



**Ogechi v LTI Kisii Safari Inns t/a Kaskazi Beach Hotel; Kisii Safari Inns Limited (Objector) (Cause 12 of 2020) [2024] KEELRC 2310 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2310 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 12 OF 2020  
AK NZEI, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**DANIEL OGECHI ..... DECREE HOLDER**

**AND**

**LTI KISII SAFARI INNS T/A KASKAZI BEACH HOTEL JUDGMENT DEBTOR**

**AND**

**KISII SAFARI INNS LIMITED ..... OBJECTOR**

**RULING**

1. In a Ruling delivered on 22<sup>nd</sup> February 2024 pursuant to the Respondent/judgment Debtor’s Notice of Motion dated 22<sup>nd</sup> June 2023, this Court stated as follows:-

- “5. Matters deponed to by the Claimant/Decree Holder have not been controverted by the Judgment debtor by way of a further affidavit or otherwise. I have noted from the copy of the judgment Debtor’s Certificate of Change of name exhibited by the Decree Holder that Kisii Safari Inns Limited and LTI Kisii Safari Inns Limited refer to one and the same company, only that there has been change of name at some point(s) in time. The judgment debtor appears to have been using the said two names interchangingly as it suits it.
- 6. It is worthy noting that the judgment debtor has not exhibited any certificates of registration (incorporation) to show that there are, indeed, two companies bearing the aforesaid two names separately.
- 7. The bank account in the garnishee bank wherein the attached amount is held is in the name of Kisii Safari Inns, the name to which the judgment debtor changed from LTI Kisii Safari Inns. This Court agrees with the Claimant/



Decree Holder that a reasonable measure of dishonesty has been demonstrated on the part of the judgment debtor. Deliberate misleading of a Court of law by a litigant, for whatever reason, is not only transgressive and unethical, but bears criminal culpability when done on oath, as the case appears to be in this case....”

2. On 20<sup>th</sup> May 2024, the Respondent/judgment debtor filed an evenly dated Notice of Motion, shown to have been filed by KISII SAFARI INNS LIMITED as an “Objector”, seeking the following orders:-
  - a. That a notice of objection be issued in terms of Order 22 Rules 52 of the Civil procedure Rules.
  - b. That costs of the application be provided for.
3. The foregoing is the application before me, and is shown to be based on the supporting affidavit of Dr. Charles G. Otara sworn on 20<sup>th</sup> May 2024. It is deponed in the said affidavit:-
  - a. That the objector is the legal owner of all the proclaimed goods/items listed in a proclamation attached to the supporting affidavit (shown to be dated 14/5/2024).
  - b. That the objector, which is a legal entity, was not aware of all that has been happening till the time auctioneers ascended upon her movables in a purported attachment in execution of a decree.
  - c. That the objector shall suffer irreparable loss and damage if the attachment is allowed to proceed.
4. The application is opposed by the Claimant/Decree Holder vide a replying affidavit sworn on 14<sup>th</sup> June 2024. It is deponed in the said replying affidavit:-
  - a. That the application is bereft of merit and falls short of the cardinal principles of law required for grant of the orders sought.
  - b. That the supporting affidavit of Charles Gekonde Otara is marred with perjury and falsehoods aimed at misdirecting and misleading the Court. That this is the second time the said Charles G. Otara is contemptuously misleading the Court, particulars of such contemptuous falsehoods being affidavits previously sworn herein by the said person (Dr. Charles Gekonde Otara) as a Director of the Respondent/Judgment Debtor company stating that LTI Kisii Safari Inns Limited is distinct and separate from Kisii Safari Inns Limited.
  - c. That from documents filed before this Court, it has emerged that the alleged two companies, LTI Kisii Safari Inns Limited and Kisii Safari Inns Limited, is actually one and the same company, and that only a change of name was effected.
  - d. That in the case of LTI Kisii Safari Inns Ltd & 2 Others -vs- Deutsche Investitions-und Entwicklungsgesellschaft(“Deg”) & Others [2011] eKLR, the Court of Appeal acknowledged the change of name from LTI Kisii Safari Inns Limited to Kisii Safari Inns Limited. That the Court of Appeal even made a reference to the fact that the said Charles G. Otara was party to the resolution which led to the change of name.
  - e. That the said Dr. Charles Gekonde Otara has always been aware of the said change of name of the judgment debtor company.
  - f. That a spot check on whether LTI Kisii Safari Inns Limited and Kisii Safari Inns Limited are two distinct companies on the Business Registration Service on the e-Citizen Portal (BRS) shows that there is only one such company in the portal. That a further run on the judgment



debtor's CR-12 Form reveals that the deponent of the supporting affidavit, Dr. Charles Gekonde Otara, is actually a Director of the company.

- g. That Dr. Charles Gekonde Otara is not only misleading the Court, but is guilty of perjury and the Court should interrogate him further, based on the information indicated at paragraph 15 of the Court of Appeal's aforesaid judgment and documents annexed to the Claimant's replying affidavit herein.
  - h. That Dr. Charles Gekonde Otara's supporting affidavit is a deliberate perjury and misrepresentation before this Court, which should be treated as contempt.
5. Documents annexed to the Claimant/Decree Holder's replying affidavit include an affidavit sworn by Dr. Charles Gekonde Otara as a Director of the judgment Debtor company and filed herein, a copy of the Court of Appeal's aforementioned judgment, the Judgment Debtor's Certificate of Change of Name and a copy of the Respondent/Judgment Debtor's CR-12 Form.
  6. The application herein was presented to this Court under a certificate of urgency on 21<sup>st</sup> May 2024, and although the same was not accompanied by the Notice of Objection contemplated in Order 22 Rule 51 of the Civil Procedure Rules and did not seek any specific orders, I exercised the Court's discretion under Order 22 Rule 52 of the Civil Procedure Rules and granted an interim stay of execution. The Claimant/Decree Holder responded to the application as aforesaid and opposed it.
  7. Order 22 Rule 51 of the Civil procedure Rules provides as follows:-
    - “(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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 the parties and to the Decree Holder of his objection to the attachment of such property.
    - (2) Such notice shall be accompanied by an application supported by an affidavit, and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.
    - (3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.”
  8. As stated in this Court's Ruling delivered on 22<sup>nd</sup> February 2024 and referred to at paragraph 1 of this Ruling, and as demonstrated by the Claimant/Decree Holder in his replying affidavit filed herein, the Respondent/Judgment Debtor and the purported "Objector" herein are one and the same person/entity. The deposition by Dr. Charles G. Otara that the "Objector" has been unaware of all that has been happening till auctioneers ascended upon her movables in purported attachment in execution of decree can only be a false statement made on oath.
  9. Indeed, the record herein is a wash with affidavits sworn by the said Dr. Charles Gekonde Otara in his capacity as a Director of the Respondent/Judgment Debtor Company. Such affidavits include the affidavits sworn on 22/6/2023, 4/5/2023 and 3/10/2022. The said person has, vide his affidavit sworn on 20/5/2024 and filed herein, deposed that he is a director of the "Objector" herein, Kisii Safari Inns Limited. The Respondent/judgment Debtor and the purported "objector" herein being one and the same company, and the said deponent being a director of that company who has all along participated in these proceedings in such capacity, the purported Objector proceedings cannot stand the test of



law, and the application dated 20<sup>th</sup> May 2024 must fail; and the same is hereby dismissed with costs.  
Litigation herein must come to an end.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26<sup>TH</sup> SEPTEMBER 2024**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

.....Decree Holder

.....Respondent

