



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 52 OF 2018

JOSEPHAT RANDA NYATIENO.....CLAIMANT/DECREE HOLDER

VERSUS

VYAS HAULIERS LIMITED.....RESPONDENT/JUDGMENT DEBTOR

DHIMAHI TRANSPORT LIMITED.....OBJECTOR

RULING

1. On 9th April 2019, I entered judgment in favour of the Claimant as against the Respondent in the following terms:
 - a) 4 months' salary in compensation.....Kshs. 80,000
 - b) 1 month's salary in lieu of notice.....20,000
 - c) Costs plus interest
2. At taxation, the Taxing Master awarded the Claimant costs amounting to Kshs. 132,099.80.
3. Upon commencement of execution, the Objector filed objection proceedings which are the subject of this ruling.
4. By a Notice of Motion dated 26th November 2020, the Objector asks the Court to make a finding that the attached property and all other moveable property as listed in the Proclamation of Attachment by Trophy Auctioneers dated 20th November 2020 belong to the Objector solely and absolutely and/or that the Objector has an equitable interest over the said moveable property.
5. The Objector also asks the Court to lift the attachment levied by Trophy Auctioneers on 20th November 2020.
6. The application is supported by an affidavit sworn by the Objector's Director, Sahel Amer Swaleh and is based on the following grounds:
 - a) That the listed moveable property attached by Trophy Auctioneers is the property of the Objector, Dhimani Transport Limited, which has legal and/or equitable interest over the said property;
 - b) That the Objector will suffer immense prejudice and great financial loss if the attachment herein is not lifted;
 - c) That the properties attached are not leased to the Judgment Debtor by the Objector;
 - d) That the Objector having not been a party to the suit and there being no judgment against the Objector, the Objector cannot be called upon to make good the judgment on record;
 - e) That it is only fair, just and in the interest of justice that the Court grants the orders sought.
7. In response to the Objector's application, the Claimant swore an affidavit on 30th November 2020. He depones that among the moveable properties proclaimed by the Auctioneers are motor vehicles registration number KCC 538N, Mercedes Benz and KAW 824E, Renault which are registered in the name of the Respondent.
8. The Claimant terms the Objector's application as defective and bad in law and asks the Court to dismiss it with costs.

9. The issue before the Court is whether the Objector has made out a case for lifting of the attachment levied by Trophy Auctioneers on 20th November 2020.

10. Order 22 Rule 51(1) of the Civil Procedure Rules 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.

11. Jurisprudence on this issue is to the effect that in objection proceedings, the Objector bears the burden of proving legal or equitable interest in the attached property (see ***Patrick Kingori Waruguongo v James Nderitu & another [2014] eKLR, Stephen Kiprotich Koech v Edwin K. Barchlei & Joel Sitienei [2019] eKLR*** and ***Chai Trading Co. Limited v Muli Mwanzia & 2 others [2019] eKLR***).

12. It is therefore not enough for an objector to state that the attached property does not belong to the judgement debtor, they must show by cogent evidence, that they themselves have a definite interest in the attached property.

13. According to the evidence on record, only motor vehicle registration number KBY 789V (item number 2 on the Proclamation of Attachment) is registered in the name of the Objector.

14. The corollary is that the Objector has failed to establish any interest in the rest of the attached property.

15. I therefore lift the attachment on motor vehicle registration number KBY 789V and direct that execution with regard to the rest of the property listed in the subject Proclamation of Attachment will proceed.

16. The Objector will meet the costs of this application.

17. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 4TH DAY OF MARCH 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:

Miss Katu for the Claimant/Decree Holder

Mr. Odindiko for the Objector