



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 246 OF 2014

HALIFAX CAPITAL CORPORATION LIMITED.....PLAINTIFF

-VERSUS -

ANNE WAMANI NJOROGE.....DEFENDANT

CLEAN WORLD LIMITED.....OBJECTOR

RULING NO.2

1. The application dated 29th November 2017 was brought by **CLEAN WORLD LIMITED**, who is an Objector to attachment of goods which it describes as belonging to it.
2. The application is supported by the affidavit of **KINUTHIA NJOROGE**, who said that he is a director of the objector, Clean World Limited.
3. The deponent said that a firm of auctioneers named **MORAN AUCTIONEERS**, had served the Defendant, **ANNE WAMANI NJOROGE**, with a Warrant for the Attachment and Sale of her property.
4. The deponent attached to his affidavit, both the Warrants for Attachment as well as the Proclamation which had been served on the defendant.
5. He said that the movable property which the Court Brokers had proclaimed, belonged to the Objector, which carries on laundry works under the name and style of **CLEAN WORLD LAUNDRY**.
6. The applicant provided the court with a copy of a Single Business Permit Payment Receipt which is dated 30th March 2017, and which was in the name of Clean World Laundry.
7. Although the deponent deponed that he was also providing a copy of the objector's Certificate of Incorporation, he failed to annex it to his affidavit.
8. In answer to the application, the plaintiff, **HALIFAX CAPITAL CORPORATION**, filed a Replying Affidavit which was sworn by **MUIGAI GITHU**. The said deponent described himself as a director of the plaintiff.
9. It is common ground that on 30th November 2016, the parties to this suit recorded a Consent pursuant to which judgement was granted in favour of the plaintiff for Kshs. 5,750,000/-.

10. According to the plaintiff, the Court file disappeared shortly after the court had granted judgement against the defendant.
11. Following the filing of an application dated 27th September 2017, the court file was reconstituted on 11th October 2017. Thereafter, the court issued the Warrants for the Attachment and Sale of the property belonging to the defendant.
12. When Moran Auctioneers executed the warrants, by effecting a proclamation of attachment on 22nd November 2017, the objector brought the current application.
13. It was the objector's contention that the attachment was unlawful, because the objector was neither indebted to the Decree-Holder, nor had it been a party to the proceedings which gave rise to the Decree in this case.
14. As far as the objector was concerned, it had demonstrated that the goods which were attached belonged to it.
15. Furthermore, the objector pointed out that there had never been any privity of contract between it and the plaintiff.
16. Citing the decision of the Court of Appeal in **SAVINGS & LOANS (K) LIMITED Vs. KANYENJE KARANGITA GAKOMBE & ANOTHER, CIVIL APPEAL No. 272 of 2006**, the objector submitted that the plaintiff could not even have sued the objector because there had been no privity of contract between the plaintiff and the objector.
17. It is a well settled principle of law that a contract cannot confer rights or impose obligations on persons who were not parties to such contract.
18. However, I think that it is also important to note that when a case has reached the stage of execution, it was already way past the stage when the court would be giving consideration to whether or not there was a privity of contract between the parties.
19. The issue concerning liability would have been determined at the stage when the court was granting judgement.
20. Even if a person was privy to a contract, but the court had not granted judgement against him, execution of the decree could not be carried out against that person.
21. In this case, there is no decree against the objector. Therefore, the decree against the defendant cannot be executed against the objector.
22. The Decree-Holder and the Court Broker appear to appreciate the fact that it was only against the Judgement-Debtor that execution could be levied. I say so because the Decree-Holder applied for warrants of attachment, which would be executed against the Judgement-Debtor; and when the Court Broker carried out the proclamation, he indicated that the debtor was **ANNE WAMANI NJOROGE**.
23. At no time did the Court Broker purport to carry out execution against the objector.
24. The objector submitted that the plaintiff had failed to prove that the attached goods belonged to the defendant.
25. Pursuant to the provisions of Order 22 Rule 51 (1) of the Civil Procedure Rules;

“Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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 parties and to the decree-holder of his objection to the attachment of such property”.

26. That is the provision which the objector relied upon to bring the current application.

27. It is the objector who is asserting that it has a legal interest in the property which had been attached. Therefore, the burden of proof rests on the objector to demonstrate that it has a legal or an equitable interest in the property which had been attached.

28. The objector was thus not right to have asserted that it was the decree-holder who had an obligation to prove that the attached goods belonged to the defendant.

29. In an effort to show that it had a legal right to the attached property, the objector made available an Invoice and a Receipt for the Single Business Permit, which was issued by the **NAIROBI CITY COUNTY**.

30. The two documents do not bear the name of **CLEAN WORLD LIMITED**, the objector. The said documents bear the name of **CLEAN WORLD LAUNDRY**, which the objector describes as its business name.

31. Apart from the deposition of **KINUTHIA NJOROGI**, that the attached goods belong to the objector, there is no document which demonstrates the nexus between the objector (*which is a limited liability company*), and the business (*Clean World laundry*).

32. Ordinarily, I would have expected that if the limited liability company was the entity (*or person*) carrying on the business, the licencing authority would issue a license to the entity (*or person*). However, as none of the parties before me has raised that issue, I will say nothing more about it.

33. In my understanding, when a court was called upon to make a determination in objection proceedings, the court was not required to conclusively determine the ownership of the attached property, which was the subject matter of the objection proceedings.

34. The court's obligation is to determine whether or not the objector had proved, on a balance of probability, that he has a legal interest or an equitable interest in the subject matter of attachment.

35. In this case the objector did not provide any receipt to show that it was the person who purchased the attached items. Indeed, the objector did not provide any document which would enable the court verify the objector's legal or equitable interest in the attached goods.

36. All we have was a statement by Kinuthia Njoroge, saying that the attached movable property vests in Clean World Limited. In my considered view, the bare statement cannot be the basis for an objective determination by the court, as to whether or not the attached goods belonged to the objector.

37. Therefore, I find and hold that the objector has failed to demonstrate that it has either a legal or an equitable interest in the attached property.

38. Accordingly, the application dated 29th November 2017 fails, and is dismissed. The objector shall pay to the plaintiff, the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 10th day of April 2018.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Wakwaya for Gicamba for the Plaintiff

No appearance for the Defendant

Miss Oduol for Ambani for the Objector.