



**Chimbagu v A Niaz & Sons Limited (Cause 630 of 2016)  
[2024] KEELRC 1544 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1544 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 630 OF 2016**

**AK NZEI, J  
JUNE 20, 2024**

**BETWEEN**

**BAKARI BOKI CHIMBAGU ..... CLAIMANT**

**AND**

**A NIAZ & SONS LIMITED ..... RESPONDENT**

**RULING**

1. The suit herein was determined vide this Court's judgment delivered on 9/6/2022, whereby the Claimant was awarded a total sum of kshs. 630,006, costs of the suit and interest. Subsequently, the Respondent/judgment debtor filed a Notice of Motion dated 17/8/2022, seeking leave to satisfy the decretal sum by monthly instalments of kshs. 25,000. The application was opposed by the Claimant/decree holder, and upon considering the same, the Court dismissed the said application vide a Ruling delivered herein on 8/12/2022.
2. On 7/11/2023, the Objector herein, Assad Arshad Niaz, filed an evenly dated Notice of Objection and a Notice of Motion pursuant to Order 22 Rules 51,52 & 53 of the [Civil Procedure Rules](#). The following orders were sought in the said application:-
  - a. that the application be certified urgent, and be heard ex-parte in the first instance.
  - b. that the Court be pleased to issue a temporary stay of execution proceedings pending hearing and determination of the application.
  - c. that the Court be pleased to raise/lift the attachment of all the attached Motor vehicles in execution of the decree herein as being the properties of the Objector/Applicant and not of the Defendant/Judgment debtor.
  - d. that the Court be pleased to make any other or further order as it may deem fit and just to meet the ends of justice.



- e. that costs of the application be provided for.
3. The application is based on the supporting affidavit of the Objector, Assad Arshad Niaz, sworn on 7/11/2023. It is deponed in the said affidavit that the proclaimed motor vehicle Nos. KAE 835H, KAW 115U, KAT 907X and KAP 170Z, belong to the Objector and not to the judgment debtor. Copies of the said motor vehicles' log books are annexed to the supporting affidavit.
4. It is further deponed in the Objector's said affidavit that the Objector is not, and has never been a director of the Respondent/judgment debtor Company. (A copy of the Respondent/Judgment debtor's CR 12, dated 5/11/2023, is annexed to the supporting affidavit).
5. The application is opposed by the Claimant/decreed holder vide his replying affidavit sworn on 21/11/2023. It is deponed in the said affidavit, inter-alia:-
- a. that the Respondent/judgment debtor, through its Managing Director, one Assad Arshad Niaz(the Objector herein), had as at 26/7/2023 paid a total of kshs. 350,000 in part liquidation of the decretal sum herein. (Copies of 2 bankers cheques and a forwarding letter dated 5/9/2022 are annexed to the replying affidavit).
- b. that after requests for settlement of the balance of the decretal sum were not responded to by the Respondent/Judgment debtor's Advocates, the Claimant's Advocates on record applied for execution of the Court's decree, and that thereupon, Auctioneers proceeded to the Respondent/judgment debtor's place of business and proclaimed the judgment debtor's movable properties.
- c. that as evidenced by a letter from the Registrar of Companies dated 8/11/2016, the Respondent's Directors are Assad Arshad Niaz and Arshad Al-haq Niaz, who are father and son. (A copy of the Registrar of Companies' said letter/CR 12 dated 8/11/2016 is annexed to the replying affidavit).
- d. that the Objector herein, Assad Arshad Niaz, was the Claimant's employer and director of A. Niaz & Sons Limited, the Respondent herein.
- e. that the Claimant is all aware that all motor vehicles, Trucks, Bulldozers and other Machines of the Respondent company are registered in the personal names of the company's directors in order to avert the Respondent company from paying tax to the government.
- f. that the Objector should be stopped by an order of the Court from delaying the lawful execution of the Court's decree.
- g. that the Objector has come to Court with unclean hands
6. It is to be noted that the Claimant/decreed holder also filed a Notice of Intention to proceed with Attachment on 22/11/2023. This he did pursuant to Order 22 Rule 54 of the [\*Civil Procedure Rules\*](#).
7. Further, it is to be noted that the Objector did not controvert and/or rebut any of the matters deponed to in the Claimant/decreed holder's replying affidavit. The Objector, Assad Arshad Niaz, is shown to have been a director of the Respondent/judgment debtor as at 8/11/2016. The suit herein was filed on 26/8/2016. The Objector was, therefore, a director of the Respondent/judgment debtor company at the time the suit herein was filed against the said company. He has not told the Court when he ceased to be a director. The copy of the Respondent's CR12 annexed to the Objector's supporting affidavit filed herein is dated 5/11/2023, some two days before filing of the Notice of Objection and the Notice of



Motion application herein, and bears his name. The proclamation of the attached movable properties herein is shown to be dated 4/11/2023.

8. The Objector deponed as follows in his supporting affidavit sworn in support of the application herein:-

“3....I am not a party to the claimant’s claim herein nor have I had any business dealings with the claimant on the suit claim by the claimant against the Respondent, and never have I been a director of the Respondent.”

9. In view of all the foregoing, the Objector has made a false statement on oath, as he was and still is a director of the Respondent company which is the judgment debtor herein. As already stated in this Ruling, the Objector has not told the court when he ceased being a director of the judgment debtor company, and has not rebutted and/or controverted the claimant’s assertion that the attached motor vehicles belong to the Judgment debtor company, though registered in the Objector’s name. I do agree with the claimant that the Objector has come to Court with unclean hands. He has not demonstrated that the orders sought are merited.

10. I decline to lift the attachment; and hereby dismiss the Notice of Motion dated 7/11/2023 with costs. Litigation herein must come to an end.

11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 20<sup>TH</sup> JUNE 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:

.....Claimant

.....Respondent

