



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 50 OF 2010

FREDRICK OUTA.....PLAINTIFF

VERSUS

MOSES AYIECHO OWITI T/A MARA HIPPO CAMP.....DEFENDANT

JOHN MBURUGU MBUI.....OBJECTOR

RULING

1. The application before me was brought by an Objector, **JOHN MBURUGU MBUI**.
2. The Objector has exhibited a Lease Agreement which he executed on 1st October 2014. The said Lease Agreement was executed by the Objector, as Lessee, and by the **OSEYIAI GROUP RANCH** as the Lessor.
3. The Objector was leasing the property known as **OLOILAIMUTIA CAMPSITE NUMBER 4**, within the **MASAI MARA GAME RESERVE**.
4. The property is said to be located near **SOPA GATE 9**.
5. The objector's complaint was that on 13th March 2015, Court Brokers named **SANJOMU AUCTIONEERS** went to the property he was leasing and commenced the process of execution of a Decree.
6. The Decree which was being executed showed that the Judgement – Debtor was **MOSES AYIECHO OWITI** Trading As **MARA HIPPO CAMP**.
7. The Objector's business is not called the **MARA HIPPO CAMP**. It is named **NALEPOMARA LODGE**, and the Objector has exhibited its Certificate of Registration, as well as a Licence issued by the Tourism Regulatory Authority.
8. Also exhibited is an audit Report issued by the National Environment Management Authority (**NEMA**), and a copy of a Stamp Duty Declaration, Assessment and Pay-in slip, dated 10th December 2014.

9. All those documents show that it is the objector who was operating the facility.

10. Prior to the Objector operating the lodge, it was being operated by the Judgement – Debtor. That fact was acknowledged by **KIROTE OLE MPOE**, the Chairman of the Lessor. Ole Mpoie deponed that the Lessor sent away the Judgement – Debtor, when the said Judgement – Debtor had failed to remit rents to the Lessor.

11. It was the Lessor’s position that they had sold off all the assets of the **MARA HIPPO CAMP**, in an attempt to recover the rents owed to them.

12. However, the sums realized from the sale, was still short by Kshs. 10 million.

13. From the evidence tendered by the Objector it is crystal clear that he is the owner of the assets which the Court Broker proclaimed.

14. As there is no *nexus* between the Objector and the Judgement – Debtor, it was wrong to carry out execution by attaching the assets belonging to the Objector.

15. Before concluding this Ruling, I note that the Objector has also demonstrated that the Judgement – Debtor is deceased.

16. From the Certificate of Death No. 203511, it is shown that **MOSES OWITI AYIECHO** passed away on 15th January 2012. In effect, by the time the Objector started leasing the lodge, it was almost 2 years after the demise of the Judgement – Debtor.

17. In effect, there cannot have been any nexus between the Objector and the Judgement – Debtor.

18. In conclusion, the proclamation of the Objector’s assets was improper and unlawful. I therefore order that the proclamation by Sanjomu Auctioneers be lifted forthwith.

19. The Decree – Holder will pay to the Objector, the costs of the application dated 18th March 2015.

20. If the Court Broker incurred any charges in relation to the execution process, the Decree – Holder will also pay the said costs.

DATED, SIGNED and DELIVERED at NAIROBI this 12th day of October 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

No appearance for the Plaintiff

No appearance for the Defendant

Maende for Gikunda for the Objector

Collins Odhiambo – Court clerk.