



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 179 OF 2016

JONATHAN MULEWA MKARE.....CLAIMANT

VS

HABO GROUP OF COMPANIES.....RESPONDENT

AND

AWANAD ENTERPRISES LIMITED.....1ST OBJECTOR

BVA G-FREIGHT LOGISTICS LIMITED.....2ND OBJECTOR

RULING

1. This ruling relates to two separate applications filed by the 1st and 2nd Objectors on 23rd August 2019.
2. In its application, the 1st Objector, Awanad Enterprises Limited seeks the following:
 - a) A finding that the attached and proclaimed moveable property listed by Five Eleven Traders Auctioneers in the proclamation of attachment of moveable property dated 16th August 2019 namely, motor vehicle registration number KHMA 691H, is owned by Awanad Enterprises Limited, the 1st Objector and/or the said 1st Objector has equitable interest in the said property;
 - b) An order stopping the attachment of the above property by Five Eleven Auctioneers.
3. In a similar application the 2nd Objector, BVA G-Fright Limited seeks the following:
 - a) A finding that that the attached and proclaimed moveable property listed by Five Eleven Traders Auctioneers in the proclamation of attachment of moveable property dated 16th August 2019 namely; 15 office tables, 8 telephone heads, 25 executive chairs, 8 desktop computers, 1 steel chair and 1 photocopy machine, are solely and absolutely owned by BVA G-Fright Limited, the 2nd Objector and/or the said 2nd Objector has equitable interest in the said property;
 - b) An order stopping the attachment of the above property by Five Eleven Traders Auctioneers.
4. The Objectors' twin applications are based on the following grounds:
 - a) That the attached properties belong to the Objectors and not the Respondent;
 - b) That the Objectors will suffer great and immense financial loss if the attachment is not stopped.
5. The 1st Objector's application is supported by an affidavit sworn by its Director, Roselyn Mulatya while the 2nd Objector's application is supported by an affidavit sworn by its General Manager, Augustine Omondi.
6. Mulatya filed a copy of the logbook for motor vehicle registration number KHMA 691H and the 1st Objector's Registration Certificate, PIN Certificate VAT Certificate as well as particulars of directors and shareholders.
7. Omondi filed the 2nd Objector's Certificate of Incorporation, PIN Certificate, particulars of directors and shareholders as well as the 2nd Objector's office lease agreement dated 25th July 2017.

8. The Claimant's response to the objection is contained in a replying affidavit sworn by his Advocate, Kitonga O. Kiiva on 27th January 2020.

9. Counsel terms the present applications as an attempt by the Respondent to deny the Claimant the fruits of his judgment for the following reasons:

a) The Objector Companies and the Respondent are intricately intertwined with the Respondent being the holding company of multiple companies, inclusive of the Objectors; the registration and/or set up having been created to defeat any form of liability from being attached to the Respondent and/or subsidiary company;

b) The Objectors have failed to provide any proof of ownership of the assets listed in the applications and to demonstrate if the said assets correspond to the items proclaimed by the Auctioneer.

10. Counsel states that the applications are an afterthought having been filed months after judgment.

11. The issue for determination in these applications is whether the Objectors have established a legal or equitable interest in the attached property.

12. 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.

13. As held in *Chai Trading Co. Limited v Muli Mwanzia & 2 others [2019] eKLR* in objection proceedings, it is upon the objector(s) to prove ownership of the subject property. It is not enough for an objector to simply state that the property does not belong to the judgement debtor; the objector must show a definite interest in the said property.

14. With regard to motor vehicle registration number KHMA 691H, the 1st Objector, Awanad Enterprises Limited produced a copy of log book showing that the said motor vehicle is owned by the 1st Objector jointly with Diamond Trust Bank Kenya Limited.

15. On the other hand, the 2nd Objector, BVA G-Freight Logistics Limited did not produce any documentary evidence to support its claim over the attached office furniture and equipment namely; 15 office tables, 8 telephone heads, 25 executive chairs, 8 desktop computers, 1 steel chair and 1 photocopy machine.

16. The 2nd Objector has therefore failed to establish any interest in the said property.

17. In his response to the objection, the Claimant makes a general statement to the effect that the Objectors and the Respondent are intricately intertwined with the Respondent being the holding company of multiple companies, including the Objectors and suggests an attempt to avoid liability.

18. There is however no application for piercing of the corporate veil before the Court and I will therefore not go into the Claimant's allegations at this stage.

19. Based on the evidence presented to the Court I make the following orders:

a) The 1st Objector's application dated 23rd August 2019, in as far as it seeks a declaration that motor vehicle registration number KHMA 691H does not belong to the Respondent is allowed;

b) The attachment on motor vehicle registration number KHMA 691H is hereby lifted;

c) The 2nd Objector's application dated 23rd August 2019, in as far as it seeks a declaration that the listed office furniture and equipment namely; 15 office tables, 8 telephone heads, 25 executive chairs, 8 desktop computers, 1 steel chair and 1 photocopy machine do not belong to the Respondent is dismissed;

d) Execution with regard to the said office furniture and equipment namely; 15 office tables, 8 telephone heads, 25 executive chairs, 8 desktop computers, 1 steel chair and 1 photocopy machine may proceed.

e) Each party will bear their own costs.

20. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF JULY 2020

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. Kitonga for the Claimant

Mr. Wameyo for the Objectors