



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Maingi v Sen-Tech Limited; KHS East Africa Limited (Objector) (Cause
1710 of 2013) [2024] KEELRC 1082 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1082 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1710 OF 2013**

JK GAKERI, J

MAY 13, 2024

BETWEEN

JERUSHA NYAMBURA MAINGI CLAIMANT

AND

SEN-TECH LIMITED RESPONDENT

AND

KHS EAST AFRICA LIMITED OBJECTOR

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 23rd January, 2024 seeking orders that;
 1. Spent.
 2. The Honourable Court do authorize the Officer Commanding Karen Police Station and or any other police station within the Republic of Kenya or officers under his command or above to accompany the Auctioneer Charles Mutinda Mutua T/A Charlton Auctioneers to gain access and break the door/gate to keep peace and witness the attachment of proclaimed movable assets.
 3. Costs of this application be borne by the Respondent in any event.
2. The Notice of Motion filed under Certificate of Urgency is expressed under the *Auctioneers Act* and *Rules 1997 and 2010* and is based on the grounds set out on its face and supported by the Affidavit of Charles Mutinda Mutua sworn on 23rd January, 2023 who deposes that he is a Licensed Auctioneer Class B, trading as Charlton Auctioneers and was instructed on 24th May, 2022 to proceed to the Respondent's premises at Karen, did so and gave the requisite 7 days' notice/proclamation of debtor



and on 31st May, 2022 and proceeded to execute the warrants but on arrival was served with a court order staying the execution.

3. The affiant further disposes that on 6th November, 2023, he received a letter from the instructing advocate informing him that the application dated 27th May, 2022 had been dismissed and execution could proceed and the warrant was reissued on 24th November, 2023, but on 27th November, 2023, security guards manning the premises denied the applicant access to the premises and locked the gate.
4. That a call to customer care of the company was responded to with the answer that directors had given instructions that no one should be allowed into the premises.
5. The affiant further disposes that efforts to secure assistance from the OCS Karen has fallen through and attempts to access the premises on 4th, 15th and 20th December, 2023 were equally unsuccessful.

Replying Affidavit

6. By an affidavit sworn by Denise Schneider Walimohamed on 5th February, 2024, the affiant states that he was a director of KHS East Africa Ltd (herein KHS), a registered company, an independent and separate from the Respondent Sen-Tech Ltd and not its subsidiary or associate or otherwise, save for the fact that KHS (EA) Ltd acquired the assets of Sen Tech Ltd in 2013.
7. The affiant deposes that KHS was not privy to the dispute between the Claimant and the Respondent as it was not the Claimant's employer.
8. The affiant admits that it filed objection proceedings dated 1st August, 2019 when execution was attempted on similar grounds.
9. That the Claimant's judgment is against Sen-Tech Ltd as the judgement and warrants of sale dated 20th May, 2022 reveal.
10. The affiant further states that Sen-Tech Ltd was solely owned by one Mr. Wilfred Sauerland who is not a director of KHS and the movable property attached by the Applicant belonged to KHS and are located at the company's premises.
11. That if the order sought is granted, KHS will be prejudiced and subjected to commercial detriment and its property vandalized.
12. In his Further Affidavit, the applicant deposes that the issues raised by the company were determined by the trial court and cannot be the basis of denying the applicant access to the premises to execute his mandate.
13. That the company is abusing the court process as its application for review dated 27th May, 2022 was dismissed on 2nd November, 2023 and ought not be re-opened.

Applicant's submissions

14. Counsel urges that the Respondent/Objector had previously denied the auctioneer access thereby denying the Decree-Holder the decretal amount of Kshs.1,352,613.87 awarded on 7th December, 2018 and had no legal basis to do so as it had no stay orders.
15. That the allegation that the Respondent was different from the Judgment-Debtor was canvassed before the trial court and the objector failed to convince the Honourable Court that that was indeed the state of affairs and is thus seeking to re-open the case through the back door as the issue is res judicata and litigation must come to an end.



