



REPUBLIC OF KENYA



KENYA LAW
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**Kamanga v Venus Inn & another; Mahindi Comfy Hotel Limited (Objector)
(Cause 371 of 2017) [2025] KEELRC 1641 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1641 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 371 OF 2017
MA ONYANGO, J
MAY 30, 2025**

BETWEEN

JACKLINE JARENGA KAMANGA CLAIMANT

AND

VENUS INN 1ST RESPONDENT

MAHINDI COMFY HOTEL 2ND RESPONDENT

AND

MAHINDI COMFY HOTEL LIMITED OBJECTOR

RULING

1. Before this Court is an application by way of Notice of Motion dated 21st January, 2025 filed by the Objector herein seeking the following orders:
 - a. That this application be certified as very urgent and service of the same be dispensed with the first instance.
 - b. That there be temporary stay of attachment and/or further execution of all the objector/applicant's business assets/properties comparing.
 - i. 10 Round tables
 - ii. 25 chairs
 - iii. 1 television 49 inches
 - iv. 2 Television sets 39 inches
 - v. 15 tables



- vi. Five Coaches
 - vii. 20 Ordinary chairs
 - viii. One music system
 - ix. Assorted stock of beer in trade
 - x. Proclaimed by the claimant on the 16/01/25 pending the hearing and determination this application inter-parties.
- c. That the attachment/execution process be declared wrongful, illegal and/or null and void and the Claimant be condemned to pay their own cost.
- d. That costs of this application be borne by the Claimant.
2. The Notice of Motion is founded on the grounds set out at the foot of the application and in the supporting affidavit of Catherine Njeri Gitonga, who describes herself in the supporting affidavit as the operations manager of the objector.
3. The grounds on the face of the application as reiterated in the supporting affidavit are that:
- i. That Claimant has wrongfully and/or illegally proclaimed in readiness for attachment the objector/ applicants business assets/ properties.
 - ii. That the Objector/ applicant does not owe the Claimant any money and/or debt.
 - iii. That the objector/ applicant is not the 2nd judgement debtor/ Respondent in the suit herein.
 - iv. That the proclaimed business assets/properties belong and/or are owned by the objector/ applicant and not the 2nd judgement debtor/ Respondent.
 - v. That the Objector/Applicant is a limited liability company and is not liable for any liabilities or judgement debts of the 2nd judgement debtor/ Respondent.
 - vi. That the objector/ applicant is the owner of all the proclaimed business assets/properties which they use to run their Hotel and accommodation business which is dully licensed.
 - vii. That the Claimants agent the auctioneers did not verify whether the said assets belong to the judgement debtor/ defendant herein.
 - viii. That if the attachment is allowed to go on the objector applicant stands to lose their assets yet they are not a party to the present suit, decree or judgement
 - ix. That the illegal actions of the Claimant through their agents will expose the objector/ applicant a lot of suffering and untold hardship.
 - x. That the actions of the Claimant are not only illegal, irregular but also null and void for wrongful attachment as the proclaimed assets don't belong to their 2nd judgement debtor/ Respondent.
 - xi. That it is therefore just and expedient that this application be allowed as prayed.
 - xii. That this application has been brought promptly and in outmost good faith.
 - xiii. That no prejudice will be occasioned to the defendants if the orders sought are granted.



4. The application is opposed by the Claimant/Decree Holder Jackline Jarenga Kamanga who filed a replying affidavit sworn on 20th February, 2025.
5. The Claimant/Decree Holder states that the 2nd Respondent and the Objector are one and the same. That it is within her personal knowledge that the 2nd Respondent filed an application dated 12th June, 2023 seeking to be struck out of the suit and that the ex parte judgment and all consequential orders emanating from the judgment and decree in this suit be set aside or in the alternative, the 2nd Respondent be granted leave to file a defence.
6. The Claimant/Decree Holder further deposes that it is within her personal knowledge that one Annastacia Mumbi swore an affidavit supporting the application dated 12th June, 2023 in which she described herself as one of the directors of the 2nd Respondent and alluded that the 2nd Respondent Mahindi Comfy Hotel started operations as a company from the year 2012, which information was in conformity with the certificate of incorporation annexed and marked by the Applicant herein as EXB CNG '3'.
7. The Claimant/Decree Holder further deposes that it is within her knowledge that the 1st Respondent in its Amended Memorandum of Response filed a witness statement of its manager dated 18th October, 2019 in which the manager stated that the 1st and 2nd Respondents were owned by the late Jackson Gitonga and that pending conclusion of Succession Cause, the 1st Wife Grace Njeri Mahindi would oversee the operations of the 2nd Respondent while the 2nd wife Grace Muthoni Mahindi would oversee the operations of the 2nd Respondent. That Grace Njeri Mahindi is indeed one of the directors/ shareholders of the alleged objector/applicant.
8. The Claimant/Decree Holder states that while she was in employment of the 2nd Respondent who is the Objector/Applicant the name as per NSSF records was Mahindi Comfy Hotel while her employee card was in the name of Mahindi Hotel.
9. That in the court ruling rendered on 29th February, 2024 the court held that the 1st and 2nd Respondents have common directors and therefore not strangers to each other.
10. That as such there is evidence that the 2nd Respondent who is the Objector was aware of the proceedings in this suit but decided to ignore the same.
11. The Claimant/Decree Holder deposes that the instant application is an attempt by the Objector/Applicant to delay and prevent the Claimant/Decree Holder from enjoying her judgment. That the Applicant has come to court with dirty hands and is not deserving of the orders sought in its application.
12. In a further affidavit sworn on 17th March, 2025, Claimant/Decree Holder Jackline Jarenga Kamanga deposed that it is a legal requirement of the *Companies Act* for companies or corporations to have postal addresses and the Objector/Applicant postal address as portrayed in their letterhead in the letter dated 20th January, 2025 (Objector's Annexure "CNG 1") is P.O BOX 812-30100, Eldoret.
13. That the 2nd Judgment Debtor/Respondent's postal address which has always been quoted in all the court documents served upon the 2nd Judgment Debtor/Respondent is similarly 812 -30100, Eldoret as per Exhibit "JJK 10-19" which are copies of the Amended Statement of Claim, copies of invitations to take hearing dates, hearing notices and the affidavits of service.
14. That it is further within her personal knowledge that the 2nd Judgment Debtor/Respondent never refuted the said postal address whenever they were served with court documents.



15. Directions were issued that the application be disposed of by way of written submissions. The Applicant/Objector was, pursuant to its application, granted leave to file a further or supplementary affidavit together with its submissions within 7 days from 24th February, 2025 while the Claimant/Decree Holder was to file submissions within 7 days of service. The Objector did not file any further affidavit. It further did not file any submissions. The Claimant/Decree Holder filed submissions on dated 18th March, 2025.
16. Although the Objector was granted leave to file submissions even after the date of ruling had been fixed, no submissions or supplementary affidavits have been filed to date.

Determination

17. I have considered the application dated 21st January, 2025 together with the grounds and affidavit in support thereof. I have further considered the replying affidavit and the submissions on record. The issues for determination are whether the Objector and 2nd Respondent are separate legal entities and if so, if the Objector is entitled to the prayers in the application.
18. The Claimant/Decree Holder submitted that the 2nd Respondent and the Objector are the same person and therefore the application herein is incompetent, frivolous, vexatious, devoid of merit and an abuse of court process.
19. The 2nd Respondent in this suit is Mahindi Comfy Hotel. The Objector is Mahindi Comfy Hotel Limited. While considering the instant application ex parte, I stated that I was not convinced that the 2nd Respondent and the Objector were not the same entity.
20. As has been demonstrated by the Claimant/Decree Holder, there are documents on record in this court file that prove the Objector and Respondent are one and the same.
21. In the witness statement of Albert Chege Ndung'u, dated 18th October, 2019 in this suit, he stated that he was the general Manager of Venus Inn. He further deposed at paragraph 2 to 6 thereof that:
 2. Venus inn and Mahindi Hotel are businesses which were owned by the late Jackson Gitonga Mahindi and currently they are under the administrators of the estate of the late Jackson Gitonga Mandi succession has never been concluded.
 3. Pending conclusion of the succession cause temporary arrangements have been made that the 1st wife Grace Njeri Mahindi would oversee the operations of Malindi hotel whereas the 2nd wife Grace Muthoni Mahindi would oversee Venus hotel.
 4. The Claimant was an employee of Jackson Gitonga Mahindi and was working for both Venus Inn and Mahindi Hotel as a house keeper but mainly Mandi hotel.
 5. The businesses were never registered but were mere business names being used by the Late Gitonga Malindi in other words they are not separate legal entities from the late Gitonga Mahindi.
 6. The Claimant was placed to work under Mahindi hotel and that is where here salary came from and NSSF paid.
22. It is my finding that the Objector and the 2nd Respondent is one and the same person. It is further my observation that the Application herein is yet another scheme by the Respondents to abuse the process of this court by making false averments after their applications dated 22nd April, 2023, 29th May, 2023 and 12th June, 2023.



23. In the determination of the 2nd Respondent's application dated 12th June, 2023 in which it sought that its name be struck out of these proceedings, the court stated as follows:

This is therefore in my view, one of the cases contemplated by the court in *Shah v Mbogo* when the court stated that the discretion of the court is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.

24. It would be worth repeating the same herein. It is hoped that this is the last this court will be seeing from the Respondents herein because with those instances mentioned above, is it my very humble and respectful opinion that the applicant herein Mahindi Comfy Hotel alias Mahindi Comfy Hotel Limited and its sister company Venus Inn would not deserve any further audience of this court.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

