



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1300 OF 2002

BUSURU RICHARD MARK T/A BUSURU

M M & PARTNERS ARCHITECTS.....CLAIMANT/RESPONDENT

=VERSUS=

AFRO ANGLO INVESTMENTS LIMITED.....RESPONDENT

PETER KAKAI CHELOTI.....1ST INTERESTED PARTY/RESPONDENT

B A OMUSE T/A AFRO ANGLO INVESTMENTS LIMITED....OBJECTOR/APPLICANT

RULING

1. This is the notice of motion dated 28th June 2019 brought under order 51 rule 1, order 22 rule 50, 51 and 52 of the Civil Procedure Rules 2010, Sections 1A, 1B and 3A of the Civil Procedure Act, Cap 21 and all enabling provisions of law.

2. It seeks orders:-

1. Spent.

2. That pending the hearing and determination of this application interpartes and or till further orders of this court, there be a stay of execution of the ruling delivered and or given on the 27th June 2019 and the decree herein dated the 14th October 2003.

3. That the execution, attachment, sale or transfer of the objector's property known as LR NO. 2116/IV/26 Kitale be stayed, set aside and cancelled, together with all consequential orders given by this court.

4. That costs be to the objector.

3. The grounds are on the face of the application and are:-

1. That the decree given on the 14th October 2003 was against a limited liability company, Afro Anglo Investment Limited, in which the objector is a member and director.

3. That as such, the objector's personal property is unavailable for attachment or sale in execution of that decree unless the corporate veil was lifted by leave of this court, which has never been sought or granted.

3. That the execution of the decree by attachment and sale of the objector's property has thus been ongoing as though execution were against a sole proprietor or a firm/partnership whereas that is not the case.

4. That this was first brought to the court's attention vide the application dated 3rd May 2019 but the court upon consideration the same ex parte under certificate of urgency on the 7th May 2019, directed that application awaits the ruling that was delivered on the 27th June 2019.

5. That unless the interim and final orders sought herein are granted the objector's property shall be transferred in execution of the decree herein and the ruling delivered on the 27th June 2019, and the objector shall be disposed of his lawful property without lawful cause.

6. That the decree holder and the 1st interested party have admitted that the full purchase price has not been paid and so the objection proceedings herein have been brought within time.

4. The application is supported by the affidavit of Bonventur Andrew Omuse, a director of the judgment debtor sworn on the 28th June 2019.
5. The application is opposed. There is a replying affidavit sworn by Peter Kakai Cheloti, the interested party/respondent herein sworn on the 25th July 2019.
6. The application was canvassed by oral submissions.
7. It is the objector/applicant case that a company is a corporate entity which bears its own liability. The directors can only bear that liability if the corporate veil has been lifted. No leave was sought to execute against the objector's assets. He prays that the application be allowed.
8. It is the interested party/respondent's case that the orders sought in prayer (3) of the application are not available to the objector/applicant as execution has already been completed. This application is an abuse of the court process as the objector/applicant has been heard on previous applications. Further that there is no evidence that Afro-Anglo Investments Ltd existed as at 3rd December 2007 when the sale took place. He prays that the application be dismissed with costs.
9. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the replying affidavit, the oral submissions made on behalf of the parties and the authorities cited. The issue for determination is whether this application is merited.
10. The objector/applicant relies on a search from the company's registry to show that the said Afro-Anglo Investment Limited is a limited liability company that therefore liability only attaches to the directors once the corporate veil has been lifted. The applicant only relies on the records and nothing else. There is nothing to show that the company existed as a limited liability company on 3/12/2007 when the suit property was sold by public auction.
11. I have gone through the Award by the sole Arbitrator. The claim was against Bonventure Andrew Omuse T/a Afro-Anglo Investments Limited. If the company was indeed a limited liability by then then it should have been sued in its own. It is incumbent upon the objector/applicant to prove that the company existed as a limited liability company as at 3rd December 2007.
12. The objector brings this application under order 22 rules 50, 51 and 52 of the Civil Procedure Rules. I find that the applicant cannot benefit from these provisions as the execution has already been completed. The sale took place in 3rd December 2007.
13. The objector/applicant has previously not raised the issues of ownership of the property on the previous applications dated 27th February 2006 and 25th July 2007. The objection is estopped from raising this issue in the instant application. The decree was pursuant to an arbitration which resulted in a public auction.
14. I find that this is another attempt by the objector/applicant to stop the interested party from enjoying the suit property he brought through a public auction twelve (12) years ago. If the objector/applicant was not satisfied with the ruling of 27th June 2019 all he needed to do was to appeal against the said ruling. In the instant application the objector/applicant seeks that execution be stayed but does not state whether he has filed an appeal. I rely on the case of **Michira t/a Michira & Co. Advocates vs East African Standard No.2 [2002] KLR 63**. In conclusion I find that this application is an abuse of the court process. I find no merit in the same and it is dismissed with costs to the interested party.

It is so ordered.

Dated, signed and delivered in Nairobi on this 9th day of October 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant