



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 66 OF 2002

KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS UNION.....CLAIMANT

VERSUS

GITITU COFFEE GROWERS COOPERATIVE LTD.....RESPONDENT

AND

NYAKIRI COFFEE FARMERS CO-OPERATIVE SOCIETY LTD.....OBJECTOR

RULING

1. By its Notice of Motion dated 5th October 2021, the Objector seeks the following reliefs:

- a) Leave for its Advocates to come on record on its behalf;
- b) A temporary injunction restraining the Claimant and its agents, Bemac Auctioneers, their employees or agents from interfering with, taking possession of or in any manner disposing of the properties listed on the Proclamation dated 27th September 2021;
- c) Stay of execution and/or suspension with respect to the Proclamation dated 27th September 2021 and the Warrants of Attachment of moveable property in execution of money decree dated 24th September 2021;
- d) That the Proclamation dated 27th September 2021 and the Warrants of Attachment of moveable property in execution of money decree dated 24th September 2021 be lifted in respect of the following factories and/or properties:
 - i) Nyakabugi-Plot No. Githunguri/Nyaga/731;
 - ii) Nyaga-Plot No. Githunguri/Nyaga/553;
 - iii) Ndithiati-Plot No. Githunguri/Nyaga/ 734 & 740;
 - iv) Giagithu-Plot No. Githunguri/Kimathi 652 & 666;
 - v) Rioki-Plot No. Githunguri/Rioki 462, 624 & 741;

together with the land, machinery and any plot attached to the listed areas of operation, equipment and all the developments thereto.

2. The application is supported by an affidavit sworn by the Objector's Chairman, Josphat Kahura and is based on the following grounds:

- a) That the Objector had never been notified of the proceedings in respect of the instant matter. It was not a party to the matter wherein execution proceedings have been commenced and are nearing conclusion;
- b) That in the aforementioned proceedings and the resultant proceedings, the property of the Objector is being proclaimed and is under grave danger of being attached. The said properties do not belong to the Respondent;

c) That the proclamation by the Claimant is illegal, irregular and fraudulent;

d) That on the basis of the above facts, the Objector prays for audience of the Court at the earliest possible instance;

e) That the Objector has moved the Court without delay. Further, no party in the instant matter will suffer irreparable harm or prejudice if the Court stops the intended proclamation.

3. 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 the decree-holder of his objection to the attachment of such property.

4. There is no argument that in objection proceedings such as the present ones, the Objector bears the burden of demonstrating to the Court that they have a legal or equitable interest in the attached property (see ***Kennedy Njuguna Mwangi v Collins Kiprono Bett & others [2018] eKLR***).

5. In the submissions filed on behalf of the Objector, this undisputed legal position is acknowledged. However, the Objector did not provide any evidence to support its claim that it has an interest in the subject property.

6. The Objector therefore failed to convince the Court that it has any interest in the listed property. That being the case, the Objector's application dated 5th October 2021 fails and is disallowed.

7. I make no order for costs.

8. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF DECEMBER 2021

LINNET NDOLO

JUDGE

Appearance:

Mr. Thiong'o for the Claimant

Mr. Mege for the Respondent

Mr. Kwoba h/b Mr. Gitonga for the Objector