



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1318 OF 2015

VIOLET MBEYU.....CLAIMANT

VERSUS

WASINI RESORTS LIMITED.....RESPONDENT

AND

CYTONN INVESTMENT PARTNERS TWENTY LLP.....OBJECTOR

RULING

The objector filed application dated 17th March, 2021 and seeking for orders that the items proclaimed on 15th March, 2021 by the agents/auctioneers of the claimant belong to the objector and same is unlawful.

The application is supported by the Affidavit of Jennifer Ndaisi Solovea and on the grounds that pursuant to a Share Purchase Agreement executed between the Objector and Tiribe Estate Limited, Tinkerbird Securities Limited and Proactive Enterprises Limited and former owners of the respondent, the objector obtained equitable, beneficial and legal ownership of all assets previously owned by the respondent. the objector has a recognisable legal, beneficial and equitable interest in the property now proclaimed on 15th March, 2021.

Ms Solovea also avers that she is the statutory manager for the objector and the claimant moved through auctioneers and proclaimed objector's goods which is unlawful as such goods belong to the objector following a Share Purchase Agreement with the respondent. The legal title to the proclaimed goods belongs to the objector and such should not be sold to satisfy any decree against the respondent.

The claimant filed Ground of Opposition that the objector has not demonstrated that it is the registered owner of the proclaimed assets and does not have legal interest in the whole part of any property proclaimed in execution of the decree. The exhibited share purchase agreement is an attempt by the respondent to use one of its shareholders to defeat execution and deny the claimant the fruits of her judgement and should be dismissed.

Both parties filed written submissions.

The objector submitted that the claim herein was settled by consent and the claimant has since proceeded to proclaim the objector's goods and property in execution of the judgement whereas such good do not belong to the respondent but the objector. There is a share purchase agreement executed way before the consent judgement and passing legal, equitable and beneficial title to the proclaimed goods to the objector.

The objector also submitted that under Order 22 Rule 51(1) of the Civil Procedure rules any person claiming to be entitled to or to have a legal or equitable interest in whole of pat of any property attached in execution of a decree can file objection with the court stopping the attachment and sale of the same. The objection has such stake in the proclaimed goods since 2018 when the share purchase agreement was executed s held in **Arun C Sharma v Ashana Raikundalia t/a A. Raikundaria & Co. Advocates & 4 others [2014] eKLR.**

The Share Purchase Agreement is executed by the parties conferred ownership of the attached proclaimed goods and property. The purchaser and objector is not liable for the liabilities of the respondent as held in **New Kenya Co-operative Creameries Ltd v Omari Mzee Segal Kenya Creameries Ltd [2020] eKLR** and that where the objector has discharged the burden that the attached property belongs to it, the same shall be discharged and cannot be sold in execution against a judgement-debtor.

The claimant submitted that following a consent judgement herein, the claimant commenced execution proceedings against the respondent to satisfy the decree. The instructed auctioneers proclaimed some of the respondent's movable assets.

The objector does not have a legal interest in whole in in part of the proclaimed properties. Any party asserting ownership must prove

through documentary evidence as held in **Akiba Bank v Jetha & Sons Limited [2005] eKLR**. The claim by the objector that it became the owner of all properties of the respondent following a share purchase agreement is not proof of ownership of the proclaimed goods. It is only an agreement that the objector bought shares in the respondent company and there is no evidence that the agreement was completed as held in **National Social Security Fund Board of Trustees v Central Bank of Kenya & 4 others [2015] eKLR** that save for the agreement, there was nothing to show payment and passing of ownership as held in **Stephen Kipkoech v Edwin K Barchilei; Joel Sitienei (Objector) [2019] eKLR**.

Determination

Under Order 22 rule 51 it provides that;

(1) 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.

(2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.

In objection proceedings stopping the attachment and sale of property following a court decree, an objector must therefore have a legal or equitable interest in whole or in part of any property attached in execution. The court is then required *to investigate the objection with the like power as regards examination of the Objector, and in all other respects as if he was party to the suit. and in the case of Chotabhai M. Patel v Chaprabhi Patel [1958] EA it was held that;*

b) The Objector shall adduce evidence to show that at the date of attachment he had some interest in the property attached.

c) The question to be decided is, whether on the date of attachment, the Judgment Debtor or the Objector was in possession, or where the court is satisfied that the property was in the possession of the Objector, it must be found whether he held it on his own account or in trust for the Judgment Debtor. The sole question to be investigated is, thus, one of possession of, and some interest in the property.

d) Questions of legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment Debtor or some other person. To that extent the title may be part of the inquiry.

The evidence of ownership is imperative. Such should be followed with possession and interest making the question of legal right and title relevant.

In this regard, the objector has claimed legal, equitable and beneficial title to the proclaimed properties on the grounds that there is a Share Purchase Agreement between the respondent and objector. That such agreement was executed prior to the consent judgement and in the year 2018.

Upon interrogation of the entire record, the Share Purchase Agreement is undated. Save for the year 2018 it does not reflect that this was executed prior to the consent judgement herein.

In any event, even where the share purchase agreement was dated, which is not the case here, an agreement on its own is not sufficient evidence of legal right and title.

In the case of **National Social Security Fund Board of Trustees v Central Bank Of Kenya & 4 others [2015] eKLR** in addressing similar objections as herein, the court held that it could not be ascertained that the objector was the lawful proprietor of shares addressed in the purchase agreement without proof of payment or other records of ownership having been passed over.

In this case, without any other record and evidence of any legal right and title over the proclaimed goods/properties in execution of the decree herein against the respondent, the objector application herein is found without merit.

Accordingly, application dated 17th March, 2021 is hereby dismissed. Execution of the decree shall proceed. The objector shall pay the claimant costs herein.

DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF MAY, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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