-Cons Africa Ltd & Impak Holdings Co. Ltd [2012] eKLR the court held; "Although the law is that in the objection proceedings the court does not and cannot make a findings as to the ownership of the



property the subject of the objection proceedings; but simply decide whether or not the objector has interest legal or equitable in the attached property, it is equally true that the onus of proof in objection proceedings is on the objection to establish ownership. [See Chatabhai M.Patel & Anor HCCC No. 544 of 1957 (Lewis) on 81258 HCU [1958] 743”.

23. Thus the fact that the objector’s interest is based on legal and equitable interest does not exempt the objector from proving ownership. On equitable ownership the objector has argued that the items were Matrimonial property and indeed she has legal ownership of the Matrimonial home.
24. I need to point out at this point that the matrimonial home is not in issue as the property is not the subject of execution proceedings, the items inside the home are.
25. I have read the findings in the case of Michael Kweno Vs Paza Properties Ltd & Anor (2008) EKLR where Justice Nambuye stated that due to the difficulties of distinguish what belongs to which spouse in a Matrimonial setting, the decision then depends on whether the objector has demonstrated the ability to acquire. In the present case the objector has stated that she is an astute business woman, that she runs Hotel businesses in Kakamega town and a poultry as well as a sugarcane farmer. However, these averments have been made without any documents in support .A hotel business for instance unlike a “Mama Mboga” business, would be well documented. There would be trade permits or business permits for instance. As for sugarcane farming, there would be evidence of contracts of supply with the millers or evidence of payment of proceeds.
26. All the above documents would have proved that the objector has had the financial ability to have purchased the goods. This has not been done. It is therefore my findings that the objector has failed to demonstrate that she has the legal or equitable interest on the attached goods.

Whether the Auctioneer’s Fees are illegal and exorbitant.

27. On the alleged defects on the proclamation Notice and the costs charged, these are procedural and substantive claims against the named Auctioneer. The auctioneer has not been made a party to this suit. This court cannot issue orders against a party who has not been given a chance to be heard. The right to fair trial is a sacrosanct. Indeed It one of the unlimited rights pursuant to Article 25 of *the constitution*. An orders against the Auctioneer would be a violation of his right to be heard.
28. I have taken note of the fact that the objector has sought leave to bring in the Auctioneer. I thing this prayer is misplaced as the Objector did not need any leave. She only needed to include the Auctioneer in the list of respondents.
29. In any event, and if indeed the objector thought she needed leave, she ought to have moved the court prior to bringing this application. Any leave, being granted at this point will only be academic. I therefore decline to grant any orders against the Auctioneer.
30. In the end, the objection proceedings fails. The same is dismissed with costs to the 3rd respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 29TH DAY OF APRIL 2025

S. CHIRCHIR

JUDGE.

