



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 195 of 2004
ORIGINATING SUMMONS

IN THE MATTER OF GOVERNMENT LANS ACT CHAPTER 280 LAWS OF KENYA

AND

**IN THE MATTER OF THE TRANSFER OF PROPERTY ACT, 1882 OF INDIA AS AMENDED
AND APPLIED IN KENYA**

ORIENTAL COMMERCIAL BANK LTD.....APPLICANT

VERSUS

KENYA HOTELS LTD.....RESPONDENT

AND

GITARI T. NJEU

COURT APPOINTED RECEIVER MANAGER OF

KENYA HOTELS LIMITED.....OBJECTOR

RULING

On 28th August 2009, this court delivered judgment in favour of the applicant. It allowed the applicant's originating summons thereby granting leave to the applicant to sell the suit properties i.e. LR.

Nos. 6291/1 and 6901, registered in the respondent's name in exercise of the rights conferred under the memorandum of equitable mortgage dated 3rd April 2001 and which was registered on 5th April 2001. The court granted leave to the applicant to sell the suit properties to recover the sum of KShs.69,112,319.17 together with accrued interest at the rate of 22% per annum from the date the amount became due. On 15th October 2009, the objector commenced objection proceedings pursuant to **Order XXI Rule 53** of the **Civil Procedure Rules**. The objector described himself as "the court appointed receiver" of Lake Naivasha Country Club whose business is being operated on the suit properties. He claimed that the suit properties were in "*custodia legis*" through such appointment. He stated that the purported execution of the decree of this court was void and was contrary to **Section 225** of the **Companies Act**. The objector further stated that the suit properties were not liable to be attached in satisfaction of the decree on the grounds that the same were under the custody of the court.

The notice of objection provoked the applicant's application dated 29th October 2009. The applicant filed a notice of motion pursuant to the provisions of **Sections 1A, 1B, and 3A** of the **Civil Procedure Act** and **Order VI Rule 13(1) (d)** of the **Civil Procedure Rules** seeking orders of the court to strike out the notice of objection to attachment (*and essentially the objection proceedings*) as it was of the view that the objector lacked the requisite *locus standi* to bring the objection proceedings. The applicant further sought to set aside any orders that may have been issued pursuant to the said notice of objection. The application is supported by the annexed affidavit of Atulkumar I. Dave. The respondent, through its director Suresh Raman, filed a replying affidavit essentially agreeing with the applicant that the objector lacked the requisite *locus standi* to commence objection proceedings in respect of the suit properties. The objector filed a replying affidavit in opposition to the application. He deponed that as the court appointed receiver manager of Lake Naivasha Country Club, he had the requisite legal capacity to institute objection proceedings in the circumstances where the properties of the said club were in danger of being wasted. He deponed that the basis of the objection proceedings was an order issued by Kasanga Mulwa J on 12th June 2001.

At the hearing of the application, I heard rival submissions made by Mr. Khagram for the applicant, Mr. Ochieng Oduor for the respondent and Mr. Kilonzo for the objector. Having considered the said arguments, and further having read the pleadings filed by the parties to this application (*including the cited authorities*), the issue for determination by this court is whether the objector has *locus standi* to bring the objection proceedings in this case. Certain facts are not in dispute. It is not disputed that the objector **IS NOT** the receiver manager of the respondent. When he therefore describes himself as the court appointed receiver manager of the respondent, the objector is being less than candid with the court. The objector is actually a receiver manager of Lake Naivasha Country Club which is the subject of a pending suit i.e. Nairobi HCCC No. 881 of 2001. The objector claims that he was appointed by the court in the above suit to manage the properties of Lake Naivasha Country Club including commencing court proceedings without the necessity of seeking leave from the court. I have perused the said order. It is clear that the said order does not relate to any property owned by the respondent.

The objector was therefore required to seek the leave of this court before commencing objection proceedings in the present suit. The objector explained away his failure to seek the leave of the court by stating that objection proceedings were not suits as defined under **Section 2** of the **Civil Procedure Act**. I was not persuaded by such argument. I agree with the holding of Waki J (*as he was then*) in **Mombasa HCCC No. 782 of 1995 Mohamed Taib vs. Shantilal Petraj & others** (*unreported*) in which he concurred with the decision of Duffus J. A. in **Mandavia vs. Rattan Singh [1968] EA 146** where it was held that objection proceedings commenced under **Order XXI** of the **Civil Procedure Rules** where proceedings that can be legally be regarded as a suit.

Secondly, pursuant to the authority of **Lochab Brothers vs. Kenya Furfural Co. Ltd [1983] KLR 257**, the objector fell in error when he commenced the objection proceedings in his own name other than that of the company whose agent he is. In that case, it was held that a receiver cannot sue in his own name since he has no property vested in him and so acquires no right of action by his appointment. I therefore hold that the applicant's application is well founded. The objector has no *locus standi* to entitle him to lodge any claim in regard to properties owned by the respondent. As stated earlier in this ruling, the basis of the objector's alleged authority to commence objection proceedings herein is an order which was

issued by the court on 12th June 2001. That order does not bind the respondent since the respondent was not a party to that suit. Equally, that order does not affect the decree of this court since Lake Naivasha Country Club is not and has not been a party to this suit. Lake Naivasha Country Club does not claim any proprietary interest in respect of the suit properties registered in the name of the respondent that is capable of entitling it to challenge the decree of this court.

The upshot of the above reasons is that the objection proceedings commenced by the objector are incompetent. The objector lacks *locus standi* to bring any objection proceedings in this suit. The objection proceedings commenced by the notice of objection to attachment is hereby struck out with costs to the applicant and the respondent.

DATED AT NAIROBI THIS 13TH DAY OF NOVEMBER 2009

L. KIMARU

JUDGE