



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
CIVIL CASE NO. 285 OF 2009

PAUL IMISON.....PLAINTIFF/DECREE HOLDER

VERSUS

JODAD INVESTMENTS LIMITED.....DEFENDANT/JUDGMENT DEBTOR

AND

NINETEEN TWENTIES SAFARI CAMP LTD

COTTARS SAFARI SERVICE LTD.....OBJECTORS

RULING

1. The application before me entails objector proceedings brought under Order 22 Rule 51 of the Civil Procedure Rules. Two corporate entities have launched the objection proceedings to an execution process initiated by the Plaintiff/Decree-holder against the Defendant/judgment-debtor.
2. The brief background to the application is this. The Plaintiff obtained final judgment against the Defendant on 9 June 2017 for the sum of Kshs. 9,939,302/59. Having extracted the decree and with no satisfaction thereof forthcoming the Plaintiff proceeded to execution. On 7 November, 2017 the Plaintiff's duly instructed auctioneer attached various movables. The attachment took place on Land Reference No. 1160/576. Uncontroverted evidence before the court reveals that the premises are registered in favour of the Defendant.
3. Though the attached movables were within the premises at the time of attachment, the objectors contend that they do not belong to the Defendant-judgment debtor. The Plaintiff-decree holder asserts otherwise.
4. The question I have to decide is whether on the date of the attachment the judgment-debtor or the objector was in possession of the attached asserts and whether the possessor held the attached assets on its own account or in trust for the Judgment Debtor.
5. Mr. A.B. Shah submitted that the objectors have done enough to show their interest in the attached goods. With regard to the movables, Mr. Shah referred the court to the inventory of assets as proof of the objectors' interest in the assets. While with regard to the motor vehicles, Mr. Shah took refuge in the log books, copies of which were annexed to the founding affidavit.
6. Mr. P.L. Nyaberi for the Plaintiff/decree holder held the firm view and submitted that the objectors

were simply bent on abusing the process and this was evident in the commonality of the directorships of the Defendant company and the two objector corporates. Mr. Nyaberi pointed to the fact that the parcel of land where the goods were attached was registered in the Defendant's name, whilst the motor vehicles were not registered in the objectors or Defendant's name save one motor vehicle.

7. I have considered the application as well as the founding and opposing affidavits. I have also considered the rival submissions. My view in this matter is brief.

8. It should not be disputed that the objectors were under a duty to show to the court the legal and/or equitable interest in the attached assets.

9. In this case the attachment took place within the Defendant's property. This is where the attached assets were domiciled. Even though the objectors claim to have been lawful occupants in actual possession at the material time, the objectors exhibited nothing to show such entitlement. Even as separate corporate entities, the objectors did not provide or avail enough evidence to show their tenure on the Defendant's tenement/or property.

10. The objectors were however able, in my judgment, to demonstrate that motor vehicles registration No. KVE 536M, KBC 575N and KBZ 363W are not registered in the Defendant's name.

11. The legal ownership of the said motor vehicles lay with either the objectors or the objectors' employees. I am, in this regard, satisfied that the objectors have shown that they are either legally or equitably entitled to the motor vehicles, the subject of the attachment. It would be a pyrrhic victory for the Plaintiff if the court was to close its eyes to this fact of the motor vehicles not being registered in the name of the Defendant.

12. With regard to the other moveable assets also attached within the Defendant's premises, I am not satisfied that the objectors have done enough to show their legal or equitable interest in the same. The objectors were not even able to establish possession. In my view, a mere inventory of assets did not suffice to prove the objector's claim. The objectors needed to do more and avail corroborative evidence in the form of audited accounts or acquisition receipts to help discharge the burden on a balance of probabilities. The objectors in this respect failed to discharge their burden.

13. It is unnecessary for me to lift the veil of incorporation as urged by Mr. Nyaberi. It will serve no purpose currently.

14. I come to the conclusion that the objectors have only partially succeeded. I will order the release of the motor vehicles KBE 536M, KBC 575N and KBZ 362W from the attached property and from the execution process. These motor vehicles must remain with the objectors. Execution on any other attached property may proceed.

15. I make no order as to costs as both parties have been partially successful.

Dated, signed and delivered at Nairobi this 8th day of December, 2017.

J.L.ONGUTO

JUDGE