



**Thatchmaanz Limited v Pride Inn Limited; Diamond Trust Bank (DTB)
(Garnishee); Prideinn Hotels & Investments Ltd (Objector) (Civil Case 329 of 2015)
[2022] KEHC 314 (KLR) (Commercial and Tax) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 329 OF 2015
DAS MAJANJA, J
APRIL 28, 2022**

BETWEEN

THATCHMAANZ LIMITED PLAINTIFF

AND

PRIDE INN LIMITED DEFENDANT

AND

DIAMOND TRUST BANK (DTB) GARNISHEE

AND

PRIDEINN HOTELS & INVESTMENTS LTD OBJECTOR

RULING

1. What is before the court for determination is the Objector’s Notice of Motion dated March 2, 2022 and made, *inter alia* , under Order 22 Rule 51, 52 and 53 of the [Civil Procedure Rules](#) (“the Rules”) where the Objector seeks the following orders:
 1. Spent
 2. Spent
 3. The Plaintiff be permanently restrained from attaching Kshs. 3,225,442.90 or any other amount from the Objector’s account held with the Garnishee being account numbers 011xxxxx17-Westlands branch, 011xxxx01-Nation Centre branch & 011xxxxx05-Nation Centre branch.



4. The Costs of this Application be provided for.
2. The application is supported by the grounds set out on its face together with the supporting affidavit of the Objector's Chief Accountant, Lorin Mwit, sworn on March 2, 2022. It is opposed by the Plaintiff through the replying affidavit of its director, Edward Ahn, sworn on March 4, 2022.
3. The facts giving rise to this application are fairly straightforward. By a judgment dated February 15, 2019, the court entered judgment for the Plaintiff and against the Defendant for KES. 2,104,770.00 together with interest at court rates from the date of filing of the suit together and costs of the suit. The Plaintiff has extracted a decree and is in the process of executing it against Defendant and has served a Garnishee Order on the Garnishee in respect of the accounts 011xxxxxx17-Westlands branch, 011xxxxxx01-Nation Centre branch and 011xxxxxx05-Nation Centre branch ("the accounts") belonging to the Objector.

The application

4. The Objector does not deny that it is the holder of the subject accounts. Its case is that it has never been a party to this suit and that the Defendant is unknown to it. It therefore states that the intended attachment of the money in the accounts is unlawful and unprocedural and that unless the orders sought herein are granted, it shall be condemned unheard. It further states that the subject accounts belong to it as Pride Inn Hotels & Investments Limited, which is a limited liability company and a separate legal entity from the Defendant hence it is not liable to attachment.

The plaintiff's reply

5. The Plaintiff opposes the application and submits that this is a case of misdescription as the Defendant and the Objector are one and the same person and that the Defendant Pride Inn Limited is Pride Inn Hotels and Investments Limited as is evident from the record and proceedings.
6. The Plaintiff states that the Objector appeared and defended itself as the Defendant against the Plaintiff's claim. It points out that the Objector in fact received the Plaint and Summons to Enter Appearance in this matter on June 15, 2015 whereupon it entered appearance as the Defendant on July 20, 2015 and filed a statement of Defence on August 4, 2015 in which it gave notice of intention to take-out third-party proceedings against its then Chief Executive Officer. That the Objector as the Defendant further filed a witness statement by Nicholas Ochieng who worked for the Objector as the Group Human Resource Manager.
7. The Plaintiff further states that on April 28, 2016, the Objector filed a Chamber Summons dated April 18, 2016 seeking to institute third party proceedings against its former CEO, Anthony Ngunga where his Contract of Service with the Objector forms part of the record as an attachment to the replying affidavit sworn on June 3, 2016 and filed on 8th June 2016 and clearly identifies the Objector as the employer of the third party. That the court allowed the third-party proceedings sought by the Objector appearing as the Defendant through its ruling of September 6, 2016.
8. The Plaintiff points out that from the judgment, PW1, PW3 and PW4 were former employees of the Objector/Defendant and that the documents relied on by the Plaintiff and which informed the court's judgment all clearly refer to the Objector's stamp. The Defendant called Nicholas Ochieng, the Group Human Resource Manager and Secretary of the Board of the Objector/Defendant and the Defendant admitted having issued to the Plaintiff a cheque dated December 15, 2014 for KES. 322,000.00 which was produced in Court. The said cheque drawn by the Objector/Defendant relates to the Objector's



account No 011xxxxxx05 – Nation Centre Branch held at the Garnishee and is one of the accounts attached.

