



REPUBLIC OF KENYA



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**Mzuri Sweets Limited v Shah & 3 others; I&M Bank Kenya Limited & another
(Objector) (Civil Suit 18 of 2019) [2025] KEHC 12311 (KLR) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 18 OF 2019
F WANGARI, J
AUGUST 7, 2025**

BETWEEN

MZURI SWEETS LIMITED PLAINTIFF

AND

ROHIT ZAVERCHAND SHAH 1ST DEFENDANT

BHAVIN ROHIT SHAH 2ND DEFENDANT

PRADIPKUMAR BHAGWANJI SHAH 3RD DEFENDANT

ATUL BHAGWANJI SHAH 4TH DEFENDANT

AND

I&M BANK KENYA LIMITED OBJECTOR

MAHITAJI ENTERPRISES LIMITED OBJECTOR

RULING

1. The 1st and 2nd Objectors filed Notice of Motion applications sought for orders that this court be pleased to lift, nullify and/or set aside the attachment and/or proclamation and/or execution of proceedings and all other consequential orders emanating therefrom in respect of the warrants of attachment dated 02/12/2024 and the proclamation dated 18/12/2024 and in particular that part of the warrants of attachment and proclamation affecting and/or listing for execution of motor vehicle registration numbers KCG 239N, KBC 239S, KAU 239A, and KAR 239V, and that costs of the application be provided for.
2. The 1st Objector's application was premised on grounds therein and the Supporting Affidavit dated 10/01/2025 by Andrew K. Muchina, the Assistant General Manger in the Legal Department. It was stated that the Plaintiff's auctioneers served the Defendants with a proclamation in respects of a



- decretal sum amounting to Kshs. 67,467,608.44, where the auctioneers erroneously attached motor vehicles that did not belong to the Defendants
3. The said motor vehicles belonged to the 1st Objector's client/borrower Mahitaji Enterprises Limited which offered them as part of collateral to secure a facility whose outstanding balance stood at Kshs. 176,106,393.88 as at the date of attachment.
 4. The 2nd Objector's application was also premised on grounds on its face and the Supporting Affidavit dated 10/01/2025 by Pradip Shah. It was stated that the Plaintiff's auctioneers served the Defendants with a proclamation in respects of a decretal sum amounting to Kshs. 67,467,608.44 where the auctioneers erroneously attached motor vehicles that did not belong to the Defendants. That the attached motor vehicles belong to the 2nd Objector who offered them as part of collateral to secure a facility with I&M Bank Kenya Limited.
 5. The 1st and 2nd Objectors stated that they have legal/equitable interests in the motor vehicles attached in execution of the decree herein. That the 1st and 2nd Objectors were not a party to the proceedings herein ab initio and the Defendants/Judgment Debtors therefore have no attachable interest in the motor vehicles. That the applications have been brought timeously and without unreasonable delay, and it is just and equitable in the circumstances that the orders sought are granted.
 6. The Plaintiff filed a Replying Affidavit to the 1st Objector's application sworn on 14/02/2025 by Hitendra Solanki, one of the Directors of the Plaintiff, that the Supporting Affidavit is defective for lack of authority and/or resolution appointing the deponent to swear court process on behalf of the 1st Objector who is an entity and/or a limited company.
 7. That the deponent therein has not attached any authority to confirm his designation or legal relationship with the objector company. That the auctioneers carried out the attachment in full compliance with the law and that there was no evidence of any illegalities involved.
 8. It was further deponed that although Mahitaji Enterprises Limited has been listed as the registered owner of the motor vehicles, the 3rd Defendant is a director and majority shareholder of the said entity with 2500 shares. That the 3rd Defendant is attempting to frustrate execution by registering the properties in the names of 3rd parties and/or in collision with his spouse who is the 2nd shareholder of Mahitaji Enterprises Limited.
 9. That while the 1st Objector has attached a debenture agreement, there is no evidence to show that it has been registered, and that the list of existing securities does not include any of the attached motor vehicles as securities. That the 1st Objector has not provided sufficient cause to warrant the court's discretion to issue orders for stay pending execution. That the application lacks merit, is an abuse of the court process, an attempt to delay execution process and should be dismissed.
 10. The Plaintiff in their Replying Affidavit to the 2nd Objector's application sworn on 14/02/2025 by Hitendra Solanki, one of the directors of the Plaintiff, that despite the deponent alleging to be one of the directors of the 2nd Objector, he has not produced a resolution authorizing her to swear the affidavit. That the supporting affidavit is therefore fatally defective, incompetent and should be struck out.
 11. That the auctioneers legally and lawfully attached multiple properties including the vehicles and that prior to the proclamation and attachment, the auctioneers conducted due diligence and established that the property prima facie belonged to the 3rd Defendant. That the debenture facilities in question were disbursed between 14/08/2000 and 16/12/2009 but there is no specific clause designating the motor vehicles as security.



