



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 312 OF 2014

DESNOL INVESTMENT.....PLAINTIFF/JUDGEMENT DEBTOR

VERSUS

LAZARUS OKELLO.....1ST DEFENDANT/DECREE HOLDER/RESPONDENT

ALFA PETROLEUM LTD.....2ND DEFENDANT/DECREE HOLDER/RESPONDENT

ABDIRAZAK ADOW HASSAN.....3RD DEFENDANT/DECREE HOLDER

AND

DESNOL INVESTMENT.....OBJECTOR/APPLICANT

RULING

Desnol Investment Ltd hereinafter referred to as the Objector filed a Notice of Objection to attachment under Order 22 rule 51 of the Civil Procedure Rules objecting to the attachment of items contained in the schedule of the movable property on notice of attachment dated 21/11/2018 by Maywood auctioneers.

The items were all assorted supermarket goods at Desnol Petrol station at Kisian weighing machine, photocopy machine and four computers.

The objection is based on grounds that the objector is the legal owner of the said property and that the same does not belong to the Judgment debtor. Joan Prisca Arum filed a supporting affidavit stating that she is a co-owner of the Supermarket (Annexed hereto and marked JPA 1 is a copy of certificate of registration).

That on 22nd November 2018, the objector was surprised to find that the supermarket goods had been proclaimed with respect to a debt that belongs to a Desnol Investment Ltd. (Annexed hereto and marked JPA -2 is a copy of the proclamation notice and attachment).

That she knows of her knowledge that the said supermarket co-owned with the Judgment debtor and has not become his sole property. (Annexed hereto and marked JPA 3 is a copy of trading license).

That she has never been a party to the said suit and she has no debt that belongs to the Judgment debtor herein. (Annexed hereto and marked JPA 4 is a copy of Petrol Station trading License).

That the said proclamation and attachments is improper and is meant to take away our interest in the super market without any justification.

That unless the Decree holder is stopped and the proclamation set aside, she stands to suffer irreparable loss and damages.

That she swore this affidavit in support of her application for the setting aside of attachment of her property.

The 2nd Defendant filed grounds of opposition to the impact that:

- 1. The application filed on 30.11.18 is incompetent, incurably defective, bad in law and ought to be struck out.**
- 2. That the application lacks in merit and is otherwise an abuse of the court process.**

3. That the applicant lacks candour and has withheld material information from this honourable court.

4. That the objector and the judgment debtor are one and the same entity.

5. That the interest of the judgment debtor in the attached property is ascertainable and can be sold without much ado in order to settle the decree herein.

6. That the objector claims only part of the attached properties.

Moreover, the 2nd Defendant filed a replying affidavit stating that she knows of her own knowledge that the 2nd defendant/respondent has a decree against the plaintiff herein in the sum of Kshs. 1,154,764 excluding interest.

That she knows of her own knowledge that the objector is a wife to the managing director of Desnol investment Ltd one Clive Ouko Natome and a Co. director thereof.

That the objector and the Judgment debtor are one and the same entity in law in the circumstances of this case calling for the lifting of the corporate veil.

That there is no valid objection proceedings lodged by the objector as by law contemplated herein.

That prior the interest of the objector in any event is ascertainable and is severable with the result that half the attached property can be sold as belonging to the judgment debtor with the rest reserved for the objector.

That she can't help noticing that whereas the objector claims C-ownership over the attached properties she does not state her exact share thereon for the case of this court's determination wherefore she is guilty of withholding critical information.

I have considered the objection and the supporting affidavit together with the replying affidavit and do find that the objector has not demonstrated joint ownership of the proclaimed goods. No receipts have been produced for the machines and no purchase documents have been produced to demonstrate the goods were purchased jointly. I do dismiss the objection with costs to the Respondents.

DATED AT KISUMU THIS 18TH DAY OF MARCH, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE