



**Katumbi v Kanuna t/a Eastern Gate Investors; Kitila & another (Objector)
(Civil Appeal 60 of 2020) [2025] KEHC 11602 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11602 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL 60 OF 2020
EN MAINA, J
JULY 31, 2025**

BETWEEN

DIANA KATUMBI APPELLANT

AND

PETER KANUNA T/A EASTERN GATE INVESTORS RESPONDENT

AND

PENINAH NDINDA KITILA OBJECTOR

CO-OPERATIVE BANK OF (K) LIMITED OBJECTOR

RULING

1. Before this court are objection proceedings by way of two separate Notices of Motion dated 24th April 2025 and 28th April 2025.
2. The Notice of Motion dated 24th April 2025 is brought by Penina Ndinda Kitila (hereafter referred to as the 1st Objector) and objects to the attachment and sale of motor vehicle KCJ 453 N in execution of a decree in favour of the Appellant herein.
3. The Notice of Motion dated 28th April 2025 is brought by the Co-operative Bank of Kenya Limited (2nd Objector) and it similarly objects to the attachment and sale of the motor vehicle Registration No. KCJ 453 N in execution of a decree in favour of the Appellant herein.
4. The two Objectors claim a legal or equitable interest in the motor vehicle. Upon being served with the objections, the Appellant/Respondents filed and served a Notice of Intention to Proceed with attachment dated 29th April 2025, whereupon learned Counsel for the parties were directed to prosecute the objection proceedings by way of written submissions.



5. Learned Counsel for the Appellant/Decree Holder/Respondent urged this court not to allow the objections for reasons that; firstly, the same are incompetent as they were not filed upon the judgment debtor in whose name the motor vehicle is registered and secondly because it is the judgment debtor but not the objectors who is in daily use of the motor vehicle that the 2nd objector has not demonstrated that there is an outstanding loan in respect to the motor vehicle and that the two objectors have not proved that they had a legal or equitable interest in the motor vehicle as at the time/date of attachment. Counsel cited the following cases in aid of his submissions:-*Odhiambo Awiti & Company Advocates v Dominion Farms limited, Sukari Industries limited (Objector)* 2021 eKLR.*Abdalla Ali Hussein Mohamed v Clement A. Ojiambo & Others* Civil Appeal No.118 of 1997 (citation not availed).*Precast Portal Structures v Kenya Pencil Company Limited & 2 Others* [1993] eKLR.*Boleyn Magic Wall Panel Limited v Nesco Services Limited; Boleyn International (K) Limited (Objector)* [2021] eKLR. *Mombasa Trade Centre v East African Institute of certified studies limited & 2 others; Equity Bank (K) Limited (Objector)* [2024] KEELC 13669 9KLR).
6. On their part Counsel for the Objectors submitted that they had proved their objections to the required standard. For the Peninah Ndinda Kitila, (1st Objector), it was submitted that she had exhibited a log book and a copy of records as at 9th April 2025; that her name appears in both documents which proves the existence of her legal proprietary rights to the motor vehicle and that the Appellant/Decree Holder/Respondent had not impeached the documents. This court was therefore urged to allow her application. Reliance was placed on the case of [Muhambi Koja v Sai Mbwana Abdi](#) [2015] KECA 635 (KLR).
7. A similar argument was raised for the Co-operative Bank of Kenya Limited (2nd Objector). Additionally, it was contended that the outstanding debt/loan for the car stands at Kshs.413,854/71; that the motor vehicle is yet to be transferred to the exclusive possession of the judgment debtor and that the bank's interest as a secured creditor ranks in priority to any interests of the Appellant as a decree holder. In support of their submissions, Counsel for the 2nd Objector cited the following cases:*Chotabhai M. Patel v Chaprabhi Patel* [1958] EA 743.*Mombasa Trade Centre v East Africa Institute of certified studies limited & 2 others; Equity Bank (K) limited (Objector)* [2024] KEELC (13669) KLR.*Stephen Kiprotich Koech v Edwin K Barchilei; Joel Sitienei (Objector)* [2019] eKLR.*Nelson Kombe Mangaro v Tana River Bus Services; Mansour Naji Said & Another (Objectors/ applicants)* [2019] eKLR.*Grace Wanjiru Mbugua v Phillip Karumi Matu* [2009] eKLR.*Precast Portal Structures v Kenya Pencil Company Limited & 2 Others* [1993] eKLR.
8. From the above submissions and the cases cited, it is clear that once the decree holder files the Notice of Intention to Proceed with the attachment, the onus to prove that the Objector has a legal or beneficial interest in the thing attached shifts to the Objector.
9. The Objectors herein, have exhibited documents which prove that they together with the Judgment Debtor, were the registered owners of the motor vehicle KCJ 453 N as at the time of the impugned attachment. The 2nd Objector has gone further and produced bank records that prove that it financed the purchase of the motor vehicle by the judgment debtor and the 1st Objector and that their company is still indebted to the bank in respect of the hire purchase agreement. It has also demonstrated that it is a joint registered owner of the motor vehicle for purposes of securing its interest. I am satisfied that the Objectors have proved that they have a legal and beneficial interest in the attached motor vehicle.
10. The upshot is that the objection proceedings have merit. In the premises the applications dated 24th April 2025 and 28th April 2025 are allowed and there shall be an order restraining the decree holder either by himself, his employees, officers, servants, assignees or agents, including Crater View



Auctioneers from attaching or selling the motor vehicle Registration No. KCJ 453 N in satisfaction of the decree.

11. That the application was not served upon the judgment debtor is a procedural lapse curable under Article 159(2)(d) of the Constitution.
12. The costs of the objection proceedings shall be borne by the Judgment debtor as shall those of the Auctioneer if any.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 31ST DAY OF JULY 2025.

E.N. MAINA

JUDGE

In the presence of:

Ms Kitila for Penina Ndila Kitila

Ms Mutuku for Objector (Co-operative Bank)

Mr. Kimeu for the Appellant/Respondent

Geoffrey - Court Assistant

