



**Gulf African Bank Limited v Plaza Magnetic Resonance Limited
& 4 others; Kimenyi (Objector) (Commercial Case E025 of 2021)
[2025] KEHC 11412 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E025 OF 2021**

PM MULWA, J

JULY 31, 2025

BETWEEN

GULF AFRICAN BANK LIMITED PLAINTIFF

AND

PLAZA MAGNETIC RESONANCE LIMITED 1ST DEFENDANT

NAIROBI IMAGING SOLUTIONS LIMITED 2ND DEFENDANT

THOMAS OTIENO OBAT KWASA 3RD DEFENDANT

BENJAMIN IMALINGAT 4TH DEFENDANT

ALFRED ODHIAMBO OTIENO 5TH DEFENDANT

AND

JUDY WAIGUMO KIMENYI OBJECTOR

RULING

1. This ruling flows from the objection application filed by the Objector, Judy Waigumo Kimenyi dated 8th April 2025.
2. The Objector asks the Court to set aside and/or quash the proclamation, attachment and/or sale of motor vehicle Reg. No. KBP 300U Toyota Landcruiser in the proclamation notice and notification of sale dated 13th March 2025. And further that the said motor vehicle be released to the Objector being the lawful owner thereof.



3. The Objector's application, which is supported by the affidavit of Judy Kimenyi is based on the following grounds:
 - a. That the listed motor vehicle registration number KBP 300U rightfully and legally belong to the Objector, having bought the same from the 4th Defendant on 16th December 2011.
 - b. That the Objector owes no liability to the Plaintiff and the Defendants and does not consent for her property to be utilized for the satisfaction of the latter's debt.
 - c. That the Objector will suffer great and immense loss if the attachment is not stopped.
4. The Plaintiff filed Notice of Intention to Proceed with Execution under Order 22, Rule 54 of the Civil Procedure Rules dated 6th May 2025, together with a replying affidavit sworn by the its legal officer Lawi Sato.
5. In response to the objection, Mr. Sato depones that the Objector has not demonstrated to the Court why execution should not proceed, as the subject motor vehicle is registered in the name of the 4th Defendant as at 4th December 2024 and that the 4th Defendant had earlier sworn an affidavit confirming as much.
6. Mr. Sato further depones that the Objector is merely a means through which the 4th Defendant is attempting to fraudulently shield himself and his property from lawful execution. He urges the court not to lift the attachment.
7. The application was canvassed by way of written submissions.

Analysis and determination

8. Having considered the application, the affidavits in support and in opposition thereto and the parties' submissions, the only issues raised are:
 - i. whether the Objector has established a legal or equitable interest in the attached motor vehicle.
 - ii. whether the attachment should be lifted.
9. 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.”
10. Indeed, the objection proceedings are brought under this very provision. As held in Patrick King'ori Waruguongo v James Nderitu & another [2014] eKLR and Chai Trading Co. Limited v Muli Mwanzia & 2 others [2019] eKLR, in objection proceedings, it is always the objector's duty to establish ownership of the subject property. It is therefore not enough for an objector to state that the property does not belong to the judgement debtor, they must show by cogent evidence that they themselves have a definite interest in the said property.
11. From the proclamation of attachment dated 13th March 2025 one of the attached items is motor vehicle registration no. KBP 300U, whose ownership would ordinarily be evidenced by a log book.



12. The Objector placed reliance on an agreement dated 16th December 2011 when the 4th Defendant sold her the attached motor vehicle for Kshs. 3.1 million – with Kshs. 1.7 million being paid to the 4th Defendant’s bank account and Kshs. 1.4 million in cash. Thereafter, the Objector contends that she leased the attached motor vehicle to the 4th Defendant for an agreed monthly payment of Kshs. 100,000.00. the Car Hire Agreement and M-Pesa transactions were exhibited.
13. The Plaintiff, on the other hand argued that the attached motor vehicle was registered in the name of the 4th Defendant as at 4th December 2024 as per a search conducted with the NTSA. And that the latter registration was only done to fraudulently shield the 4th Defendant and his property from lawful execution.
14. Whereas the Plaintiff contends that it had recourse courtesy of the Motor Vehicles Register pursuant to Section 8 of the *Traffic Act*, Chapter 403 of the Laws of Kenya, and thereby satisfied itself that the motor vehicle belonged to the 4th Defendant, it is well settled that such evidence of ownership is rebuttable. In the case of *Nancy Ayemba Ngaira v Abdi Ali* Civil Appeal No. 107 of 2008 [2010] eKLR Ojwang, J (as he then was) observed thus:

“There is no doubt that the registration certificate obtained from the Registrar of motor vehicles will show the name of the registered owner of a motor vehicle. But the indication thus shown on the certificate is not final proof that the sole owner is the person whose name is shown. Section 8 of the *Traffic Act* is fully cognizant of the fact that a different person, or different other persons, may be the de facto owners of the motor vehicle and so the Act has an opening for any evidence in proof of such differing ownership to be given...”
15. The Objector claims ownership of the subject vehicle on the basis that she bought it from the 4th Defendant pursuant to a Sale Agreement dated 16th December 2011, at a cost of Kshs. 3.1 million which was paid. The documents annexed to the Objector’s application confirm that she later entered into a Car Hire/Lease Agreement with the 4th Defendant but continued to service and maintain the attached motor vehicle and met all the accruing costs.
16. Though the NTSA search revealed the 4th Defendant as the owner of the attached motor vehicle, the Objector has demonstrated that indeed she had purchased the said vehicle from the 4th Defendant as early as 2011. The Sale Agreement of 16th December 2011 vested the ownership of the motor vehicle in her. The subsequent leasing of the motor vehicle to the 4th Defendant for business purposes did not divest the Objector’s claim for the same. It is evident therefore that the Objector herein acquired a valid legal title to the subject motor vehicle. What remained then was a matter of procedure for her name to be registered with the Registrar of Motor Vehicles.
17. In view of the foregoing, the upshot is that:
 - i. The Objector’s Chamber Summons dated 8th April 2025 is merited and the same is allowed.
 - ii. Orders to issue as prayed for in paragraphs 3 and 4 thereof.
 - iii. Each party to bear its own costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI.

THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE



In the presence of:-

Ms. Nalianya h/b for Mr. Kongere for Plaintiff/Decree holder

Ms. Nyambura h/b for Mr. Alakonya for 1st, 2nd, 3rd & 5th Defendants

Ms. Otieno for 4th Defendant

Ms. Tazita for Objector

Court Assistant: Carlos

