



**Kunga v Okungu t/a Rock Resort Kisumu; George Philip Investment Ltd (Objector)
(Cause 18 of 2016) [2023] KEELRC 2499 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2499 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 18 OF 2016
S RADIDO, J
OCTOBER 18, 2023**

BETWEEN

JOAB ODHIAMBO KUNGA CLAIMANT

AND

**GEORGE JOSHUA ONGONGA OKUNGU T/A ROCK RESORT
KISUMU RESPONDENT**

AND

GEORGE PHILIP INVESTMENT LTD OBJECTOR

RULING

1. In a judgment delivered on 9 November 2022, the Court found that the Respondent unfairly terminated the employment of the Claimant and awarded him a total of Kshs 220,500/-.
2. The Claimant taxed his costs and thereafter, he moved to execute, and warrants of sale were issued on 7 August 2023.
3. On 11 August 2023, George Philip Investment Ltd (the Objector) filed a Motion seeking orders:
 - (1) ...
 - (2) ...
 - (3) That this Honourable Court be and is hereby pleased to make a declaration that the goods proclaimed by Bridgelake Auctioneers Services vide proclamation dated 8th August 2023 belong to the objector.
 - (4) That the Honourable Court be and is hereby pleased to lift, vacate/or set aside the proclamation undertaken by Bridgelake Auctioneer Services under the proclamation dated 8th August 2023 on instructions from the Claimant in its entirety.



- (5) That the costs of the application be provided.
4. The grounds in support of the application were that the proclaimed properties solely belonged to the Objector; the Respondent had no interest in the property whatsoever; the Objector was not a party to the suit; the Respondent was not a legal person capable of being sued and that the Objector's property rights as protected under Article 40 of *the Constitution* stood to be violated.
 5. The Claimant filed a replying affidavit in opposition to the Motion asserting that the Objector had no locus standi to institute the application since it had changed its name from George Phillip Investments Ltd to George Philip Investment Ltd in 2008.
 6. The Objector made brief oral submissions on 3 October 2023, urging the Court to allow the objection because the Claimant's replying affidavit had been filed out of the prescribed time and without leave.
 7. The Court has considered the application, affidavits, and brief oral submissions.
 8. Even without consideration of the Claimant's replying affidavit, the Objection application was a non-starter.
 9. One, the Objector has not demonstrated any legal, valid, or beneficial interest in the proclaimed goods through receipt(s), motor vehicle registration certificates, or other means of ownership.
 10. Two, the Respondent was sued as the proprietor and/or owner of the business known as Rock Resort, Kisumu.
 11. The said resort operates within a defined location within the County of Kisumu and the Objector did not even remotely suggest that the proclamation was not carried out at the location where the Respondent operated the business.
 12. Three, under the current Constitutional dispensation, a person can institute legal proceedings against any person, whether incorporated or not incorporated.
 13. Indeed, under the *Employment Act*, 2007, an employer is defined to include a manager or agent of the employee.
 14. The dispute leading to the judgment was an employment dispute and it has been admitted that George Joshua Ongonga is a director of the Objector thus an inference can be drawn of a relationship of agency/manager as contemplated under section 2 of the *Employment Act*.

Conclusion and Orders

15. In light of the above, the Court finds no merit in the Motion dated 11 August 2023, and it is dismissed with costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 18TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

