



**Kisali v Omido; Ayesa (Objector) (Cause 16 of 2016)
[2022] KEELRC 13554 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13554 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 16 OF 2016
MN NDUMA, J
DECEMBER 15, 2022**

BETWEEN

HENRY KEVERENGE KISALI PLAINTIFF

AND

JANET ASAMBO OMIDO RESPONDENT

AND

JUDITH AYESA OBJECTOR

RULING

1. By a notice of motion application dated August 25, 2022, the applicant seeks an order in the following terms:-
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. That this honourable court be pleased to lift the purported proclamation of the objector's household items by BEMAC Auctioneers on August 25, 2022 pursuant to a decree in this suit to which the objector is not a judgment debtor or a party to the suit.
 6. That the costs of the application be provided.
2. The application is premised on grounds set out on the face of the application and in the supporting affidavit of Judith Ayesa, the objector, which may be summarized that the objector is the legal owner of the attached goods and is not a party to the suit. That BEMAC Auctioneers erroneously attached



- the objector's goods on August 25, 2022 at her residential house at Muthaiga Nairobi County. That the auctioneer was not granted access to the premises but they proceeded to issue a proclamation notice at the gate valid for 7 days. That the objector is not indebted to the judgment holder. That the proclamation is an abuse of the court process and it be lifted.
3. That the defendants have since left the country for the United States of America on December 13, 2019 and August 9, 2019 respectively as copies of their passports show. That they closed their business when they left the country.
 4. That the objector's family will suffer irreparable loss and damage if the proclamation is not lifted. That the suit was filed against Ultimate Engineering Limited but the proclamation surprisingly names one Janet Asambo Omido as the respondent in her personal capacity. That the respondent has never been served with an application lifting the veil of the company (respondent).
 5. That the proclamation is mischievous and it be lifted forthwith.
 6. A replying affidavit was filed by one Henry Keverenge Kisali the claimant.
 7. The deponent states that the auctioneers are lawfully executing the order of the court sealed on June 16, 2022.
 8. The deponent denies having proclaimed the objector's property but states that he proclaimed the defendant's movable property.
 9. That the defendant left the country to defeat ends of justice.
 10. That the defendant was on February 20, 2020 directed by the court to deposit security pending hearing and determination on an application dated March 3, 2020. That the defendant left the country without complying with the court order.
 11. That an order was issued by the court on June 16, 2022, granting leave to the plaintiff to execute against the directors of Ultimate Engineering Limited.
 12. That the advocates for the objector are involved in defeating the ends of justice. That the advocate is now in the same premises which was owned by Ultimate Engineering Limited.
 13. That the application has no merit and it be dismissed with costs.
 14. Parties made oral submissions in the matter and the only issue for determination is whether there is proof that the proclaimed household goods belong to one Janet Asambo Onmido who was joined to the suit as the 2nd defendant, in a ruling by Hon Ann Mwaure in which the judge lifted the corporate veil of Ultimate Engineering Company Limited, the 1st defendant.
 15. The objector has in her deposition claimed possession and ownership of the household goods proclaimed by the auctioneer on behalf of the judgment debtor.
 16. The burden has shifted to the judgment debtor to prove on a balance of probability that the proclaimed goods belong to the 2nd defendant Janet Asembo Omido, who has since left the country.
 17. The judgment debtor has not through the replying affidavit of Heryny Kisali discharged the onus of rebuttal, by demonstrating with conclusive proof that indeed the proclaimed goods do not belong to the objector but they belong to Janet Asambo Omido, the 2nd defendant.
 18. That there is no iota of evidence in the 24 paragraph replying affidavit that demonstrates that the proclaimed goods belong to the 2nd defendant and not to the objector who is in physical possession and enjoyment of the household goods.



19. Accordingly, the application is meritorious and is granted with no order as to costs.
20. Accordingly, the court has lifted the proclamation of the objector's household goods by BEMAC Auctioneers on August 25, 2022 with immediate effect. The judgment debtor/plaintiff to pay the costs of the application.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 15TH DAY OF DECEMBER, 2022.

Mathews N Nduma

Judge

Appearances

M/s Kinyua for objector.

Auctioneer in person

Ekale – Court clerk

