



Radar Security Limited v Obiele; Radar Limited (Objector) (Appeal E189 of 2022) [2024] KEELRC 1154 (KLR) (3 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1154 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E189 OF 2022
SC RUTTO, J
MAY 3, 2024

BETWEEN

RADAR SECURITY LIMITED APPELLANT

AND

KENNEDY KHATETE OBIELE RESPONDENT

AND

RADAR LIMITED OBJECTOR

RULING

1. By a Notice of Motion dated 5th February 2024 brought under Section 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 22, Rule 54 & 55 and Order 40 Rule 22 of the [Civil Procedure Rules](#), the Objector seeks the following orders:
 - a. Spent.
 - b. That, this Honourable Court be pleased to stay execution of the decree of the Judgment of Hon. S. N. Muchungi (Mrs) delivered on 9th September, 2022 in MCELRC Suit No. E130 of 2018 between *Kennedy Khatete Obiele v Radar Security Services Ltd* pending hearing and determination of this Appeal.
 - c. That, pending hearing and determination of this Application this Honourable Court be pleased to stay execution of the decree of the Judgment of Hon. S. N. Muchungi (Mrs) dated 9th September, 2022 in MCELRC Suit No. E130 of 2018 involving *Kennedy Khatete Obiele v Radar Security Services Limited*.
 - d. That, pending hearing and determination of this Application inter partes the Respondent, its agents, auctioneers or any person acting on its behalf be temporarily restrained from



attaching, advertising for sale, selling, transferring or dealing in any manner whatsoever with the Objector's Radar Limited properties.

2. The grounds in support of the Application are set out in the body of the Motion and the Affidavit sworn on 5th February 2024 by Beryl Odhiambo who describes herself as the Human Resource Manager of Radar Limited, the Objector herein.
3. In brief, Ms. Odhiambo deposes that judgment was delivered on 9th September 2022 in favour of the Respondent for a sum of Kshs.1,275,117.00. In turn, the Respondent obtained a decree from the said judgment and extracted a Warrant of Attachment of moveable property against the Objector.
4. That the Decree Holder's agency known as High Class Auctioneers proclaimed properties belonging to Radar Limited on 2nd February 2024. She contends that the proclaimed goods belong to the Objector absolutely.
5. It is Ms. Odhiambo's contention that the Objector is not a party to the proceedings and its properties should not be used to satisfy the decree herein. According to her, the Objector has established the legal and equitable interest in the whole of the properties proclaimed in execution of the decree.
6. The Respondent opposed the Application through his Replying Affidavit sworn on 28th February 2024. He avers that he was employed by the Appellant who is still the Objector from 23rd January 2013 to 5th January 2017 when he was terminated unlawfully and unfairly.
7. According to the Respondent, the Appellant and the Objector are one and the same company registered as a Security Limited Company under the *Companies Act*.
8. He further asserts that the Appellant and the Objector have one registered contact which is Post Office Box xxxx Nairobi Kenya, Location Argwings Kodhek Road, Kilimani, Email: xxxx.
9. The Respondent further avers that the Appellant and the Objector moved the lower court and filed applications supported by affidavits both sworn by Rina Ondego who stated that she is the Human Resource Manager of the Appellant and also the Objector.
10. That the application dated 16th February 2022 was not in order because the matter in question had not been heard before the Honorable Court.
11. The applications were dismissed on 26th January 2024 by Hon. S. N. Muchungi and High Class Auctioneers moved to proclaim the Respondent's (sic) movable properties after the dismissal of the Objector's application.
12. That High Class Auctioneers moved to the trial court and renewed the Warrants of Attachment. The Auctioneers served their Proclamation Notice dated 1st February 2024 to Radar Security Limited which was received with no objection.
13. The Respondent contends that the Objector who is still the Appellant in the matter, cannot proceed and file another application in the High Court after the dismissal of the same application by the trial court. He termed it an abuse of the court process.
14. According to the Respondent, the Objector could have appealed to this court against the trial court's decision made on 26th January 2024.
15. The Respondent further deposes that the Objector referred to as Radar Limited has not demonstrated any proof that he was not their employee and their intention is just to delay justice and deny him the fruits of the Judgment delivered on 9th September 2022 by the trial court.



16. He maintains that the properties proclaimed by High Class Auctioneers belonged to the Appellant who is still the Objector.

Submissions

17. The Application was canvassed by way of written submissions. The Objector did not file submissions as the same were missing from the Court's physical record and the online portal.
18. On his part, the Respondent has submitted that the Objector has not complied with Order 42 Rule 1 of the *Civil Procedure Rules* Act as it filed the Application on 5th February 2024, while the judgment was delivered on 9th September 2022.
19. Referencing the case of *Kenya Shell Ltd v Kibiru & another* (1986) KLR 401; KAR 1018, the Respondent has further submitted that the Objector has not demonstrated how or what substantial loss it would suffer in the event the Decree is executed.
20. It is the Respondent's further submission that the intended Application has no chance of success because the evidence on record was comprehensively evaluated by the trial court in reaching the verdict.

Analysis and Determination

21. I have considered the issues raised in the Application before me, the grounds in support thereof, the response thereto as well as the rival submissions and to my mind, the singular issue that stands out for determination is whether the Court should allow the Objector's Application thereby restraining the Respondent, his agents, auctioneers or any person acting on its behalf from attaching, advertising for sale, selling, transferring or dealing in any manner whatsoever with its properties.
22. Order 22 Rule 51 of the *Civil Procedure Rules* which is pertinent in determining objection proceedings provides as follows: -
- “ Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all parties to the decree-holder, of his objection to the attachment of such property”.
23. Addressing itself on the issue, the Court had this to say in the case of *Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector)* [2019] eKLR: -
- “ ...the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, inter alia, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached.”
24. And further, in *Arun C. Sharma v Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] eKLR, it was held as follows: -
- “ 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. Has the objector proved



it is entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree?”

25. Fundamentally, the Objector must adduce evidence to show that at the date of the attachment, it had a legal or equitable interest in the property attached in execution of a decree.
26. In the present case, the Objector’s contention is that it is the owner of the proclaimed goods being motor vehicle registration numbers xxxx and xxxx. In support of its case, the Objector attached copies of the logbooks of the said motor vehicles as proof of ownership.
27. I have carefully scrutinized the copies of the log books produced by the Objector and notably, both bear the names of “Radar Systems Limited” as the registered owner of motor vehicle registration numbers xxxx and xxxx. Evidently, this is quite distinct from “Radar Limited”, the Objector herein.
28. Indeed, there is no nexus established between the Objector and ownership of motor vehicle registration numbers xxxx and xxxx to warrant it to claim any interest therefrom.
29. Revisiting the provisions of Order 22 Rule 51 of the *Civil Procedure Rules* aforesaid, the burden was on the Objector to prove that it had a legal or equitable interest in the whole or part of the attached property.
30. As stated herein, there is no proof that the attached motor vehicles bearing registration numbers xxxx and xxxx belong to the Objector, Radar Limited, to justify the objection proceedings herein.
31. Accordingly, I am not satisfied that the Objector has proved its case to the required standard. In the circumstances, I disallow the Objector’s Application dated 5th February 2024, with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF MAY 2024.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Wachakana for the Appellant

Mr. Mwangi for the Respondent

No appearance for the Objector

Millicent Kibet Court Assistant

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 had 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.



STELLA RUTTO
JUDGE

