



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL CASE NO. 196 OF 2012**

**BUSINESS LIASON COMPANY LTD. ....PLAINTIFF**

**VERSUS**

- 1. TRANSPORT & ALIED WORKERS UNION ..... 1ST DEFENDANT**
- 2. T/A TIP TOP AUCTIONEERS .....2ND DEFENDANT**

**RULING**

By way of a Notice of Motion dated 30th October, 2012 and expressed to be brought under rule 40 (1) and (2) of the Civil Procedure Rules the applicant seeks an order for an injunction pending the hearing and determination of this suit restraining the Defendants from proceeding to attach any of the plaintiffs properties, movable and or immovable, on LR. No. MM/1/856 being the Flamingo Beach Hotel and Workshop yard in execution of a decree issued in Nairobi Industrial Cause No. 648 (N) of 2009, involving the 1st Respondent and African Safari Club.

The grounds are that the Warrant issued in Nairobi Industrial Cause No. 648 of 2009 are for execution not as against the plaintiff in this suit but as against Safari club.

That the said African Safari club has never at any time been the owner of either the Flamingo Beach Hotel, the adjacent workshop or any of the movable properties in the said Hotel and workshop situated on LR No. M/N/1/856.

That the Defendant were of the mistakenly view that ownership of the said Hotel/workshop had been given to African Safari club.

This application is supported by the affidavit of Omar Bunu Famau the operations manager of the plaintiff company who depones that on the 25th September, 2012 the 2nd Defendant acting as an auctioneer and in execution of Warrants of attachment issued in Nairobi Industrial Cause No. 648 (N) of 2009 visited the plaintiffs property Flamingo Beach Hotel with a view to taking away movables belonging to African Safari Club and which he had proclaimed in April, 2011.

The 2nd Defendant was aware of a ruling of this Court made on 21st September, 2011 in HCCC No. 586 of 2011 visiting ownership of Flamingo Beach Hotel to African Safari Club.

The validity of the Warrants was upto 26th September, 2012.

It is further deponed that an application was filed in the Court of Appeal on the position taken by the Respondents on the ruling delivered on 21st September, 2012 and when the matter came up for hearing

on 17th October, 2012 there was a consensus between the parties that the status quo obtaining then be maintained.

The application is opposed **SIMON KIGALU** the National General Secretary of Transport and Allied Workers Union of Kenya in his replying affidavit filed in Court on 14th December, 2012 depones that African Safari Club (The Judgment Debtor) owns Flamingo Beach Hotel situate on plot No. 31500/VII/108 on plot No. 122149/22A whereon stands Flamingo Beach Hotel and a workshop which Hotel African Safari Club has been in exclusive possession thereof since 1989 and that this position is confirmed by Civil Case No. 586 of 2011 African Safari Club – Vs- Miriam Muthoni Mahihu & Others.

It is further deponed that the orders of the Court issued on 31st October, 2012 are calculated to deny the Decree Holder the fruits of its Judgment/Award granted by the Industrial Court in Cause No. 648 (N) of 2009 Transport & Allied Workers Union – Vs- African Safari Club.

It is the Respondents prayer therefore that the order of stay issued on the 31st day of October, 2012 be vacated.

In the Replying Affidavit sworn by Omar Buru Faman its deponed that African Safari Club has never been the owner of Flamingo Beach Hotel, or the property on which it stands being plot No. MN/1/856 and that plot No. 31500/XII/108 is not the Title Number of the plot where the Hotel Stands.

The African safari Club was running the hotel from the year 1989 as a tenant of the true and actual owner who is the plaintiff in the present proceedings.

It is contended that through the existence of the plaintiff as a company African Safari club has never been either a shareholder and or owner.

That African Safari club has nothing to do with Flamingo Beach hotel. I have been referred to a ruling by the Court of Appeal being Civil Application No. 239 of 2012 which was an application for stay of execution of the orders granted by Mureithi, Judge which case was between Miriam Muthoni, Business Liaison Company Ltd. & Others – Vs- African Safari club.

At page 12 of the ruling it was observed,

**“There is likelihood that the Warrant of attachment issued by the Industrial Court in cause No. 648 (N) of 2009 to recover a claim of Ksh. 24, 539, 133/= against the Respondent may be affected. Execution of this warrant alongside other Warrants on wanting maintained by learned Counsel for the applicants and not denied by the Respondents Counsel may in essence obliterate the substratum of the intended appeal and in effect render it nugatory should it ultimately succeed ..... Orders issued by the High Court dated 21st December, 2012 be and are hereby stayed pending the hearing and determination of the intended appeal”.**

Parties were also ordered to maintain the status quo.

I am satisfied that the applicant made out a prima facie case that African Safari club has never been a shareholder or owner of Flamingo Beach Hotel ( the Debtor) and the subject of a Warrant of attachment issued by the industrial Court in Cause No. 648 (N) of 2009 to recover a claim of Ksh. 24, 539, 133.

I am further satisfied that the Court of Appeal in Civil Application No. 239 of 2012 did make orders for stay of execution of the warrant in question among others. I find that the grant of the injunction is merited.

An injunction is hereby granted restraining the Defendants jointly and severally from attaching any of the Defendants jointly and severally from attaching any of the plaintiffs properties on LR. MN/1/856 Flamingo Beach Hotel and Workshop yard pending hearing and determination of this suit.

Costs in the cause.

Ruling delivered dated and delivered this **26th** day of **February, 2014**.

.....

**M. MUYA**

**JUDGE**

**26TH FEBRUARY, 2014.**

**In the presence of:-**

Counsel for the applicant Mr. Paul Buti

Counsel for the Respondent absent

2nd Respondent in person

Court clerk Musundi