Respondent's submissions

16. By 29th April, 2024 when the court retired to prepare this ruling, the Respondent had not filed submissions.

Determination

17. The only issue for determination is whether the applicant's Notice of Motion dated 23rd January, 2024 is merited.
18. In order to contextualize the instant application, it is necessary to recapitulate the chequered history of this case.
19. The instant suit was filed on 25th October, 2013 and judgment was delivered on 7th December, 2018. The court awarded the Claimant Kshs.1,200,000/= being 6 months compensation with costs and interest at court rates.
20. Records reveal that the costs were taxed and a ruling delivered on 29th May, 2019 taxing the Bill at Kshs.149,388.87.
21. A warrant of sale of property in execution of decree for money was issued on 26th July, 2019 for the sum of Kshs.1,351,838.87 but the Objector herein filed a Notice of Objection dated 1st August, 2019.
22. By its ruling delivered on 12th May, 2022, the court found the notice of objection and the Chamber Summons dated 5th August, 2019 unmerited and dismissed the same with costs and allowed the execution to proceed.
23. However, by an application dated 27th May, 2022, the Objector herein, applied for interim stay of execution pending review of the ruling delivered on 12th May, 2022, on the same grounds as the objection filed earlier and similar to an earlier application for stay. The application was dismissed with costs for want of merit.
24. No other application was made until the instant application by the Auctioneer which precipitated the objection dated 5th March, 2024 and a Preliminary Objection pending determination.
25. The pith and substance of the applicant's case is that the Objector has denied the Auctioneer access to execute its mandated pursuant to warrants re-issued by the court on 24th November, 2023 and is thus praying for police escort.
26. The Objector argues that as it did in its objection proceedings dated 1st August, 2019 and the application for stay dated 27th May, 2022, the Objector herein and the Respondent in ELRCC No. 1710 of 2013 are different legal entities, an issue the trial court determined.
27. To reinforce its case, the Objector attached a copy of Form CR12 which reveals the shareholders and directors of KHS East Africa Ltd.
28. From the document, it is discernible that the company is owned by KHS GMBH at 10,999 ordinary shares and Holstein & Kappiet GMBH at 1 share and the two shareholders are also directors of the company. The other three directors include Denise Schneider Walimohamed and have no proprietary interest in the company.
29. Significantly, the CR12 form does not of itself demonstrate that the Respondent and the Objector had no relationship.



30. In its Replying Affidavit sworn by Denise Schneider Walimohamed on 5th February, 2024, the affiant states that KHS acquired the assets of Sen-Tech Ltd in 2013.
31. This averment has no supporting documentation as to when and how the transaction occurred as the instant suit was filed in October 2013.
32. More significantly, however, in its Ruling delivered on 12th May, 2022, the court was persuaded that the documentary evidence provided by the Claimant/Decree-holder, which the Objector did not controvert showed that the alleged acquisition of assets by the Objector was more than it was willing to admit.
33. For instance, the court found that a letter addressed to the Objector's clients dated 24th June, 2013 stated as follows;

“It is our goal to build up strong lasting relationships with our clients and hence we are pleased to inform you that the management team, sales team and an extensive service team at SEN-TECH Ltd has joined KHS East Africa Ltd and they will remain at your service.”
34. The Objector did not adduce any evidence to the contrary and has not done so now.
35. The trial court applied the Rule in Tarquands Case 6 E&B 327 also known as the Indoor Management Rule under which 3rd parties who deal with a company in good faith are entitled to assume that internal company rules have been complied with, even if they are not. (See the opinion of Jelvis C.J).
36. The *Auctioneers Act* No. 5 of 1996 establishes the Auctioneers Licensing Board which is mandated inter alia to license and regulate the business and practice of auctioneers as well as supervise and discipline licensed auctioneers.
37. The applicant professes to be a Licensed Auctioneer Class “B” and attached a copy of his license to authenticate his assertion.
38. A licensed auctioneer is also issued with an identification card for purposes of identification by clients.
39. It is also essential to underscore the fact that in so far as the conduct of auctioneering business is concerned, a licensed auctioneer's liability is unlimited and can thus be sued in his personal capacity.
40. Finally, the Auctioneers Licensing Board has statutorily empowered to refuse to grant or renew a license or revoke the same for cause.
41. The foregoing would appear to obviate the Objector's fears that his property will be vandalized if the order sought by the applicant is granted.
42. Moreover, police escort is sought to ensure that the process is carried out under police guard to guarantee order and observance of the rule of law.
43. Based on the material before the court, the court is persuaded that the order sought by the applicant is merited and is accordingly granted with costs save for the modification that the order is directed to the Officer Commanding the Karen Police Station, provided that the Auctioneer has executable warrants and no breaking of door and/or gate takes place unless it is practically impossible to access the premises otherwise and the same is supervised by the OSC Karen Police Station.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH DAY OF MAY 2024



DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 1B** 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.

DR. JACOB GAKERI

JUDGE

DRAFT

RULING Nairobi ELRC Cause No. 1710 of 2013 Page 5 of 5

