



Ogechi v Lti Kisii Safari Inn Ltd t/a Kaskazi Beach Hotel; Barclays Bank a.k.a. Absa Bank Ltd (Garnishee) (Cause 12 of 2020) [2024] KEELRC 1378 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 1378 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 12 OF 2020
AK NZEI, J
FEBRUARY 22, 2024**

BETWEEN

DANIEL OGECHI CLAIMANT

AND

LTI KISII SAFARI INN LTD T/A KASKAZI BEACH HOTEL RESPONDENT

AND

BARCLAYS BANK A.K.A. ABSA BANK LTD GARNISHEE

RULING

1. Before me is the Respondent/Applicant's Notice of Motion dated 22nd June 2023 and filed on 29th June 2023. The application is expressed to be brought under Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), and the following orders are being sought:-
 - a. that there be a temporary stay of execution of the ruling and orders made on 15th June 2023 pending hearing and determination of the application inter-partes.
 - b. that upon inter-partes hearing, there be a temporary stay of execution of the ruling and orders made on 15/6/2023 pending the hearing and determination of appeal.
 - c. that costs of the application be provided for.
2. The application is predicated on the supporting affidavit of Dr. Charles Gekonde Otara sworn on 22nd June 2022. It is deponed in the said affidavit:-
 - a. that the Garnishee (order) was made against LTI Kisii Safari Inn Limited, whereas the Respondent is Kisii Safari Inns Limited.
 - b. that the Judgment debtor has preferred an appeal against the whole of the said Ruling and decision by filing a Notice of Appeal.



- c. that the decree holder is likely to execute the said order against the wrong party who has never been a party to these proceedings.
 - d. that if the orders made on 15th June 2023 are executed, the intended appeal shall be rendered nugatory.
 - e. that the Garnishee's failure to respond to the Garnishee application should not be a reason to execute a wrong party who has never been party to the proceedings.
3. The application is opposed by the Claimant/Decree Holder vide a replying affidavit sworn by himself on 14th September 2023. It is stated in the said replying affidavit:-
- a. that the supporting affidavit of Dr. Charles Gekonde Otara is marred with perjury and falsehoods aimed at misdirecting and misleading the Court. That the said deponent has sworn under oath that LTI Kisii Safari Inns Limited is distinct and separate from Kisii Safari Inns Limited, which is a false statement sworn under oath.
 - b. that from the documents filed herein, it has emerged that the two companies, LTI Kisii Safari Inn Limited and Kisii Safari Inns Limited, is one and the same company, and that only a change of name was affected. That the deposition that the two are different companies is a false statement and perjury on the part of Dr. Charles Gekonde Otara.
 - c. that in the case of *LTI Safari Inns Ltd & 2 Others vs. Deutsche Investitions-Und Entwicklungsgesellschaft ('Deg') & 2 Others* [2011] eKLR, the Court of Appeal acknowledged the change of name from LTI Kisii Safari Inns Limited to Kisii Safari Inns Limited; and stated as follows at paragraph 15 of the said Judgment;-

“ Meanwhile, by a special resolution passed on 20th April, 1991, the company changed its name from Kisii Safari Inns Ltd to LTI Kisii Safari Inns Ltd and a certificate of change of name was given on 3rd May 1991 to that effect. By further two resolutions passed on 20th May, 1991, the share capital of the company was increased to Kshs. 105,000,000 and the Articles of Association drastically altered.”
 - d. that a search conducted on the business registration service on e-citizen by the decree holder's Advocates has revealed that there only exists one company but not two; and that the Judgment debtor's CR-12 reveals that Dr. Charles Gekonde Otara is a director of the company.
 - e. that perjury amounts to contempt of Court, which is also a criminal offence.
 - f. that deliberate misrepresentation by the said Dr. Charles Gekonde Otara amounts to belittling this Court.
 - g. that the Judgment debtor has not demonstrated any willingness to deposit security as provided by law.
4. Documents annexed to the aforesaid replying affidavit include a copy of the aforementioned Court of Appeal decision, the Judgment Debtor's Certificate of Change of name dated 3rd May 1991, and a copy of the Judgment debtor's CR-12.
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 interchangeably 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 of money 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 apparent 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 matter.
8. Further, this Court has noted that the Judgment debtor has not given any security or committed to furnishing any security for the due performance of the decree herein pursuant to Order 42 Rule 6(2) of the Civil Procedure Rules, and has not demonstrated that it will suffer substantial loss unless the stay order sought is granted. This Court's power and discretion to grant a stay of execution pending appeal is fettered by the conditions set out in the aforesaid sub-rule. The judgment debtor has not satisfied those conditions, and its application must, therefore, fail.
9. Consequently, the judgment debtor's application dated 22/6/2023 is hereby dismissed with costs.
10. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND FEBRUARY 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.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Applicant

.....Respondent

