



Mwaniki & Mamiti Advocates v Monarch Insurance Company Limited & another; Anglo African Property Holdings Ltd (Objector) (Miscellaneous Application 479 of 2018) [2025] KEHC 11455 (KLR) (Civ) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION 479 OF 2018

JN MULWA, J

JULY 31, 2025

BETWEEN

MURI MWANIKI & MAMITI ADVOCATES DECREE HOLDER

AND

THE MONARCH INSURANCE COMPANY LIMITED ... JUDGMENT DEBTOR

AND

MBUSERA AUCTIONEERS RESPONDENT

AND

ANGLO AFRICAN PROPERTY HOLDINGS LTD OBJECTOR

RULING

1. The Applicant here is the Objector in the Execution proceedings taken out by the Decree Holder Muri Mwaniki & Wamiti Advocates arising from a certificate of Taxation dated 26/10/2021 in which the costs between the Advocates and the client, the Monarch Insurance Company Ltd was taxed at Kshs.267,888/= on 25/06/2020.
2. The Client/Judgment Debtor (JD) failed to settle the taxed costs necessitating the advocates to take out execution proceedings upon judgment on costs having been passed by the court on 28/01/2024 against the Respondent/client.
3. Warrant of attachment were duly issued by the court to Mbusera Auctioneers who on 6/02/2025 proceeded to the clients premises and proclaimed moveable property therein and gave the 7 days' notice



to settle the amount plus costs failure which the said property would be carted away for sale in a public auction.

4. On 7/02/2025 the objector Aglo African Property Holdings Ltd moved the court under a Notice of Motion (under certificate of urgency) of an even date seeking orders to set aside, and quash, the proclamation attachment and sale of the objector's properties (as stated in the proclamation) being office furniture and equipment.
5. Further, the objector deposed that the judgment debtor does not own the proclaimed assets but are property of the objector citing a movable assets operational lease agreement dated 7/03/2023 between the objector and the judgment debtor.
6. The application is opposed by a lengthy replying affidavit sworn by Maina Mwaniki an advocate in the law firm the Decree Holder.

Objector's Case and Submissions

7. In addition to the supporting affidavit, the objector filed submissions dated 19/03/2025 to buttress its interest in the proclaimed assets being office furniture and equipment.
8. Citing a Movable Assets Operational Lease Agreement dated 7/03/2023 entered into between the Objector and the judgment debtor, the objector states that it has a legal and equitable interest in the proclaimed assets.
9. Citing the cases of *Dubai Bank (K) Ltd v Come-cons Africa Ltd and Impak Holdings Co. Ltd* and *Muyeyiwa t/a Shisanya & Co. Advocates v Makotsi (suing as the legal representatives of Jenipher Busolo Khaiya (Deceased) & Another; Anglo African Property Holdings Limited (Objector))* Civil suit NO. E006 of 2024 [2024] eKLR, the objector urged that the court to find that the objector has a legal and equitable interest in the proclaimed assets by virtue of the 10 year lease agreement and that it has shown that at the date of attachment it had some interest in the assets as stated in the case of *African Banking Corporation Limited v Zeifuns Holdings Ltd & 5 Others* (2022) eKLR.

Decree Holders (Advocates) Case and Submissions.

10. The Advocates/DH case is that the Objector's application is a connived attempt to thwart their efforts to recover the costs stating that the objector has no interest, legal or equitable on the proclaimed assets as non has been proved, citing the case of *Southern Bell Limited vs. National Social Security Fund of Trustees & 4 Others* [2023]eKLR, wherein an objector must properly bring himself within the ambit of Order 22 Rule 51(1) of the *Civil Procedure Rules*.
11. The Advocates further submit that the Objector has not proved its legal or equitable interest in the attached assets by proving any entitlement as held in the case of *Amin C. Sharma v Ashana Raikundalia t/a A Raikundalia & Co. Advocates & 4 Others* [2014] eKLR.
12. The Advocates further submit that the objector has not discharged the burden to establish and prove it's right to have that attached assets released to it on account that at the time of attachment, the assets were held by the judgment debtor as its own, and not on an account of any other person, or that ownership had changed so that the JD has been divested of the property in order to evade execution as held in the case of *Precast Portal Structures vs. Kenya Pencil Company Ltd & 2 others* [1993] eKLR.
13. For the above, the court has been urged to find that the objection to attachment proceedings is an abuse of court process and dismissal with costs.

Issues for Determination



- a. Whether the objector has proved any legal or equitable entitlement and interest in the proclaimed assets
- b. Whether the proclaimed assets are exempt from attachment in execution of a court decree
- c. Who bears costs of these objection proceedings

Analysis and Determination

a. Whether the objector has proved any legal or equitable entitlement and interest in the proclaimed assets.