9. The Plaintiff states that from the pleadings and proceedings including the judgement, it is clear that the Objector was aware and believed itself to be the Defendant and thus entered appearance and proceeded to defend itself against the Plaintiff's claim including seeking third party proceedings against its former CEO. The Plaintiff adds that during the consideration of Notice of Motion dated September 8, 2020, the opportunity arose for the Defendant to claim misdescription and/or for the Objector to claim that it is not the Defendant.
10. The Plaintiff submits that at no point in the proceedings did the Objector appearing as the Defendant raise the issue of misdescription and as such it is estopped from attempting to avoid execution by claiming to be unrelated to the suit. The Plaintiff further submits that the misdescription of the Defendant by omission of the word "Hotels and Investment" is not fatal both as the Objector did not suffer any prejudice as it defended itself fully as the Defendant and the fact of misdescription did not change the cause of action nor the substratum of the suit between the Parties who were fully aware of who was sued.
11. The Plaintiff maintains that the court has power to amend the misdescription of the Defendant to allow for execution and it urges the Court to do so presently and allow it to complete execution.

Analysis and determination

12. The main issue for determination is whether the Plaintiff should be restrained from attaching the Objector's accounts domiciled at the Garnishee Bank. I do not think it is in dispute that an application in the nature of objection proceedings and its determination is provided for under Order 22 Rule 51 of the Rules which states that:

Objection to attachment
 51. (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.
 - (2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.
 - (3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.
13. As the court stated in its earlier ruling of January 25, 2021, the onus is squarely on the Objector to demonstrate a legal or equitable interest in the whole or part of any of the attached property. The Objector's position is that it is a separate legal entity from the Defendant and that the attached accounts belong solely to the Objector. The Objector has annexed a letter from the Garnishee stating the accounts indeed belong to the Objector and further annexed a certificate of change of name which shows that the Objector was previously known as Nash Hotels and Investments Limited and changed to Prideinn Hotels & Investments Limited on June 17, 2010.
14. In support of its position that this is a case of misdescription, the Plaintiff contends that the Objector and the Defendant are one and the same entity as evidenced from the stamps affixed on the Plaint and Summons bearing the name Prideinn Hotels & Investment Limited. Further that the social media page



of DW 1 shows that he is the Group Human Resources Manager at Prideinn Hotels & Investment Limited. The appointment letter of the witness who testified as PW 1 indicates that the same was issued by Prideinn Hotels & Investment Limited. A copy of a Cheque no. 001771 dated 15th December 2014 payable to the Plaintiff shows that it relates to the Objector's account No 011xxxxxx05 – Nation Centre Branch, one of the attached accounts.

15. After considering the record including the proceedings and evidence presented, I have no doubt that the Objector and the Defendant are one and the same legal person and the use of Prideinn Limited rather than Prideinn Hotels & Investment Limited is a misdescription and that for all intents and purposes, the dispute was between the Plaintiff and Prideinn Hotels & Investment Limited. I find that this was common to the parties during the course of the hearing and therefore the Objector's application is not made in good faith. The Objector was well aware that Prideinn Limited being referred to by the Plaintiff is Prideinn Hotels & Investment Limited and the fact that the Defendant never raised the same during the hearing is proof that it was aware that the Plaintiff's case was in respect of and against Prideinn Hotels & Investment Limited. The Objector cannot therefore argue that it was never heard in this matter which it fully participated particularly where it has not controverted the detailed facts in the Plaintiff's deposition.

Disposition

16. For the reasons I have set out above, I now dismiss the Objector's Notice of Motion dated March 2, 2022 with costs to the Plaintiff. The costs are assessed at KES. 30,000.00.
17. For avoidance of doubt, the interim orders are discharged. The execution shall proceed to its logical conclusion.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL 2022.

D. S. MAJANJA

JUDGE

Court of Assistant: Mr M. Onyango

Ms Okimaru instructed by S. M. Kilonzo and Associates Advocates for the Plaintiff

Mr Muriuki instructed by Isoe, Nyakwana and Company for the Objector.

Mr Morara instructed by Morara Apiemi and Nyangito Advocates for the Objector

