



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
HCCC NO. 1050 OF 2002

METELEX INTERNATIONAL LIMITEDPLAINTIFF

VERSUS

SOKHI INTERNATIONAL LIMITED1ST DEFENDANT

INDER SOKHI.....2ND DEFENDANT

AND

PARAGON GLOBAL LIMITED1ST OBJECTOR

LEATHERLIFE (EPZ) LIMITED2ND OBJECTOR

HARPAL SIGNH SOKHI..... 3RD OBJECTOR

RULING

1. Before me is a Notice of Motion dated 15th June, 2012 brought under Order 22 Rules 51 and 52 of the Civil Procedure Rules. The same seeks a permanent order of stay of execution in any manner against HARPAL SINGH SOKHI, the 3rd Objector. The grounds for the application are that Lifeline Traders Auctioneers had visited his house and carried away his household goods in execution of the decree against the Defendants. That the 3rd Objector was as stranger to the proceedings herein, that the Deputy Registrar of this court had in May, 2005 ruled that the 3rd objector is not the 2nd Defendant in this suit.
2. The Application was supported by the Affidavit of the Objector sworn on 15th June, 2012. He contended that his names were Harpal Singh Sokhi and that he was not Inder Sokhi, the 2nd Defendant, he produced a copy of his passport to prove that Inder was not one of his names, that he had been arrested on execution in May, 2005 but the Deputy Registrar of this court made a finding that he was not the 2nd Defendant, that the 1st Defendant was a family business currently under receivership and that he was not a director in that company and that he was apprehensive that the Plaintiff intended to continue harassing him in an unlawful manner with execution. He therefore sought a permanent stay of execution against him.
3. The decree holder opposed the application vide a Replying Affidavit by Vallabh Dilip

- Bakhrania. He swore that he was a director of the Plaintiff, that he knew that the 3rd objector was one and the same person as Inder Sokhi, having personally dealt with him in the transaction that led to this suit, he produced a business card allegedly given to him by the 3rd objector with the name Inder Sokhi. The deponent produced a personal search from the Companies Registry showing that the the 3rd objector was a director in the 1st Defendant. That the 3rd Objector had been investigated by the police because of his use of multiple identities only to be found that his names were HARPAL SINGH SOKHI. In the premises, the decree holder prayed that the application be dismissed with costs.
4. Having considered the Affidavits on record and submissions of Counsel, I take the following view of the matter. Objection proceedings are ordinarily undertaken to prove that the execution levied has been levied on property belonging to a party other than the party against whom the decree is decreed. In the instant case, the attached goods were sold on 23rd June, 2012, what the 3rd Objector seeks is a permanent stay from future execution.
 5. The reasons advanced by the 3rd objector for the grant of the orders sought are that he is a stranger to the suit, that his names are Harpal Singh Sokhi and that a Deputy Registrar of this court had made a finding in May, 2005 that the 3rd Objector is not Inder Sokhi who is the 2nd Defendant in this suit. The Decree holder on its part, had one of its directors swear on oath that he had personally dealt with the 3rd Objector during the subject transaction that led to the suit and that he personally knew that the 3rd Objector was Inder Sokhi, the Defendant whom the Decree Holder had sued.
 6. Whilst I appreciate that the passport of the 3rd Objector clearly shows that the name Inder does not appear anywhere as one of the names of the 3rd Objector several issues casts doubt about his case.
 - a. the 3rd Objector did not deny the averments of Vallabh Dilip Bakhrania that the latter had dealt with him at the time of the transaction giving rise to this suit and that at that time, he had introduced himself to the Decree Holder as Inder Sokhi and had given the said Mr. Vallabh Dilip the business card with the name Inder Sokhi;
 - b. in paragraph 7 of his Supporting Affidavit, the 3rd Objector volunteers information that the 1st Defendant was “**family business**” and that it was currently under receivership. He therein denied that he was a director in that company. That to my mind raised the issue that the 3rd Objector knew something about the 1st Defendant or he had some connection with that company;
 - c. when the Decree holder produced a personal search from the Registrar of Companies, the same disclosed that the 3rd Objector was one of the Directors of the 1st Defendant, a fact the 3rd Objector did not dispute;
 - d. the 3rd Objector did not deny that he had been subject of a police investigation because of multiplicity of identities and that it is only after such investigation that it was confirmed that his proper names were Harpal Singh Sokhi.
 - e. on the issue that the Deputy Registrar of this court had held in 2005 that the 3rd Objector is not Inder Sokhi, the 2nd Defendant, that to my mind is an argument that cannot stand. Firstly, the alleged order or ruling was not on record and secondly, if there was any such finding, the same must have been overtaken by events. I say so because, a decision of the Deputy Registrar of this court cannot supersede a finding made by the court.

In the judgment dated 17th February, 2011 which is the basis of the execution proceedings herein, the Hon. Mugo J held as follows:-

***“PW1 also produced, as exhibits, documents to prove that the 2nd Defendant was indeed the Inder H.S Sokhi who had ordered the subject goods and visited the Plaintiff’s offices, introducing himself as the Managing Director of the Defendant and guaranteeing payment. The documents included a document examiners report to the effect that the dishonoured cheque was by the same hand as had signed the identity Card produced in respect of Harpal Singh Sokhi. In view of what I have stated earlier in this judgment concerning liability, as arising from the Defence filed, I have no doubt*”**

in my mind as to the 2nd Defendant's relationship with the 1st Defendant and his joint and several liability herein.” (underlining mine)

7. It is clear that the trial judge made a finding that Inder H.S. Sokhi who had signed a cheque belonging to the 1st Defendant was the same as Harpal Singh Sokhi through the latter's ID Card. I have personally seen PExh9 that the trial court relied on. It is a Document Examiner's Report dated 8th August, 2005. Annexed to that report is the registration particulars of Harpal Singh Sokhi's ID Card. The photograph on the Identification Report is similar in all respect with that in the passport produced by the 3rd objector in these proceedings. The names in both the Identity Card and passport are Harpal Singh Sokhi. With that, the findings of the Deputy Registrar as to the 3rd objector vis a vis the 2nd Defendant cannot stand. The Judgment of Hon. Mugo J stand.
8. In this regard, I am convinced that the Auctioneers were right in executing the Warrants as they did. The 3rd objector is but the 2nd Defendant only that he misled the Decree holder as to his correct name. At that stage, he may have intended to escape liability. Now before me, he intends to escape the consequences of his actions. That won't do!
9. In the premises, I find the motion dated 15th June, 2012 to be without merit and I dismiss the same with costs to the Decree Holder.

DATED and DELIVERED at Nairobi this 28th day of June, 2013.

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A. MABEYA

JUDGE