12. The Plaintiff stated that while the motor vehicles are registered under Mahitaji Enterprises Limited, the 3rd Defendant is both a director and a shareholder, and therefore has an interest in the property which can be used to settle the judgment against the Defendant. That pursuant to a ruling delivered on 22/02/2024, the corporate veil of Rameshwar Distributors was lifted rendering the directors personally liable for settlement of the decretal sum.
13. It has been 6 years since judgment was delivered in this matter yet the Defendants have failed and/or refused to settle the judgment sum, and that they have failed to demonstrate the nature of any substantial loss they may suffer from the execution which is a lawful process. That the application for stay is unwarranted and should therefore be dismissed.
14. The 1st and 2nd Objectors' applications were canvassed by way of written submissions. The 1st and 2nd Objectors in their submissions dated 25/04/2025. submitted that they had proved their case on a balance of probabilities that the attached property legally belonged to them at the time of the decree, subsequent proclamation and attachment. The objectors had also proved that they are entitled to, and have legal or equitable interest on the whole or part of the attached property.
15. The Plaintiff in the submissions dated 12/06/2025 submitted that the Objectors' Deponents did not produce letters of authority or a resolution by the Board of Directors authorizing them to swear supporting affidavits on behalf of the Objectors, hence the pleadings ought to be struck out.
16. It was submitted that the 1st Objector did not proof ownership of the proclaimed vehicles despite the allegation that the same had been provided as collateral for a facility obtained by the 2nd Objector. The 3rd Defendant who is the director and shareholder of the 2nd Objector company, was said to frustrate execution by registering the proclaimed properties in the names of the 3rd parties, including the 2nd Objector and his wife.
17. The objectors were said to have failed to establish any interest, equitable or otherwise in the proclaimed goods, and it was prayed that the applications by the Objectors be dismissed with costs.
18. I have considered the 1st and 2nd Objectors' Notice of Motion applications supporting affidavit, the respective Replying Affidavits, and submissions, the issues for determination are: -
 - a. Whether the Objectors' applications have merits.
 - b. What are the orders on costs
19. It is the obligation of the Objectors to prove that they have a legal or equitable interest in the goods proclaimed to justify a stay of execution as was held in the case of *Stephen Kiprotich Koech v Edwin K. Barchilei & Joel Sitienei (Objector)* (2019) eKLR which cited with authority the case of *Arun C. Sharma v Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 Others* (2014) eKLR.
20. Under Section 44 of the *Civil Procedure Act* provides that in execution proceedings, only the property belonging to the Judgment Debtor is subject to attachment. The provision provides as follows;

Property liable to attachment and sale in execution of a decree

“(1) All property belonging to a judgment debtor, including property over which or over the profits of 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”



21. It has not been denied that the proclaimed vehicles are registered in the name of the 2nd Objector. The 2nd Objector produced copies of logbooks in support of the averment that it was the registered owner of the vehicles. In the case of *Joel Muga Opinja v East Africa Sea Food Ltd* [2013] eKLR the court held that;

“We agree that the best way to prove ownership would be to produce to the Court a document from Registrar of motor vehicles showing who the registered owner is but when the abstract is not challenged and is produced in Court without any objection, the contents cannot later be denied.”

22. The 3rd Defendant is a director and a shareholder of the 2nd Objector company. In the celebrated case of *Salomon v Salomon* [1897] AC 22, the principle of separate corporate personality was established. A company is a legal entity separate from its shareholders and directors. The 2nd Objector is a legal person separate from its directors and owners/ shareholders.

23. The Plaintiff states that the 3rd Defendant frustrated execution by transferring the property to 3rd parties. The Plaintiff stated that it was upon the 2nd Objector to prove that that was not the position thus shifting the burden of proof. In Section 107 of the *Evidence Act* it states as follows;

“ 107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

24. The burden lies on the Plaintiff to prove that the Defendants transferred their properties to 3rd parties with the sole purpose of frustrating the execution of the Judgment against them. A mere allegation without evidence is not sufficient to prove a claim. In the absence of the evidence of foul play on the part of the 3rd Defendant, I find that the 2nd Objector has established a legal and equitable interest over the property in issue.

25. The 2nd Objector being a separate legal entity, and the Plaintiff having failed to prove foul play on the 3rd Defendant as far as the 2nd Objector is concerned, the transactions between the 1st Objector and the 2nd Objector are not subject to scrutiny for purposes of establishing if there was a legal or equitable interest as it would just be an academic exercise.

26. I find that the attachment of the vehicles in issue have successfully been challenged by the Objectors and their respective applications have merits.

27. On costs, the same follows the event. That is what Section 27 of the *Civil Procedure Act* decrees. However, this court has the discretion to direct otherwise. Considering that the Plaintiff is entitled to enjoy the fruits of its judgment but unsuccessful in the execution attempt, each party to bear its own costs.

28. Following the foregone discourse, the upshot is that the following orders do hereby issue: -

- a. That the Notice of Motion applications by the 1st and 2nd Objectors dated 10/01/2025 have merits and are allowed.



b. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 7TH DAY OF AUGUST, 2025.

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HON. F. WANGARI

JUDGE

In the presence of:

Ms. Bwire Advocate h/b for Mr. Kibara Advocate for the 1st & 2nd Objectors

Ms. Kojieda Advocate h/b for Mr. Swaka Advocate for the Plaintiff

Ms. Norah, Court Assistant

