



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISCELLANEOUS APPLICATION NO. 14 OF 2018**

**EAGLE VET. TECH CO. LIMITED.....APPLICANT**

**-VERSUS-**

**ANTHONY OBIDULU..... RESPONDENT**

**EAGLE VET KENYA LIMITED.....INTERESTED PARTY**

**R U L I N G**

1. This Court by its Ruling dated 27<sup>th</sup> July 2018 adopted and recognized an Arbitration Award of Korean Commercial Arbitration Board rendered on 27<sup>th</sup> November 2017. This Court granted an order for that Award to be enforced as a decree of this Court. By that Award the Arbitral Tribunal allowed the claim of **Eagle Vet Tech Co. Limited** (EVT) against **Anthony Obidulu** (the Respondent) for various sums. Subsequently the costs were taxed by this Court on 14<sup>th</sup> February 2019, at Kshs. 743,691.70.

2. Before me is a Notice of Motion application dated 8<sup>th</sup> March 2019. The application is filed by EVT. The prayer in that application is for a written prohibition order to issue to restrain the Respondent from transferring or otherwise disposing any of his shares in **Eagle Vet Kenya Limited** (EVK) from receiving any dividends, monthly salary, management remuneration bonuses, reimbursements or any other payment by virtue of his shareholding.

3. The application is supported by an Affidavit of Seung-Ho, Kim the Managing Director of EVT. He deponed that the Respondent is a Nigerian National, not resident in Kenya and that neither does he own any other assets within Nigeria or Kenya other than his shareholding in EVK a company incorporated in Kenya. That the Respondent holds 500 shares in EVK. The deponent stated that EVT intended to enforce the decree herein by attaching the Respondent's shares in EVK.

4. The application was opposed by the Respondent. The Respondent deponed that an order was made in case **HCCC No. 68 of 2018** for him to pay USD 315,000 within a period of 3.5 years starting 5<sup>th</sup> April 2018. That the said order was served upon EVK for EVK to release the Respondent's salary in settlement thereof. The Respondent therefore deponed that the attempt to attach his salary at EVK, by EVT was contrary to Section 44(1) (viii) of the Civil Procedure Act which prohibits the attachment of two thirds of a person's salary. Further the Respondent stated that EVK has a pending insolvency action against it being **Insolvency Petition No. 11 of 2017** which has a bearing in the assets and liabilities of EVK.

5. The Learned Advocate for the Respondent in opposing the application referred to Section 471 of the Insolvency Act and submitted that to permit the prayer sought would affect the other creditors of EVK (in Liquidation) contrary to the provisions of that Section 471 of Insolvency Act.

**ANALYSIS AND DETERMINATION**

6. I have considered the affidavit evidence the submissions and the parties' authorities.

7. Order 22 Rule 40 (1) and (2) provide that a share in the capital corporation can be attached in satisfaction of a judgment. Such attachment takes the form of a written prohibition Order prohibiting a person who owns the shares from transferring the same or receiving dividends thereof.

8. In this case the Respondent does not deny indebtedness towards EVT. He only argues that the Prohibition Order sought by EVT cannot be granted because EVK is facing insolvency action and such Prohibition Order would prejudice other creditors of EVK.

9. I take the view that the Respondent erred to argue that any Order of prohibition would affect either the creditors of EVK or that it would

affect the pending insolvency. This is because EVK is a separate legal entity to the Respondent and it follows the Prohibition Order affecting the shareholding of the Respondent does not affect the financial standing or otherwise of EVK.

10. I also reject the Respondent's argument that because there are other orders attaching his salary this Court cannot again make an order to attach his salary. To the contrary this Court, so long as the execution is lawful; can grant an order for the attachment a person's salary many times over. What Section 44(1) (viii) of Cap 21 prohibits is the one paying out the salary to allow attachment of more than two thirds of the salary. Indeed what would happen when there are series of attachment of salary is that those attachment would queue waiting to be satisfied when all along the one paying the salary would ensure not more than two thirds of the salary is attached at any one time. It follows the provisions of Section 44(a) (viii) of Cap 21 is directed to the one paying the salary not to the Court.

11. Before concluding I will respond to the opposition raised to the reliance of the affidavit of the Respondent sworn on 6<sup>th</sup> June 2019. It is correct as submitted by the Learned Advocate for EVT that the jurat of that affidavit does not show where the affidavit was sworn contrary to the provisions of the third schedule of the Oaths and Statutory Declaration.

Having however perused the jurat I do find that the Notary Public Stamp shows that the affidavit of the Respondent was sworn before him in Hawlev Str. Lagos. The place where the affidavit was sworn is shown and I do therefore reject the submissions of EVT in that regard. The requirement of the Third Schedule of the Cap 15 are satisfied by that Stamp of Notary Public.

12. In that end I do find that the shares of the Respondent in EVK are attachable as set out in Order 22 Rule 40 of the Civil Procedure Rules.

13. I therefore grant the following orders:

**a. A written prohibitory order shall hereby issue to restrain Anthony Obidulu from transferring or otherwise disposing any of his shares in Eagle Vet Kenya Limited and from receiving any dividends, monthly salary, management remuneration, bonuses, reimbursements or any other payment by virtue of his shareholding until the decretal sum owed to Eagle Vet Tech Co. Ltd. is paid in full.**

**b. Eagle Vet Kenya Limited shall make payment to Eagle Vet Tech Co. Limited of any dividends, monthly salary, management remuneration, bonuses, reimbursements or any other payment due to Anthony Obidulu by virtue of his shareholding.**

**c. The costs of Notice of Motion dated 8<sup>th</sup> March 2019 are awarded to Eagle Vet Tech Co. Limited.**

**DATED, SIGNED and DELIVERED at NAIROBI this 12<sup>TH</sup> day of JULY, 2019.**

**MARY KASANGO**

**JUDGE**

**Ruling Read and Delivered in Open Court in the presence of:**

Sophie..... COURT ASSISTANT

..... FOR THE APPLICANT

.....FOR THE RESPONDENT

.....FOR THE INTERESTED PARTY