14. Objection to attachment proceedings are anchored on Order 22 Rule 5191) of the *Civil Procedure Rules* such an objector must prove 3 conditions set therein:
 - a. Prove that he is not the person against whom the decree was issued and therefore not liable in respect thereof.
 - b. Prove that attachment of his property has been levied in execution of the said decree
 - c. Prove that he is entitled to or has a legal or equitable interest in the whole or part of any property attached in execution of the decree
15. These conditions were set out in the case of *Southern Bell Ltd v NSSF* (*supra*). It is the objector who has the burden of proving the three (3) conditions – *Arun C. Shaima* case (*supra*).
16. Likewise, it is the objector who has to satisfy the court that at the time of attachment, he held the attached assets as his own, and not on account of any other person, to prove that the attached assets ought to be released from attachment as rendered in the case of *Precast Portal Structures* (*supra*)
17. Further, in the case of *Chetabai M. Patel v Chaprabhai Patel* [1958]EA 743, the court held that:
 - a. The objector shall adduce evidence to show that at the date of attachment he had some interest in the property attached, and
 - b. The question to be decided is whether on the date of attachment, the judgment debtor or the objector was in possession or where the court is satisfied that the property was in possession of the objector, it must be found whether he held it on his own account or in the trust for the judgment debtor.
 - c. The sole question to be investigated is, one of possession of and some interest in the attached property.
18. The objector, to prove the above places reliance on the lease agreement entered into between the JD and the objector dated 7/03/2023 over two years ago. The proclaimed items are office furniture and equipment found and attached at the objector's offices. This aspect has not been denied or challenged; the assets were indeed in possession of the JD not in possession of the Objector. They were being used in their business of the JD. Once again, the aspect has not been challenged.
19. I have perused the lease in respect of the movable assets held or in possession of the JD. Is there any ample documentation to prove that the said assets were at date of proclamation owned by the Objector? In the case of *Zingo Investment Ltd vs. Miema Enterprises Ltd* [2015] eKLR, the court held that Proprietary interest in the assets must be provided.



The Movable Assets Operational Lease Agreement dated 7/03/2023 in itself does not specify or identify which assets were covered by the said agreement in the JDs various offices or branches.

20. Further, the lease agreement states to cover the assets as at a date of the lease. The assets covered as at a date of execution are also not specified or marked or shown to have been purchased as at that date, and therefore covered as at 7/03/2023.

The court has not been provided with an inventory of assets that may have been purchased or came into possession of the Objector after 7/03/2023. Is it possible that the JD may have purchased any of the equipment since 7/03/2023. Only the JD would be able to prove by providing candid evidence that the proclaimed under the lease agreement and are wholly owned by the objector and in possession of the JD as at date of the Lease Agreement.

21. Under Order 22 Rule 51 CPR the objector bears the burden of prove of the above issues that it had a legal and equitable interest in the whole or part of the property attached in the execution of the decree. As it stands, the burden of proof has not been discharged by the objector to the satisfaction of the court.

It is evident that as held in the Precast Portal Structures case (supra) the objector has failed to satisfy the court that the attached/proclaimed assets as at date of attachment were owned by the Objector as its own and not on account of any other person; or that the ownership has changed so that the Objector divested of the property to evade execution upon the JD.

22. It is not enough that the objector avers that at date of proclamation the assets were wholly owned by the objector. Prove by evidence must be availed to the courts satisfaction for instance, by production of purchase evidence including dates of purchase, invoices and payment receipts and possibly serial numbers of the assets or as the case may be

23. Additionally, schedule of the referenced lease agreement dated 7/03/2023 refers to “all movable assets” What it covered in the courts view is ambiguous being a blanket cover of all assets owned by the JD then.

Without a doubt, the said lease agreement covered whatever assets were then in the unidentified seller’s offices as stated at schedule I.

Once again, the said lease agreement does not prove that the proclaimed items over two years since date of the lease agreement, where then “movable assets held in the sellers offices”.

24. To that end therefore, the objector has not provided sufficient documentation of ownership of the proclaimed and/or items, to qualify the holding in the case of Zingo Investments ltd (supra).

25. In conclusion, Section 44 (i) (ii) of the Civil Procedure Rules provides for property that is liable to attachment and sale in execution of a decree as follows:-

All property belonging to the judgment debtor including property over which or over the profits which he has a disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree...

26. For the foregoing the court finds the objectors application dated 7/02/2025 to be without merit. It is dismissed.

27. The temporary stay of execution orders issued by this court on 12/02/2025 pending hearing and determination of the application are hereby vacated.



28. The objector is condemned to bear costs of its application to the Decree Holder.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

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JANET MULWA.

JUDGE

