



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. E054 OF 2020**

**ANTHONY KARANJA WAINAINA.....1<sup>ST</sup> APPLICANT/DECREE HOLDER**

**JOSEPH M. GIKONYO T/A GARAM**

**INVESTMENTS AUCTIONEERS.....2<sup>ND</sup> APPLICANT/AUCTIONEERS**

**VERSUS**

**ANDRIAN COMPANY LIMITED.....RESPONDENT**

**AND**

**ANDRIAN KENYA LIMITED .....OBJECTOR/APPLICANT**

**RULING**

1. The application dated 4/12/2020 seeks an order *interalia*.
  - (i) That this honourable Court be pleased to cancel the purported Warrants of attachment of Movable property dated 23/9/2020 and proclamation notice dated the 30/9/2020 served upon the Applicant by the Auctioneers herein
  - (ii) Costs of the Application be awarded.
2. The application is on the basis that the property proclaimed belongs to the applicant/objector and not the Respondent as the two are different entities and the Applicant/Objector was not a party to the **Employment and Labour Relations Court Cause No. 139 of 2014 – Antony Karanja Wainaina –vs- Adrian Company Limited**.
3. The application is opposed by the Decree holder in their replying affidavit in which they rely on search results obtained by the auctioneer and attached as “JMG-6” in the supporting affidavit of Joseph M. Gikonyo dated 10/11/2020.
4. The applicant on the other hand relies on a search warrant marked “OMA2” attached to the objector’s affidavit.
5. The decree holder states that the auctioneers were allowed into the premises of the respondent by a receptionist who stamped the warrant of attachment attached to the replying affidavit and marked exhibit JMG4”.
6. The decree holder states that the applicant has not demonstrated that it has any interest, legal or equitable in the proclaimed items to restrain the attachment.
7. That the application is a mischievous, and a carefully calculated move to frustrate the attachment and prevent the decree holder from enjoying the fruits of the decree.
8. That the Court has discretion to stay execution which discretion must be exercised judiciously.
9. The issue for determination is whether the premises upon which the warrants of attachment and the proclamation notice were issued belong to Andrian Company Limited, the respondent/judgment debtor or the same premises belonged to Andrian Kenya Limited, the Objector.
10. The Objector states that it is a tenant of a company known as Refined Resources who own the property and improvements therein.

11. The objector states that Graham Investments Auctioneers never entered its premises before purporting to proclaim its property.
12. That the objector shall suffer irreparable loss and damage if the attachment and proclamation is not set aside.

#### Determination

13. The judgment and Decree in ELRC No. 1390 of 2014 was issued by Hon. Justice Onesmus Makau, J. in favour of the Decree holder Antony Karanja Wainaina, against Adrian company Limited, the respondent.

14. The warrants of attachment dated 23/9/2020 named Andrian Company Limited as the Judgment debtor. The auctioneer proclaimed items of furniture listed in the warrants of attachment which goods were found attached and proclaimed in a premises not named in the warrant of attachment. The auctioneer simply stated that

***“The proclamation was done in the presence of the receptionist who stamped the copy of the Warrant.”***

15. The objector has filed company Registration Certificate marked **“DWA2”** which clearly shows that, though the objector shares a common first name with the judgment debtor, the two companies are separate and distinct.

16. The onus is on the Decree holder/respondent to show that Andrian Company Limited and Adrian Kenya Limited are one and the same entities and/or the two companies share and own the same premises and property where the attachment and proclamation took place.

17. The decree holder/respondent has failed to sufficiently counter the objection by the objector/applicant by adducing evidence to discharge the evidential burden cast on them to show that the objector is not a 3<sup>rd</sup> party who owns the attached property.

18. Accordingly, the Court finds that the applicant/objector has proved on a balance of probabilities that it is a separate and distinct company from the respondent/judgment debtor. That it was not a party to the suit and that the office premises entered into by the auctioneers and properties attached belonged to it and not to the judgment debtor/respondent.

19. The application is therefore granted with costs.

20. The Court therefore cancels the warrant of attachment of movable

property dated 23<sup>rd</sup> September, 2020 and the proclamation dated 30<sup>th</sup> September which was served upon the Applicant by Graham Investments Auctioneers lifted.

**Dated and delivered at Nairobi this 8<sup>th</sup> day of July, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Mr. Okoji for objector/applicant

Mr. B. Botany for decree holder and auctioneers

Ekale – Court Assistant