



**Imison v Jodad Investment Ltd (Civil Suit 285 of 2009)  
[2023] KEHC 24372 (KLR) (Commercial and Tax) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24372 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 285 OF 2009  
A MABEYA, J  
OCTOBER 24, 2023**

**BETWEEN**

**PAUL IMISON ..... APPLICANT**

**AND**

**JODAD INVESTMENT LTD ..... RESPONDENT**

**RULING**

1. This ruling determines the application dated 30/3/2023. The same was brought under article 50 (1) of the *Constitution* 2010, section 3A of the *Civil Procedure Act* cap 21 Laws of Kenya and order 51 rule 1 of the *Civil Procedure Rules 2010*.
2. The application sought to arrest the ruling scheduled to be delivered with respect to the creditor's application dated 15/8/2019 and that the director of the judgment creditor, Calvin Harold Cottar, be given an opportunity to be cross examined.
3. In support of the application, the applicant relied on the grounds on the face of the application and supporting affidavit sworn by the advocate Hillary Mecheo on 30/3/2023.
4. The applicant contended that the judgment creditor had made an application for the cross examination of the judgment debtor's director Calvin Cottar on 2/10/2022 but he was not available for cross examination since he was out of the country. That due to the mix up in the time difference between Kenya and the United States of America, the matter had already been read out at the time the director came online. The applicant urged the Court to allow the orders sought in the interest of justice as the applicant would be highly prejudiced if the orders sought were not granted.
5. The application was opposed by the respondent vide a replying affidavit sworn by Paul Imison on 10/5/2023. The respondent termed the application an abuse of the court process as no sufficient reason



- for non-attendance had been proffered. It was contended that the applicants advocate was present in Court when the hearing notice was given and during the hearing of the application dated 15/8/2019.
6. The application was canvassed by way of written submissions which I have considered.
  7. It was submitted for the applicant that on the first occasion when the matter came up for hearing, the judgment debtor's director was present in Court but the judgment creditor demanded for more documents. The applicant relied on article 50 (1) of the *Constitution* and section 3A of the *Civil Procedure Act* in support of its case that it needed to be given an opportunity to be heard.
  8. The respondent submitted that the applicant had not placed any material before Court to show that indeed the named director had travelled out of the country.
  9. I have considered the application, the affidavit in response and the written submissions. The decree holder applied on 15/8/2019 to cross examine the judgment debtor's director on the status and affairs of the company. The Court allowed the cross-examination and since the director was not present in Court, a ruling date was delivered in respect to the application.
  10. The applicant has since moved the Court seeking to arrest the ruling and allow the director to be cross examined. The record shows that when the matter came up in Court on 3/10/2022, neither the director nor his advocate were in Court. The Court therefore directed that submissions be filed.
  11. The ruling sought to be arrested would be made without the director having been given an opportunity of being heard. I have considered that the said director has indicated that he was out of the country at the time. That he had in the past attended but the cross-examination failed because of the judgment-creditor demanding for additional documents.
  12. I am of the view that it is crucial for a party to be heard before being condemned. If the said director is not heard and the pending ruling is delivered, definitely he would be condemned to personally pay the debts of the judgment-debtor. The right to be heard before being condemned is a very important right that should not be lightly overlooked. Especially where the end result would be to deprive a citizen his right to property such as in this case.
  13. I have also considered the prejudice to be suffered by the judgment-creditor if the orders sought are granted. It would lead to the delay in enjoyment of the fruits of its judgment. That in my view, can be compensated by an award of damages as opposed to the director being condemned unheard.
  14. In the premises, I find the application dated 30/3/2023 to be meritorious and allow the same as prayed. The ruling is hereby arrested and the director do attend court on a day to be fixed for cross-examination. The costs of the application are awarded to the judgment-creditor in any event.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER, 2023.**

**A. MABEYA, FCI Arb**

**JUDGE**

