



**Kenyanya t/a Bono Agencies v City Council of Nairobi & another; Gitahi & 2 others
(Objector) (Civil Case 440 of 2010) [2025] KEHC 12357 (KLR) (Civ) (5 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12357 (KLR)

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

**CIVIL
CIVIL CASE 440 OF 2010**

SN MUTUKU, J

AUGUST 5, 2025

BETWEEN

ELIJAH OKENYE KENYANYA T/A BONO AGENCIES PLAINTIFF

AND

CITY COUNCIL OF NAIROBI 1ST DEFENDANT

MOCO AFRICA LIMITED 2ND DEFENDANT

AND

MILTON MUGAI STANLEY GITAHI OBJECTOR

VAICOM OIL (K) LIMITED OBJECTOR

CHRISTINA WAMBUI MUGAI OBJECTOR

RULING

The Applications

1. Before the court for determination are two (2) applications, the Notice of Motion dated 29th April 2025 (the first application) brought by Moco Africa Limited (hereafter the Judgment Debtor) supported by the grounds laid out on its face and in the Supporting Affidavit of the Judgment Debtor's Director, Milton Mugai Stanley Gitahi (hereafter the 1st Objector), and seeking an order declaring the proceedings commenced in execution of the judgment delivered in the present suit on 3rd November.2023 a nullity; an order canceling, setting aside, recalling and/or lifting the warrants of attachment and sale dated 24th February 2025 for having been issued irregularly and an order that the costs of the first application plus any other resultant costs, be borne by Elijah Okenye Kenyanya T/A Bono Agencies (hereafter the Decree Holder).



2. In his supporting affidavit, the 1st Objector has stated that while the decree herein was issued on 3rd November 2023, it was not until 24th February 2025 that the Decree Holder took out warrants of attachment and sale against the Judgment Debtor, in total contravention of Order 22, Rule 18(1) of the Civil Procedure Rules (CPR) which stipulates that where execution proceedings are commenced in respect of a decree issued over one (1) year prior thereto, the person against whom execution is being commenced ought to firstly be issued with a notice to show cause, to that effect and that in the present instance, no such notice was ever served upon the Judgment Debtor.
3. The 1st Objector has further stated that the Judgment Debtor has never been served with a copy of the decree issued in this matter, whether in draft form or certified, in contravention of the provisions of Order 22, Rule 7(2) of the CPR which sets out the particulars which ought to be present in an application for execution of a decree.
4. It is the averment by the 1st Objector that notwithstanding the irregularities and non-compliance on the part of the Decree Holder in the manner set out hereinabove, the court proceeded to issue him with warrants of attachment on 24th February 2025, which warrants were subsequently served upon the Judgment Debtor; that in view of all the foregoing circumstances, the execution proceedings commenced by the Decree Holder are null and void ab initio, thereby causing the warrants of attachments subsequently issued to constitute a nullity and that the same therefore ought to be set aside accordingly.
5. The second application is the Notice of Motion dated 8th May 2025 brought jointly by the 1st Objector, Vaicom Oil (K) Limited and Christina Wambui Mugai (hereafter the 2nd and 3rd Objectors). The application is anchored on the grounds set out the face of it and in the affidavits of the 1st and 3rd Objectors, and Irene Wanjiku Mugai, a director of the 2nd Objector. The Objectors are seeking a substantive order for the unconditional release of the motor vehicles registration numbers KCE 152V, KYF 593, KBJ 924X and KCR 584J (the 1st, 2nd, 3rd and 4th subject motor vehicles) which motor vehicles are being held by or on behalf of the Decree Holder, through Wright Auctioneers (the Auctioneers). The Objectors are further seeking an order to the effect that costs of both the aforesaid application and any monies owed to the Auctioneers, be borne by the Decree Holder.
6. In his supporting affidavit, the 1st Objector has deposed that the Decree Holder instructed the Auctioneers to erroneously proclaim the subject motor vehicles belonging to the respective Objectors, in execution of the decree herein; adding that the 4th subject motor vehicle in particular; belongs to him.
7. The 1st Objector has further deposed that following the advice given to him by his advocates on record, he is aware that only properties belonging to the Judgment Debtor can lawfully be attached in execution of the decree, and hence it was both unprocedural and irregular for the subject motor vehicles being owned by persons who are not parties to the suit, to be attached. That unless the orders sought are granted, the respective Objectors stand to suffer substantial loss.
8. The 2nd and 3rd Objectors have echoed the averments made by their counterpart, by way of the respective affidavits sworn by or on their behalf, save to clarify that while the 2nd subject motor vehicle belongs to the 3rd Objector, the 1st and 3rd subject motor vehicles belong to the 2nd Objector.

Replying Affidavits

9. Both applications are opposed by the Decree Holder. Through a Replying Affidavit sworn on 8th May 2025, the Decree Holder avers in opposing the 1st Application, inter alia, that the Judgment Debtor was at all material times aware of the judgment and resulting decree and yet took no steps towards settling the same; that while the judgment herein was delivered on 3rd November 2023, the execution



process could not commence until taxation was done in respect of the costs, and a decree subsequently issued to that effect and that the taxation proceedings have since taken place, with the full participation of the Judgment Debtor.

10. It is his averment that Order 22, Rule 18(2) of the CPR equally provides that the court is not precluded from issuing any process of execution of a decree if satisfied that issuance of such notice would either cause undue delay or defeat the ends of justice; that the allegations being made by the Judgment Debtor are therefore baseless and are merely intended to deny him the fruits of his judgment; That no sufficient cause has been shown, to warrant a setting aside of the warrants of attachment and sale issued on 24th February 2025 and that, consequently, the first application ought to be dismissed with costs.
11. In respect to the second application, the Decree Holder, in his Replying Affidavit sworn on 3rd June 2025, has stated that upon conducting a business search on the Judgment Debtor, he was able to ascertain that the 1st and 3rd Objectors are directors/shareholders therein and that, a further search conducted on the 2nd Objector revealed the 1st and 3rd Objectors to equally be directors/shareholders therein; that going by Section 44 of the Civil Procedure Act (CPA), all property held by or on behalf of a judgment debtor is liable for attachment and hence the subject motor vehicles were lawfully attached and proclaimed by the Auctioneers, by virtue of the directorship/shareholding of the 1st and 3rd Objectors in the Judgment Debtor herein.
12. The Decree Holder has maintained that the second application is thus brought in bad faith and with the aim of frustrating the execution process and that, to date, the Judgment Debtor has not, at all settled the decretal amount and therefore this court ought to dismiss the second application with costs, for want of merit.

Oral submissions

13. The two (2) applications were canvassed simultaneously, by way of oral submissions. Submitting in support of the first application, the Judgment Debtor's counsel has reiterated the averments made in the supporting affidavit thereto, that the application for execution was made more than one (1) year following the decree, and in the absence of a notice to show cause. That in the absence of compliance with proper procedure, the court ought to intervene by setting aside the warrants of attachment in place.
14. In opposing the first application, counsel for the Decree Holder has likewise reiterated the contents of the replying affidavit, to the effect that following the decree, the costs in the suit were required to be assessed by way of taxation, before execution could commence. That it is only upon issuance of a certificate of taxation that the Decree Holder's advocates lodged the application for execution and that in the circumstances, the warrants of attachment were regularly issued.
15. In a rejoinder, the Judgment Debtor's counsel contended that Order 22, Rule 18 CPR does not make provision for matters touching on issuance of a certificate of taxation and that proper procedure ought to have been adhered to.
16. Regarding the second application, the Objectors' advocate reiterated the averments earlier made, that the subject motor vehicles proclaimed, belong to the Objectors and not the Judgment Debtor. That the Judgment Debtor is a limited liability company and thus a separate entity in law. That by virtue of the fact that the said motor vehicles do not belong to the Judgment Debtor, they are not eligible for proclamation and attachment and that in the premises, the court ought to exercise its discretion by similarly allowing the second application.



17. While opposing the second application, counsel for the Decree Holder has echoed the contents of the replying affidavit, maintaining that there is evidence on record to indicate that the Objectors are directors/shareholders of the Judgment Debtor and that the aforesaid motor vehicles are held in such capacity and that it is apparent that the Judgment Debtor is attempting to evade the execution process
18. Going by the record, City Council Of Nairobi (hereafter the 1st Defendant) did not participate in the hearing of the two applications. The record also shows that the suit against it was dismissed with no order as to costs.

Analysis and Determination

19. I have considered the rival material presented in respect of the two (2) applications. I have read the court records and have noted that, the Decree Holder filed the present suit against the 1st Defendant and the Judgment Debtor herein vide a plaint dated 18th October 2010, seeking various compensatory reliefs for the alleged demolition of the Decree Holder's structures situated on Block NBI/BLC 93/1418. The Defendants in the suit filed their respective statements of defence and the matter thereafter proceeded for full hearing. Upon conclusion thereof, Onger, J. delivered judgment on 3rd November 2023 in favour of the Decree Holder and against the Judgment Debtor to the tune of Kshs.1,072,000/- plus costs and interest, whilst dismissing the rest of the claim with no order as to costs. The suit as against the 1st Defendant was dismissed in its entirety.
20. The record shows that the matter thereafter proceeded for taxation of the Party and Party Bill of Costs dated 19th June 2024. The Bill was taxed at a sum of Kshs. 213,000/- vide the taxation ruling delivered on 18th November 2024. A Certificate of Taxation was issued on 5th February 2025. Subsequently, the Decree Holder commenced the execution process against the Judgment Debtor, culminating in the instant applications.
21. In respect of the first application which seeks an order rendering the execution proceedings a nullity and a consequent order setting aside or otherwise lifting the warrants of attachment dated 24th February 2025, I have considered the arguments of the Judgment Debtor that the warrants of attachment were irregularly issued; that the execution process commenced more than one (1) year from the date of issuance of the decree and that no notice to show cause was served, in contravention of Order 22, Rule 18(1) of the CPR. The Judgment Debtor has equally stated through its director, that it was never served with a copy of the relevant decree. This position was denied by the Decree Holder, as shown in the arguments above.
22. Order 22, Rule 18(1) of the CPR provides as follows:
Where an application for execution is made—
 - (a) more than one year after the date of the decree;
 - (b) against the legal representative of a party to the decree; or
 - (c) for attachment of salary or allowance of any person under rule 43, the court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom the execution is applied for, made on any previous application for execution, or in consequence of the application being made against the



legal representative of the judgment-debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him

...

- (2) Nothing in subrule (1) shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.
 - (3) Except as provided in rule 6 and in this rule, no notice is required to be served on a judgment debtor before execution is issued against him.
23. To my understanding, save in the exceptional circumstances stipulated above, where an application for execution is made more than one (1) year following the decree, then the party against whom execution is being made ought to firstly be served with a notice to show cause before the execution process can be undertaken against him or her.
 24. In the present instance, it is not disputed that the decree was issued more than one (1) year before the application for execution was made. While it may be apparent that the matter proceeded for taxation of the Party and Party Bill of Costs upon delivery of judgment, thereby resulting in a taxation ruling on 18th November 2024, the legal position under Order 22, Rule 18(2) CPR is that unless the court in which an application for execution is made, prescribes by way of specific reasons, that a notice would cause unreasonable delay or would defeat the ends of justice, such notice ought to be firstly issued and served upon the party or person against whom execution is made.
 25. In the absence of any indication that a notice to show cause was either issued or served upon the Judgment Debtor herein prior to the execution process being effected, or that the court considered and gave reasons for not requiring issuance thereof; this court is satisfied that the warrants of attachment dated 24th February 2025 were issued irregularly and therefore ought to be set aside. Consequently, the court finds that the first application is merited and therefore succeeds.
 26. In respect of the second application, as earlier mentioned, therein the Objectors are seeking an order for the unconditional release of the subject motor vehicles which were previously proclaimed by the Auctioneers, in execution of the decree.
 27. Having found and determined that the warrants of attachment were irregularly issued, the same being anchored on execution proceedings which are a nullity, it automatically follows that the proclamation and attachment of the subject motor vehicles is a nullity.
 28. Further, I have considered the averments made by the Objectors; namely, that the subject motor vehicles do not belong to the Judgment Debtor and were therefore not available for proclamation and attachment in any event. I have similarly considered the rival averments by the Decree Holder, that the said vehicles were being held on behalf of the Judgment Debtor thereby making them properties of the said party and therefore available for proclamation.
 29. From a consideration of the record, it is not disputed that the subject motor vehicles were proclaimed and attached by the Auctioneers pursuant to the warrants of attachment issued on 24th February 2025. Copies of the Proclamation Notice dated 24th April 2025 are annexed to the respective affidavits supporting the second application. Going by the record, the Objectors have equally tendered credible material to support the averment that the subject motor vehicles are registered in their personal names, as seen in the respective logbooks annexed to their affidavits.



30. From a further consideration of the record, it is not disputed that the Judgment Debtor is a limited liability company. The law on this is well settled, that a company is a legal entity separate and distinct from its directors and/or shareholders. This principle was restated by the Court of Appeal in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] KECA 557 (KLR) when it held thus:

“...it is settled law that a company is a separate legal entity from its owners and has a right to sue and be sued as a separate and distinct personality. It is a principle enunciated in the age-old case of *Salomon*...”

31. As earlier established, the Judgment Debtor was partially found liable in the judgment delivered herein. That said, it is apparent from the record that the Objectors were never parties to the suit, and there is nothing credible to indicate or infer that the subject motor vehicles were being held on behalf of the Judgment Debtor at any material time, in order for them to constitute properties available for proclamation and attachment in satisfaction of the decree issued against the Judgment Debtor.

32. I am therefore satisfied that there was no legal or proper basis upon which the Auctioneer acting on the instruction of the Decree Holder, could proclaim the subject motor vehicles in execution of the decree herein. It is my finding, and I so hold, that the proclamation of the respective motor vehicles is illegal and improper, and I am satisfied that the foregoing circumstances would warrant an exercise of discretion in favour of the Objectors.

33. Consequently, I make the following orders:

- a. The Notice of Motion dated 29th April 2025 is hereby allowed as prayed and an order be and is hereby made, declaring the proceedings commenced in execution of the judgment delivered in the present suit on 3rd November 2023 a nullity. Consequently, the warrants of attachment and sale dated 24th February 2025 are hereby set aside.
- b. The Notice of Motion dated 8th May 2025 is similarly allowed as prayed with the consequence that motor vehicles registration numbers KCE 152V, KYF 593, KBJ 924X and KCR 584J being held by or on behalf of the Plaintiff/Decree Holder, through Wright Auctioneers, shall be unconditionally released with immediate effect.
- c. In the circumstances, the 2nd Defendant/Judgment Debtor shall have the costs of the Notice of Motion dated 29th April 2025.
- d. The 1st, 2nd and 3rd Objectors shall have the costs of the Notice of Motion dated 8th May 2025.
- e. The Plaintiff/Decree Holder shall bear the costs of the respective Motions, as well as the resulting charges owing to Wright Auctioneers.

34. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF AUGUST 2025.

S. N. MUTUKU

JUDGE

In the presence

Mr. Wepo for Judgment Debtor

Mr. Wepo H/B for Mr. Limo for Objectors

Mrs. Morara for the DH

