



REPUBLIC OF KENYA



**Karaba v Reubenson & 2 others; Karaba (Objector) (Election Petition
4 of 2017) [2025] KEHC 7184 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
ELECTION PETITION 4 OF 2017
EM MURIITHI, J
MAY 30, 2025**

BETWEEN

HON DICKSON DANIEL KARABA CLAIMANT

AND

HON KIBIRU CHARLES REUBENSON 1ST RESPONDENT

SAMUEL LEPATI SEKI 2ND RESPONDENT

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 3RD
RESPONDENT**

AND

CHARITY WANGITHI KARABA OBJECTOR

RULING

1. This is a ruling on objection proceedings under Oder 22 Rule 51 of the Civil Procedure Rules seeking an order “lifting the Proclamation and sale of Objector’s house-hold goods to wit seater sofa sets, dinning table and chairs, refrigerator, coffee table, music system, television set and motor vehicle no. KCF632B.”
2. The application is opposed by the IEBC, the 3rd respondent on the principal ground that the application is an abuse of the process of the court to the great prejudice of the 2nd and 3rd Respondents as it only seeks to obstruct the process of execution of the judgment in their favour.

Submissions of the Parties

3. Counsel for the parties field their respective written submissions urging the parties’ contentions on the availability of the order for lifting of the attachment.



4. For the applicant, by submissions filed on 21/11/2024, the objector who is the wife of the petitioner judgment debtor contends that she has demonstrated ability to acquire, ownership and therefore legal interest of the proclaimed goods by means of copy of records from NTSA with regards to the motor vehicle and receipts for the goods.
5. Citing *Electrowatts Limited v. Countryside Suppliers Limited and Another*; *Mary W. Kamau* [2021] eKLR (Mabeya, J.) and decisions referred to therein, the Objector pointed to the fact of her long marriage to the Petitioner and her financial ability having been a High School teacher and businesswoman, evidence of lease for businesses owned and a current bank account as evidence of means. She referred to the Court decision in *MICHAEL KWENA v RAZA PROPERTIES LIMITED & ANOTHER* [2008] KEHC 1088 (KLR) (R. N. Nambuye, J. as she then was) that in a situation of man and wife “a decision of who owns the households will therefore depend on whether the objector has demonstrated ability to acquire. In this Court’s opinion, the objector has demonstrated such an ability by virtue of being in gainful employment and by her being a family member. The objection against the attachment of the household goods is therefore upheld.”
6. By Written Submissions dated 20/1/2025, the 2nd and 3rd Respondents submitted that the objection proceedings fell to be considered in accordance with the rules set out in Order 22 rules 51-54 of the Civil Procedure Rules. They relied on the *Michira Messah & Company Advocates v Katana Kalume Ndurya; Kalume Kenga Katana (Objector)* [2021] KEHC 7882 (KLR) (R. Nyakundi, J.) to assert that the burden of proof was on the objector/applicant as follows:

“In the strict legal parlance, the objector’s standard of proof has to be listed with parameters provided for under Order 22 rule 51(1) of the Civil Procedure Rules which envisages “that he or she must prove that he or she is not the person against whom the decree was review against and therefore not liable to meet the terms of the decree. Secondly, he or she must prove that the execution of his or her property has been proclaimed and attached to satisfy the decree. Thirdly, he or she must prove that he or she is entitled to have a legal or equitable interest in the whole or part of any property attached and the execution of the decree. Finally, he or she must prove that no payment out of the proceeds of the attached and sale of the property has been made.””
7. It was urged that the objector’s application was calculated afterthought to aid the Judgment debtor avoid the execution process, which explained why the receipts of the goods were filed in the Supplementary Affidavit pointing out that the objector had “initially only produced proof of ownership of motor vehicle registration no. KCF632B” and “only produced proof of ownership of the rest of the proclaimed household items much later”, without justification for the delay.
8. Counsel pleaded that being an old matter instituted in 2017 it was in the interests of justice that the objector’s application dated 1/10/2024 be dismissed with costs to the 2nd and 3rd respondents to pave way for execution and closure as “the objector’s principal aim is to shield the petitioner /judgment debtor from his debt obligations by delaying and obstructing the course of justice”.

Evidence of ownership of proclaimed goods

9. By the supporting Affidavit and the supplementary Affidavit to the application, the objector has shown proof of ownership of the attached property as well as her ability to acquire such property by way of documents indicating her employment as a High school teacher promoted to Ag. Deputy Head Teacher wayback in 1981, a Lease Agreement on shop /office at Kerugoya town dated 24/12/2025 and bank account statements. The only suspicious items the receipt for the purchase of all the electronic



items from one dealer M/S Rhomwa Digital Electronics & Express CYB, Baricho dated 25/09/2017. But it is not entirely impossible that the goods were bought on the same day from the same dealer.

10. However, the Respondents did not discharge their evidential burden by rebuttal evidence.

Shift of Evidential Burden

11. It was observed in Michael Kwena v Raza Properties Limited & another, supra, as follows:

“As observed by Ringera J. as he then was in the Kenya Oil Company Ltd. Versus Fuad Mahmoud Mohamed and Fuel Mogulls’ Services Ltd. and Abdul Rehman Abdalla Saleem and Marivan Rashid and Mariam Fuad Mahmoud “Once the objector demonstrates ability to acquire households goods, the burden shifts to the judgment creditor to demonstrate otherwise”.

12. The Respondents did not discharge their evidential burden by rebuttal evidence to demonstrate that the receipts of the households were false or secured to defeat the execution process. The motor vehicle records show registration in the name of the objector and it was not shown by the respondents that its transfer and or registration in the objector’s name was unlawfully procured to defeat the execution of the judgment against the Petitioner.

13. On a balance of probabilities, the Court must accept that the Objector who has shown her ability and means to acquire the property in question, and her relationship of marriage with the judgment/ debtor giving her an interest to acquire for the benefit of the family such household property as herein attached, was the legal owner of the attached goods.

Orders

14. Accordingly, for the reason set out above, the Court finds that the applicant has proved that she has a legal interest in the property proclaimed in execution of the debt against the Petitioner herein.

15. Consequently, the Objector’s application dated 1/10/2024 is allowed in terms of prayer No. 3.

16. There shall be no order as to costs.

Order Accordingly.

DATED AND DELIVERED THIS 30TH DAY OF MAY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Gikonyo for Mr. Thuita for the Applicant.

Mr. Mwangela for the 2nd and 3rd Respondents.

