



Chemurgor v Laico Regency Hotel Limited; Underhill Limited (Objector) (Employment and Labour Relations Cause 2524 of 2016) [2024] KEELRC 323 (KLR) (23 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 323 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2524 OF 2016**

K OCHARO, J

FEBRUARY 23, 2024

BETWEEN

BETTY CHEMURGOR CLAIMANT

AND

LAICO REGENCY HOTEL LIMITED RESPONDENT

AND

UNDERHILL LIMITED OBJECTOR

RULING

Background

1. The Objector/Applicant filed a Chamber Summons application dated 21st December 2022 expressed to be under the provisions of Order 22 Rule 51[1], [2] and [3] of the Civil Procedure Rules principally seeking that the Claimant/Decree Holder or its employees, agents and or servants be restrained by way of an injunction from enforcing against it the decree, warrants of attachment and warrants of sale, issued by this Court.
2. The application is anchored on the grounds set out on the face of it and fortified by those on the supporting affidavit sworn by Ibrahim Adan one of the Directors of the Objector Company.
3. The application is resisted by the Respondent through the Replying affidavit of the Applicant sworn on the 23rd day of January 2023.

The Application

4. The Objector/Applicant contends that its items were proclaimed on 19th December 2022, by the agents of the Claimant/Decree Holder following the issuance of warrants of attachment herein. The



- Claimant is a total stranger to the Objector, as there has been neither a relationship between it and her nor the Respondent and it. The Claimant/Decree Holder has no right to attach its property.
5. The Objector contends further that it leased the Hotel from Libyan Arab African Investments Company Kenya Limited, the owners of the hotel, as such a leasee, it cannot shoulder the liabilities of the Respondent/Judgment Debtor.
 6. The Defendant/Judgment Debtor has no legal or equitable interest in the items proclaimed on 19th December 2022.
 7. Further, the Objector stands to suffer irreparable loss if the execution process that has been commenced on its properties is allowed to proceed. The Objector stands the risk of losing the proclaimed property.
 8. The objector further stated that Libyan African Arab Investments Company Limited is the owner of the Land Reference No. 209/9514 and the Hotel erected thereon.

The Response

9. The Claimant/Decree Holder asserted that through the years, Libya African Arab Investments Limited has not been candid on its relationship with the Respondent. Theirs has been approbating and reprobating. For instance, in the case of *Match Electricals Company Limited v Libyan Arab African Investments Company Limited & Another* [2021] eKLR, it denied being party to a Contract that involved Laico Regency Hotel- Nairobi, alleging that Laico Regency was a different entity from it. The same issue arose in the matter of *Libyan Arab African Investments Company Kenya Limited* [2021] eKLR, a different position was taken.
10. The Claimant/Decree Holder contended that according to the search done at the Registrar of Companies, the Directors of the objector are Advocates practising in the name and style of Wetangula and Company Advocates, the Law Firm that is representing the objector in this matter. Further, the registered office of the objector Company is reflected as housed within the offices of the Law Firm.
11. The Claimant stated further that her contract and the termination letter were all done in the name of Laico Regency Nairobi Hotel. Clearly, the Respondent has been shifting goalposts in respect of its trade name to evade liability.
12. Finally, the Claimant/Decree Holder avers that Articles 3.2, 7.10, 10.5 and 11.1 of the Lease provide that the Objector shall assume liabilities and settle any disputes arising either previously or during the subsistence of the Lease on behalf of the Lessor.

The Objector's Submissions

13. The Objector submitted that Libyan African Arab Investments Company Limited is the owner of the commercial complex which includes the hotel erected Land Reference No. 209/9514. Further, the Objector is not aware of the proprietary interest of "Laico Regency Hotel Limited". The Objector entered into a lease with the said owner of the land and took over the hotel.
14. The Objector contended that the Lessor is a different entity from the Respondent. The concept of a separate legal entity in law must be protected. To support these submissions, the Court was urged to be persuaded by the decision in the case of *Abdulkarim Ali Mohamed v Coast Mail Company Limited & Another*.
15. It was further submitted that for the Claimant to be allowed to execute against the Objector, she first has to prove her claim against Libyan African Arab Investments Company Kenya Limited who are not parties to this suit.



16. In the Match Electricals Limited case[supra], the Arbitrator found that the Libyan Arab African Investments Company Limited was not a party to the contract for the facelift of Laico Regency Hotel -Nairobi, Kenya, between Laico Regency Hotel -Nairobi [LAICO] and Match Electricals.
17. The Objector argues that the scrutiny of Directorship by the Claimant is not relevant to the instant application. In any event, there isn't any bar to Advocates from being Directors of a Company.
18. The Objector asserts that it has a legal title over the proclaimed goods. In addition, it acquired proprietary interest over the properties on Land Reference No. 209/9514. It also pays a consideration of USD 600,000 per year as provided for in the agreement.
19. The properties proclaimed are the Objector's tools of trade not liable to be attached under Section 44 of the *Civil Procedure Act*. The proclamation was therefore illegal. To buttress these submissions, reliance was placed on the case of *Invesco Assurance Co. Ltd v Kinyanjui Njuguna & Co Advocates* [2020] eKLR.
20. Order 22 Rule 54 of the *Civil Procedure Rules* requires a Judgment creditor who has been served with a notice of objection to file a notice of intention to proceed with the attachment, the Claimant/Judgment Creditor didn't file any.

