



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 557 OF 2017

CLEOPHAS OMUGA.....CLAIMANT

VERSUS

HABO GROUP OF COMPANIES.....RESPONDENT

HGC HABO GROUP LIMITED.....OBJECTOR

RULING

1. On 21st May 2019, I delivered judgment in favour of the Claimant in the sum of Kshs. 403,750 plus costs and interest.
2. Upon commencement of execution of the judgment by the Claimant, the Objector filed objection proceedings on the ground that all the attached assets listed by High Class Auctioneers in the Proclamation of Attachment dated 15th October 2020 namely; office cabinets, office chairs, sofa sets and computers belong solely and absolutely to the Objector.
3. The Objector therefore asks the Court to stop the attachment, stating that it will suffer great financial loss should the attachment proceed.
4. In an affidavit sworn by the Objector's Legal Assistant/Acting Human Resource Officer, Omboko Sammy on 29th October 2020, it is deponed that the proclaimed assets belong to the Objector not to the Respondent.
5. It is further deponed that the Objector is a distinct legal entity and is not in any way related to the Respondent.
6. In his replying affidavit sworn on 27th November 2020, the Claimant states that the Objector has failed to demonstrate any legal or equitable interest over the proclaimed goods.
7. The Claimant further states that the Objector and the Respondent share the same directors/shareholders and that the Respondent is simply using the certificate of incorporation of one of its companies to defeat execution.
8. The Objector's objection is brought under Order 22 Rule 51(1) of the Civil Procedure Rules which provides as follows:

51. (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.
9. The law is that the Objector bears the burden of demonstrating to the Court that they indeed have a legal or an equitable interest in the attached property (see *Akiba Bank Ltd v Jetha & Sons Ltd [2005] eKLR* and *Kennedy Njuguna Mwangi v Collins Kiprono Bett & others [2018] eKLR*).
10. The Objector pursues these proceedings on two fronts; first, that the Claimant's Notice of Intention to Proceed with Execution was served outside the prescribed time, without leave of the Court and second, that the Objector and the Respondent are distinct entities in law.
11. Regarding the first issue of time, the only thing I will say is that under Article 159(2)(d) of the Constitution of Kenya, 2010, a rule of procedure setting the time within which parties are to file their respective notices cannot be used to determine objection proceedings *in limine*.
12. It seems to me that the second issue on the relationship between the Objector and the Respondent is not before me at this stage. I say so

because there is no application for piercing of the corporate veil of either the Objector or the Respondent.

13. What the Objector was required to do was to demonstrate to the Court that it has a legal or an equitable interest in the attached property.
14. In this regard, the Court is not persuaded by the submission made by Counsel for the Objector that because the Proclamation Notice bears a rubber stamp in the name of the CEO of the Objector, the legal and evidential burden is lifted from the Objector.
15. I hold this position for two reasons; first, the rubber stamp was not authenticated nor was the name of the said CEO disclosed and second, on the face of it, the Proclamation Notice could have been received either directly by the Judgment Debtor or by an agent. At any rate, the legal and evidential burden imposed on an Objector by Order 22 Rule 51(1) of the Civil Procedure Rules cannot shift to a Decree Holder by the mere imprint of a rubber stamp on a Proclamation Notice.
16. The Objector, having moved the Court in these proceedings, ought to have produced evidence to show its interest in the attached property. Having failed to do so, the objection fails and execution will proceed.
17. The Objector will meet the costs of these proceedings.
18. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 4TH DAY OF FEBRUARY 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyange for the Claimant

Mr. Wameyo for the Objector