



Beluga Limited v KTK Advocates & another (Commercial Miscellaneous Application E880 of 2023) [2025] KEHC 11414 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E880 OF 2023**

PM MULWA, J

JULY 31, 2025

BETWEEN

BELUGA LIMITED OBJECTOR

AND

KTK ADVOCATES DECREE HOLDER

AND

FOREST LODGE LIMITED JUDGMENT DEBTOR

RULING

1. The Objector herein, Beluga Limited, filed the objection application dated 9th June 2025 and asks the Court to stay execution of the proclaimed property and preclude the decree holder and their agents including Bealine Auctioneers from proclaiming or having proclaimed, from attaching or selling the Objectors goods in answer to the decree of this Court.
2. The Objector’s application is expressed under Order 51[2] of the Civil Procedure Rules, and is supported by the affidavit of its manager Joseph Musembi Muriuki. It is based on the following grounds:
 - a. The proclaimed household goods are the property of the Objector who is not a party to this suit.
 - b. The 2nd Respondent/JD has no interest and/or claim whatsoever over the said property and the same cannot be attached in satisfaction of the decree.
 - c. The Applicant faces an imminent threat of being unfairly and unlawfully disposed of their property.



3. In response to the objection, learned counsel for the Decree-Holder Mr. Donald Kipkorir depones that the application is intended to defeat and subvert the lawful execution of a decree. And further that the same does not establish how the proclaimed goods belong to the Objector and not the Judgment Debtor.
4. It is contended for the Decree-Holder that the Objector, the Judgment Debtor and Sandalwood Resort and Hotels Limited are all companies owned by one Leon Muriithi Nduati and his wife and thus the Judgment Debtor should not be allowed to hide behind corporate entities. He urges the application be dismissed.
5. The application was heard through oral arguments by learned counsel for parties.

Analysis and determination

6. Having considered the application, the affidavits in support and in opposition thereto and the oral submissions, the issues raised are:
 - i. whether the Objector has established a legal or equitable interest in the proclaimed/attached goods.
 - ii. whether the attachment should be lifted.
7. On these issues, the Court is guided by Order 22 Rule 51[1] of the Civil Procedure Rules, which provides as follows:

“Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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 the parties and to the decree-holder of his objection to the attachment of such property.”
8. In *Chai Trading Co. Limited v Muli Mwanzia & 2 others* [2019] eKLR, the court observed that in objection proceedings, it is always the objector’s duty to establish ownership of the subject property. That it not enough for an objector to state that the property does not belong to the judgment debtor, and therefore, they must show by cogent evidence that they themselves have a definite interest in the said property.
9. Also, in *Arun v C. Sharma Astana Raikundaha t/a Raikundaha & Co. Advocates & 4 Others* [2014], the court stated as follows:

“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 or to have a legal or equitable interest in the whole or part of the property.”
10. From the Proclamation of Attachment, dated 4th June 2025 the attached goods include; assorted drinks, assorted furniture and some IT equipment among others and ownership thereof can be to any of the parties.
11. The Objector placed reliance on a lease agreement dated 20th July 2023 between itself and Lord Erroll Gourmet Restaurant the property from which the household goods were proclaimed. The Objector further contends that it wholly owns the attached goods the Judgment Debtor has no interest in them. That the Objector and the Judgment Debtor are separate legal entities.



12. The Decree Holder, on the other hand argued that the alleged lease document was not presented at the Lands Registry for registration as the relevant page was not executed, and hence no proof of stamp duty paid. And that without this single document, the objection must fail. Counsel for the Decree Holder urged for the alleged lease document to be struck out.
13. It is trite law that execution proceedings must be confined to the property of the Judgment Debtor. Attaching the property of a third party amounts to an unlawful act. This principle was succinctly enunciated in *Precast Portal Structures v Kenya Pencil Company Ltd & 2 Others* [1993] eKLR, where the Court observed that:
 - a. that the property was not, when attached, held by the judgment-debtor for himself, or by some other person in trust for the judgment-debtor; or
 - b. that the objector holds that property on his own account.”
14. From what I have noted from the CR12 documents exhibited by the Decree Holder, there is clear connection as to the ownership of the three companies namely; Forest Lodge Limited [Judgment Debtor], Sandalwood Hotel and Resort Limited and Beluga Limited [Objector]. It is evident that the three companies are owned by the same people Mr. Leon Mureithi and Marijana Mitrovic. I agree with the Decree Holder that the said companies are special service vehicles for one Leon Muriithi used to avoid legal responsibility.
15. The Objector has not demonstrated a prima facie case through evidence of its proprietary interest in the proclaimed goods. The mere contention that it was for the lessor [Errol] to register the lease agreement and hence should not be punished for the said omission, does not lessen its burden to prove that it has legal or equitable interest in the proclaimed goods.
16. Having considered the material placed before the Court, I am not satisfied that the Objector has established a legal and equitable interest in the proclaimed goods and hence has not met the threshold for the reliefs sought.
17. Accordingly, the Objectors application dated 9th June 2025 is for failing. The same is dismissed with costs to the Decree-Holder.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:-

Ms. Anyango for Advocate

Ms. Muronji for 2nd Respondent

Court Assistant: Carlos

