



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE 221 OF 1999

ASECO (K) LTD. PLAINTIFF

VERSUS

MARA FORWARDERS LTD DEFENDANT

AND

FOUR WAYS BEACH HOTEL COTTAGES &

APARTMENTS LIMITED1ST OBJECTOR

AND

JANE MUGAMBI MUMEITA 2ND OBJECTOR

R U L I N G

These are objection proceedings under Order 21 rules 56 and 57 Civil Procedure Rules. The objectors claim ownership of attached goods in the attempted execution of decree herein against the Judgment debtor.

The grounds written on the application show that the objections are based on the ground that the goods belong to the objector and were in premises rented by her thus in her possession. The objector has exhibited a certificate of registration of business “Kimana Hippo Port Restaurant” on Plot No.153/XXI/MI Moi Avenue Mombasa. She has also exhibited receipts of the payment of purchase price of some of the items attached which were bought in a public auction. The application is strongly opposed by the decree holder. He states that summary judgment was obtained against defendant “Mara Forwarders Ltd” a limited liability company in which the objector is a director.

That the defendant and objector use same post office Box address. That at one time the property known as Fourways Beach Hotel erected on Plot No.111/1590 belongs to defendant. Let it be observed here that the 2nd objector is “Fourways Beach Hotel Cottages & Apartments Ltd. Again this is a limited liability company. Also the Respondent states under par.20 Replying Affidavit that the Moi Avenue Restaurant is his client’s restaurant. There is another objection in this matter filed by Fourways Beach Hotel Cottages & Apartments Ltd. Dated 5th June 2000 where the ground is states that the objector is a tenant of the Defendant and is owner of goods attached. At this time (28.4.2000) the goods attached were lying at Fourways Hotel Vipingo. This objection was argued by objector’s advocate Mr. F. Kinyua and the ruling was at request of the parties reserved pending the hearing of the other objection by Jane Mumeita so that both can be determined at same time.

I have perused this file and all relevant material placed before the court.

The first objection was brought by a limited liability company of which the husband and wife, Christopher and Jane Mumeita are directors. The business of Hotel and Apartments is run by this limited liability company. However the plot is owned by the defendant in this case also a limited liability company.

The goods attached in the second objection proceedings are clearly the assets of Jane Mumeita trading as Hipo Point Restaurant with a registered business name. She has shown that the goods are hers and were in her possession on the day the auctioneers attached them. I believe what she says.

It is trite law that each incorporated body under the Companies Act Cap 486 is a legal entity. It is a corporation with sole responsibility for its debts.

I therefore find that the goods of objectors cannot be attached in execution of the Defendant's debts even if the directors are the same.

The directors and other officers of corporations do not incur personal liability except in situations where they are personally committed for example where they have personally guaranteed the liability of the corporation. There are a few more well known exceptions and this case it is not within such exceptions.

In the circumstances I find that the two objection proceedings are with merit and the applications are allowed. The attachments are hereby lifted. Each party to pay its costs.

Dated at Mombasa this 17th Day of May, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE