



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 544 of 2015

TONY BEN OLANG AKELLA.....CLAIMANT/ DECREE HOLDER

VERSUS

RURAL DEVELOPMENT SOLUTION LIMITED.....RESPONDENT

AND

SVEIN RENE.....OBJECTOR/APPLICANT

RULING

The, objector, Svein Rene filed application dated 17th November, 2020 under the provisions of Order 22 Rule 51, 52, 53, Order 51 Rule 1 & 13 of the civil procedure rules, 2010, Section 1A, 1B and 3A, 63 (e) of the Civil Procedure Act and seeking the following orders; :

1. Spent.
2. That the honourable court be pleased to order stay of execution of the judgment entered herein and any consequential orders emanating therefrom pending the hearing and determination of this application
3. THAT the honourable court be pleased to lift the proclamation and the attachment levied on the objector's items/goods/chatels/vehicles/furniture by Moran Auctioneers, agents of the claimant/decree Holder
4. The costs of this Application be provided for.
 1. On 12th November, 2020 at 4:00 pm Mran Auctioneers proclaimed the objectors assorted office goods/items including Motor Vehicle registration number KBQ 872P and KBZ 984T.
 2. The items proclaimed belong to the objector/applicant.
 3. That the Judgment debtor does not have any legal or equitable interest in the property proclaimed by the said auctioneers.
 4. That the Objector Applicant stands to suffer irreparable damage should the proclaimed items and vehicles be sold.

The Application is further supported by the Affidavit of **SVEIN RENE**, the objector, sworn on 17th November, 2020 where he that he was a director of the respondent which company was allegedly dissolved before the judgement was entered and attached documents confirming the dissolution. The properties of the respondent were distributed, and as such the decree holder has no right to proclaim against the Objector who is a stranger to the proceedings. He pleads the application be allowed as he shall suffer irreparable damages should the decree holders agents Morn Auctioneers proceed and sell the proclaimed properties.

In response, the Claimant filed his Replying Affidavit sworn on 24th November, 2020 and avers that the Objector has not met the threshold for the grant of the Orders sought in their Application, the objection proceedings are mischievous and a scheme to defeat the process of execution. The objector fully participated in the proceedings in the capacity of a Chairman/ Director of the respondent/ Judgment debtor.

He also avers that service of summons has always been effected through the house of the Objector and as such he cannot purport to differentiate his office and his residence at the time of execution. The Claimant/Judgment holder avers that the Objector respondent tried to change the name of the Judgment/ Debtor during the preceding of this suit and eventually dissolved without notifying the court before the

judgment was delivered.

The Claimant as the decree holder following a valid judgement of this court. the Objector has failed to prove that he is entitled to the reliefs sought and urges the court to find that the property proclaimed belongs to the Judgment debtor and in turn dismisses the objection and allow the sale of the attached property towards the satisfaction of the decree holder and the instant application be dismissed with costs.

When the matter came up for hearing, there was no appearance by the Objector or his Advocate. The Claimant's advocate orally submitted on the instant application.

Determination

On the pleadings, evidence, submissions and authorities cited by the parties, I find the following issues for determination: -

- a) Whether the court should grant stay of execution herein;**
- b) Whether the court should lift the attachment levied on the objectors goods; and**
- c) Who should pay costs.**

The instant application is moved by the objector.

The core of objection proceedings is to allow the objector to adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property(s) attached. For this purpose, he may raise an objection on the ground, *inter alia*, that he has some beneficial interest in the property. A beneficial interest is as much an interest within the meaning of the Rules as a legal interest in the property attached as held in **Stephen Kiprotich Koech v Edwin K. Barchilei; Joel Sitienei (Objector) [2019] eKLR** and in the case of **Precast Portal Structures versus Kenya Pencil Company Ltd & 2 others [1993] eKLR** the court held that;

The burden is on the objector to prove and establish his right to have the attached property released from the attachment. On the evidential material 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.*

In this case, the objector asserts that the goods attached belong to him and the Respondent has no legal or equitable interest in the proclaimed property. The objector filed a copy of a log book for Motor Vehicle Registration No KBZ 984T and a motor vehicle search for Motor Vehicle Registration Number KBQ 872 P. On the other hand, the Claimant maintains that the proclaimed goods belong to the Judgment Debtor. To support his averment, he attached Motor vehicle search results for Motor Vehicle Registration No KBZ 984T and Motor Vehicle Registration Number KBQ 872 P.

The National Transport and Safety Authority (NTSA) Motor vehicle search results attached by the Claimant reveals that the owner of the two Motor vehicles as at 5th November 2020 was Rural Development Solutions. The copy of the Log Book for Motor Vehicle Registration No KBZ 984T also confirms that its registered owner is Rural Development Solutions, the Judgment Debtor herein. Further, the Motor vehicle search result for Motor Vehicle Registration Number KBQ 872 P filed by the objector confirms that as at 12th November 2020, the registered owner was Rural Development Solutions, The Judgment Debtor herein. Neither of the parties has filed any document(s) to prove ownership of the other proclaimed goods.

On the evidence before court, the registered owner of the two Motor Vehicles is the Judgment Debtor. As for the other proclaimed goods (sofa sets, assorted office seats and photocopier machine), the onus was on the objector to produce evidence to prove that he was the rightful owner. He was at liberty to do so by availing receipts or any other document. Failure to avail such evidence means that his objections to the attachment lack merit. These are the properties of the judgement debtor.

The Objector has raised the issue of dissolution of the Judgment Debtor. This occurred post judgement herein and to prove his assertions, the objector filed Certificate of Incorporation, Certificate of change of name, and a copy of **Gazette notice No 6414**. The Claimant disputed this claim and averred that it is a mischievous scheme whose sole aim is to defeat the process of execution. He posits that on 29th October 2019 the Objector testified in court in his capacity as a director of Rural Development Solutions and did not disclose to the court that the company had changed its name and eventually been dissolved. Further that the allegedly dissolved company filed submissions and thereafter filed a Notice of Appeal. He posits that the conduct of the Objector is fraudulent and questionable in that he failed/neglected to make material disclosure.

The documents produced by the Objector in support of the dissolution allegations are not in dispute. That the Judgment Debtor changed its name from Rural Development Solutions Limited to Rudeso Holding Limited on 25th July 2018. It is also not in dispute that the said Rudeso Holding Limited was dissolved via a gazette notice no 6414. This is *prima facie* evidence of dissolution.

On the prayer by the Claimant to proceed with the sale of the attached properties towards satisfaction of the Decree, on the evidence of dissolution of the respondent and establishment that the proclaimed goods are registered under the Respondent debtor, execution should proceed. Save, with dissolution, this alters the process of execution.

Property in dissolved companies is regulated under the Companies Act, 2015. Section 905 of the Companies Act, 2015 states;

905.(1) Property that, immediately before the dissolution of a company had not been distributed or disclaimed, vests in the State with effect from the dissolution of the company.

(2) For the purposes of this section, property of the former company includes leasehold property and all other rights vested in or held on trust for the former company, but do not include property held by the former company on trust for any other person.

(3) The Attorney General shall, on becoming aware of the vesting of the property, give public notice of the vesting, setting out the name of the former company and particulars of the property.

(4) If property is vested in the State under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its realisation, if it had been in the hands of the company immediately before its dissolution, or any other person claiming through that person, may apply to the Court for an order-

a. Vesting all or part of the property in that person;

or

b. for payment to that person by the State of compensation of an amount not greater than the value of the property.

It is trite law that a dissolved company cannot hold or possess property. one cannot execute against a dissolved company as held in **Suisse Limited & another v Habib Bank Ag Zurich [2014] eKLR** that;;

However, if the property had actually become bona vacantia as the Plaintiffs had contended and which the Plaintiffs did not demonstrate, the right party to have sought the injunctive orders against the Defendant's purported exercise of statutory sale would have been the Honourable the Attorney General and not the Plaintiffs.

This court is not privy to information as to whether an application under section 905 (4) of the Companies Act or an application to restore the dissolved company has been filed. As such the court is not armed with the necessary information to give further directions on the execution process. The court will say no more on this issue.

The Objector's major prayer is the lifting of the proclamation and attachment on the goods proclaimed on 12th November 2020. The Objector brought this application on the basis that he has a legal title to the proclaimed goods. However, there is no proof to support such assertions as the proclaimed goods are registered under the Judgment Debtor.

Accordingly, the Objector application dated 17th November 2020 is found without merit and is hereby dismissed with costs to the claimant.

DELIVERED IN OPEN COURT AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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