



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE NO.201 OF 2018**

**SLOK CONSTRUCTION LIMITED.....PLAINTIFF**

**VERSUS**

**BEVERLY LIDONDE HOLDINGS LIMITED.....DEFENDANT**

**RULING**

(1) Before this Court is the Notice of Motion dated **29<sup>th</sup> March 2019** by which **BEVERLY SCHOOLS OF KENYA LIMITED** (the Objector herein) seeks the following Orders:-

**“(a) SPENT**

**(b) SPENT**

**(c) THAT this Honourable Court be pleased to lift the proclamation dated 24<sup>th</sup> March 2019 forthwith.**

**(d) THAT the costs of the objection proceedings be provided for.”**

(2) The application which was premised upon **Order 22 Rule 51 (2), Order 51(1) and (2), Section 3 and 3A** of the **Civil Procedure Rules** and all enabling provisions of law was supported by the Affidavit of even date sworn by **ALICE MUDIRI**, the Executive Director of the Objector/Applicant. The same deponent swore a Further Supporting Affidavit dated **15<sup>th</sup> May 2019**.

(3) The Plaintiff/Respondent **SLOK CONSTRUCTION (K) LIMITED** opposed the application by way of the Replying Affidavit dated **17<sup>th</sup> April 2019** sworn by **VIMAL VYAS** the Director of the Plaintiff Company. The application was canvassed by way of written submissions. The Objector filed their written submissions on **16<sup>th</sup> May 2019** while the Plaintiff/Respondents filed their submissions on **9<sup>th</sup> July 2019**.

**BACKGROUND**

(4) On **24<sup>th</sup> March 2019** the Plaintiff as decree-holder in **Civil High Court Suit No.354 of 2016** instructed **Clear Real Auctioneers Owners** to proclaim goods on the strength of the decree issued on **5<sup>th</sup> March 2018**. Acting upon those instructions the Auctioneer moved to the Objector’s premises and attached various office and school equipment as well as a School Bus **Registration KAW 658H**.

(5) On **29<sup>th</sup> March 2019** the Objector filed a Notice of Objection to Attachment under **Order 22 Rule 51 and 52** of the **Civil Procedure Code**. The Objector contends that the attached items belong to the Objector and **not** to the Judgment Debtor known as **“Beverly Lidonde Holdings Limited.”** The Objector submits that the attachment of its property/equipment is unlawful given that it was **not** a party to the suit in question and the decree was not directed against the Objector.

(6) In their Reply the Plaintiff/Respondent counters that the Objector has always paid any sums payable by the decree-holder. That the Directors/Shareholders of the Judgment Debtor are the same as the majority shareholders of the Objector. The Respondent urges the court to lift the veil of incorporation in order to ascertain the relationship between the owners of the Objector on the one hand and the judgment-debtor on the other.

**ANALYSIS AND DETERMINATION**

(7) I have carefully considered the rival submissions filed in this case. The Objectors position is that it was not party to High court **Civil suit No.354 of 2016** which gave rise to the decree issued on **5<sup>th</sup> March 2018**, therefore any purported attachment of their property is illegal.

(8) A look at the Decree in question (annexture “**AM3**” to the supporting Affidavit dated **29<sup>th</sup> March 2019**) reveals that the suit in question involved **Slok Construction Limited** as the Plaintiff and **Beverly Lidonde Holdings Limited** as the Defendant. The Judgment-Debtor was **Beverly Lidonde Holdings Ltd** and the attachment was to proceed against that entity.

(9) The Objector herein is known as **Beverly Schools of Kenya Limited** and is an entity which is separate and distinct from the judgment debtor. Annexed to the Supporting Affidavit dated **29<sup>th</sup> March 2019** is a Certificate of Incorporation for the Objector “**AM1**”.

(10) Given that the decree was issued as against “**Beverly Lidonde Holdings Limited**”, the proclamation and attachment could only issue against property owned by that Judgment- Debtor. There is no proven link or relationship between the judgment debtor and the Objector. A mere similarity in names will not suffice as proof of a relationship between the two.

(11) I note that amongst the attached items was a School Bus **Registration KAW 658H**. The log book of that vehicle which is annexed to the Supporting Affidavit dated **29<sup>th</sup> March 2019** gives the name of the current owner of the vehicle as **Beverly Schools of Kenya Limited** (the Objector herein). That vehicle does **not** belong to the Judgment Debtor and therefore was not available for attachment in execution of the decree issued on **5<sup>th</sup> March 2018**.

(12) The Plaintiff/Respondent submits that the Objector has always “**presented itself**” as the judgment debtor and that the Objector did pay a part of the decretal sum. The fact that the Objector may have paid part of the decretal sum does not make them the judgment debtor. The Judgment Debtor remains the entity known as “**Beverly Lidonde Holdings Limited**” which is distinct and has a separate corporate entity from the Objector.

(13) The Respondents further urge the Court to lift the corporate veil and look at the true owners of the two entities. No formal application to lift the corporate veil has been made by the Respondent. The Court cannot act on applications made in written submissions without having given the judgment debtor or the Objector an opportunity to respond.

(14) Furthermore documents availed to the Court by the Respondents themselves prove that the Objector was not a party to the transactions which led to **High Court Civil Suit No.354 of 2016**. The Contract or Agreement annexed to the Replying Affidavit dated **17<sup>th</sup> April 2019** [“**VV2**”] indicates the names of the parties to the Agreement. The Agreement was executed by **The Beverly Ahono Lidondo Education Corporation Limited** an entity separate and distinct from the Objector “**Beverly Schools of Kenya Limited.**”

(15) All in all it is manifestly clear that the Objector was not a party to the civil suit which led to the decree in question. The Objector is not the Judgment Debtor, therefore any purported attachment against the Objector is unlawful. Accordingly I do hereby order that the Proclamation dated **24<sup>th</sup> March 2019** be and is hereby lifted. Costs of this application are awarded to the Objector.

**Dated in Nairobi this 14<sup>th</sup> day of February 2020.**

.....

**Justice Maureen A. Odero**