



Swing Limited v Attorney General (Sued on Behalf of the Kenya Meteorological Department) & 2 others; Survey Consult Limited (Objector) (Environment & Land Case 114 of 2020) [2023] KEELC 17461 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17461 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 114 OF 2020**

**LN MBUGUA, J
MAY 11, 2023**

BETWEEN

SWING LIMITED PLAINTIFF

AND

ATTORNEY GENERAL (SUED ON BEHALF OF THE KENYA METEOROLOGICAL DEPARTMENT) 1ST DEFENDANT

NATIONAL HOUSING CORPORATION 2ND DEFENDANT

ATTORNEY GENERAL (SUED ON BEHALF OF MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS) 3RD DEFENDANT

AND

SURVEY CONSULT LIMITED OBJECTOR

RULING

1. The case against the 2nd Defendant was withdrawn on November 25, 2021 by consent. Thereafter, the 2nd Defendant filed its bill of costs which was taxed at Kshs 1,455,185/= by a ruling delivered on May 10, 2022. The Plaintiff filed a reference to the said bill but it was dismissed via a ruling dated October 13, 2022. The 2nd Defendant then commenced execution of the certificate of costs dated July 28, 2022 and a proclamation of attachment of goods was made by the auctioneer.
2. The objector, Survey Consult Limited has filed the application dated January 25, 2023 which is for determination before this Court. It seeks orders that the court vacates the warrants and proclamation on its property pursuant to the certificate of costs dated July 28, 2022 as well as orders that the 2nd Defendant bears the auctioneers' fees.



3. The application is based on grounds on its face and on the supporting affidavit of the objector's director, one Kamau Mucuha sworn on January 25, 2023. He deposes that on January 20, 2023, the Objector's office furniture was proclaimed at 9th Floor Bruce House in the offices shared between it and the Plaintiff pursuant to warrants obtained by the 2nd Defendant on December 9, 2022. He annexed purchase invoices of the furniture.
4. He deposes that the Objector was initially the only tenant at the said offices from as far back as 2007, but was later joined by the Plaintiff to share offices and the objector has leased furniture to the Plaintiff. He annexed the lease agreement.
5. The application is opposed by the 2nd Defendant who relies on the replying affidavit of John M. Mbijiwe, a licensed auctioneer from Bealine Kenya Auctioneers which conducted the auction herein sworn on February 8, 2023. He avers that on January 20, 2023, he peaceably visited the Plaintiff's office premises situate at the 9th Floor of Bruce House in Nairobi door No 13 which bears a signboard in the Plaintiff's name and lawfully carried out a proclamation against its moveable property for purposes of attachment and sale in recovery of the decretal sums of Kshs 1,458,185/=. He adds that there is no indication that the objector's offices are situated in the subject building.
6. He avers that the objector has conspired with the Plaintiff to concoct false ownership claims over the proclaimed goods which belong to the Plaintiff in an attempt to frustrate execution. He points out that the objector and the Plaintiff are sister companies sharing directors with the majority shareholder being Mr. Kamau Mucuha.
7. Mr. Mbijiwe also deposes that the objector has not proved ownership of any of the proclaimed goods as required under Order 22 rule 51 of the [Civil Procedure Rules](#) as the annexed invoices are addressed to the Plaintiff and the objector and the lease agreement for office furniture has no probative value due to the nature of the relationship between the Plaintiff and the Objector.
8. The matter was canvassed by way of written submissions. The Objector's submissions are dated March 13, 2023, where they aver that the auctioneer did not possess a valid auctioneer license as at January 20, 2023 and that the averments made by the auctioneer are in breach of Order 19 Rule 3 (1) of the [Civil Procedure Rules](#) and should be struck off.
9. It is also submitted that that based on the case of [Salmon and Salmon and Co. Ltd](#) (1897) A.C 22 HL, a company is in law a separate legal entity distinct from its directors and there is no basis to purport that this Court has powers to lift the cooperate veil. To this end, reference was made to the case of [Hannah Maina T/a Taa Flower v Rift Valley Bottlers Limited](#) [2016] eKLR and the case of [K-rep Bank Ltd v Basilio Pascal Kiseli & 2 others](#) [2012] eKLR.
10. The objector relies on the case of [Patrick Kingori Warugongo v James Nderitu & another](#) [2014] eKLR to submit that the fact that the offices located on 9th floor, Bruce House, had sign board bearing the Plaintiff's name did not by itself prove that the office furniture that was proclaimed belonged to the Plaintiff. Thus in tandem with the case of [Akiba Bank Ltd v Jetha & Sons Ltd](#) [2005] eKLR, the objector has proved that it has a legal equitable interest over the office furniture proclaimed by exhibiting purchase receipts and the lease agreement.
11. On the other hand, the 2nd Defendant submitted that the Objector is not entitled to and has no legal or equitable interest in the whole of, or part of the property proclaimed by the auctioneer as required under Order 22 Rule 51 (1) of the [Civil Procedure Rules 2010](#) as the sign board of the offices in question was clearly indicated the name "Swing Limited". To this end, reference was made to the cases of [Obadha v Omoro](#) (Civil Case E104 of 2021) [2022] KEHC 332 (KLR).



12. I have considered all the arguments raised herein. The issue falling for determination is whether the court should stay execution herein by vacating the warrants of attachment and the proclamation made thereof. The Objector objects to the proclamation of 12 items as described in the proclamation notice dated 20.1.2023 pursuant to a certificate of costs issued on 28.7.2022.
13. In *Dubai Bank (K) Ltd v Come-Cons Africa Ltd and Impak Holdings Co Ltd* [2012] eKLR. the Court Stated as follows:

“ Although the law is that in the objection proceedings, the court does not and cannot make a finding as to the ownership of the property the subject of the objection proceedings but simply decide whether or not the objector has interest legal or equitable in the attached property, it is equally true that the onus of proof in objection proceedings is on the objector to establish ownership...”
14. In *Arun C Sharma v Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] eKLR the court held that:

“ The objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The key words are; entitled to or to have a legal or equitable interest in the whole or part of the property.”
15. The Objector has produced an offer letter dated April 17, 2007 for the office space in question. It has also produced an acceptance of offer dated May 30, 2007. It agreed to all the terms and conditions of the offer letter dated April 17, 2007. Clause 13 of the aforementioned offer prohibits subletting/sharing possession of the office space. The alleged proclaimed objector’s goods could not legally be in the 1st Defendant’s premises as office sharing is prohibited. Further, the lease for furniture agreement dated June 5, 2013 does not show that the exact office furniture in the proclamation notice dated January 20, 2023 is what the Objector leased to the Plaintiff.
16. In any event, John Mbijiwe has given a precise account of the offices they visited for purposes of proclamation. The office had a signage written “swing limited” and was door number 913.
17. I find that the Objector has not established a legal interest in the proclaimed property. In the circumstances, the application dated January 25, 2023 is found to be unmerited, the same is hereby dismissed with costs to the 2nd defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Thuo for Plaintiff

Aboba for 2nd Defendant

Allan Kamau for 1st & 3rd Defendant

Court assistant: Eddel