The Claimant's Submissions

21. The Claimant/Decree Holder submitted that is couched in a manner that no doubt places a legal burden on the Objector to prove his or her right over the attached property. To support this point, reliance was placed on the case of *Precast Portal Structures v Kenya Pencil Company Ltd & 2 others*.
22. The Claimant submitted that the lease agreement, that the Objector has placed reliance on, does not support its claim to the proclaimed property. Clauses 3.2, 7.10, 10.5 and 11.5 all contemplated that the Objector was to take past liabilities of the Lessor. The Objector is bound to honour the warrants of attachment in this matter. The import of the lease agreement is that it is holding the property in issue in trust for the judgment debtor.
23. The Claimant submitted further that the Objector failed to discharge its evidential burden that it holds the property solely on its account for the attached goods to be released. To buttress these submissions, reliance was placed on the decision in *Martin Barasa Lutilo v Foton East Africa Limited & another* [2018]eKLR.
24. It was further argued that the objection proceedings herein are a sham, only intended to deny the Claimant the benefits of the decree and the regular judgment herein. To fortify this submission the Court was urged to be persuaded by the decision in *Grace Wanjiku Kageni Waiyaki vs. Pegrume Limited & Anor.* [2019] eKLR.

Analysis and determination

25. I have considered the Chamber Summons dated 21st December 2022, the Grounds thereof, the Supporting Affidavit sworn on 21st December 2022, the Claimant/Decree Holder's Replying Affidavit sworn on 23rd January 2023, the respective submissions filed by each party and authorities relied on. I distil a single issue for determination in the instant application, whether the Objector's application herein should succeed or fail.
26. Section 3..... of the *Civil Procedure Act*, being one of the most important provisions relating to the execution of decree, bestows upon the court executing the decree to determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and such questions may not be adjudicated in a separate suit. The jurisdiction



in my view, is intended to prevent unnecessary litigation and to achieve speedy disposal of the question arising for discussion to the execution, discharge or satisfaction of the decree.

27. In case there is any objection raised impeding the due execution of a decree made by a court of competent jurisdiction, the provisions of Order 22 Rule 51 enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits.
28. Experience has shown that the difficulties of litigants in Kenya begin when they have obtained a decree. Courts must be careful to ensure that the process of the Court and the laws of procedure are not abused by Judgment- debtors in such a way as to make the courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.
29. Order 22 Rule 51 provides thus: -
 - “Objection to attachment [Order 22, rule 51.]
 - (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.”
30. In my view, the provision without ambiguity provides for who can initiate objection proceedings and what that person will be required to show for his or her objection to succeed. The objector must show that he or she is entitled to, or has a legal or equitable right over, the property in issue.
31. The Objector placed before this Court a lease agreement to fortify its case that Auctioneers under the instructions of the Claimant had wrongfully attached properties that do not belong to the judgment-debtor. I note that it argued that it has a proprietary interest in the proclaimed property. What comes out clearly from the agreement is that the items attached are allegedly the property of the Lessor. In my view, therefore, the agreement does not really aid the Objector’s case but dampens it, for the question that crops up is, why didn’t the “owner” initiate the objection proceedings? In what capacity has the Objector set out to advance the “owner’s” proprietary rights?
32. Under the provisions of Order 22 Rule 51, the Objector herein was duty-bound to demonstrate either that it is entitled to the property in issue or that it has a legal or equitable interest in the property. The Objector has not in any clear way explained to the Court where it falls under the three categories of objectors contemplated under the Order. I cannot hesitate to conclude that in the circumstances of this matter, the Objector falls under none of them.



33. In the case of *Precast Portal Structures v Kenya Pencil Company Ltd & 2 others* [1993] eKLR, the Court held;

“The burden is on the objector to prove and establish his right to have the attached property released from attachment. On the evidential material placed before the Court, a release from attachment may be made if the Court is satisfied

[1] that the property was not, when attached, held by the judgment -debtor for himself, or by some other person in trust for the judgment debtor; or

[2] that the objector holds that property on his own account.”

34. In my view, the objection proceedings herein are nothing but an attempt to inhibit or delay the Claimant/Decree-Holder from realizing the fruits of his judgment. I see it in no other way. The objection is dismissed with costs to the Claimant-Decree-Holder, as a consequence.

35. Orders accordingly.

READ, DELIVERED AND SIGNED THIS 23RD DAY OF FEBRUARY, 2024.

OCHARO, KEBIRA.

JUDGE

In the presence of:

Ms Noor for Mr. Damocha for Objector/Applicant

Mr. Chege holding brief for M/s Maina for Claimant/Decree Holder

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 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.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

