

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CASE NO. 220 OF 2018

NELSON THEURI KIMOTHO.....CLAIMANT

VERSUS

ANCHOR GROUP OF COMPANIES.....RESPONDENT/JUDGMENT DEBTOR

ANCHOR FLOUR MILLS COMPANY LIMITED.....OBJECTOR

RULING

1. The Objector has filed a motion in which it seeks stay of execution under Order 22 Rule 63 of the Civil Procedure Rules to the attachment and sale of moveable property attached in execution of decree in this case. The objector seeks the following orders:-

- i. THAT the proclamation dated 11th June 2020 by Chador Auctioneers was unlawful.
- ii. THAT the items proclaimed on 11th June 2020 by the agents of the Plaintiff/Decree holder belong to the Objector.
- iii. THAT the Defendant/Judgement Debtor has no legal or equitable interest in the items proclaimed on 11th June 2020.
- iv. THAT costs of this Application be provided for,

The application is grounded on the following ground: that the proclamation done on 11th June 2020 was against the ANCHOR GROUP OF COMPANIES the Defendant/Judgement Debtor herein while the property proclaimed on 11th June 2020 belongs to the Objector; that the Defendant/Judgement Debtor does not have any legal or equitable interest in the property proclaimed and that the Defendant/Judgement Debtor is unknown and/or non-existent to the Objector – ANCHOR FLOUR MILLS COMPANY LIMITED which is a distinct legal entity.

2. The application was opposed by the Claimant who filed an affidavit in reply. In the affidavit he deponed that Giraffe Ark Game Lodge which was a division of Anchor Group of Companies issued a final dues calculation sheet with a clear letter head showing all the companies under the mother company Anchor Group of Companies and that Anchor Flour Millers is under the Anchor Group of Companies, the defendant herein. The Claimant deponed that a further scrutiny in the spirit of lifting the corporate veil, the directors of the objector are a wife and son of GM Kariuki (deceased) who was during his lifetime the Claimant's boss and a director of Anchor Group of Companies. He deponed that the objector's claim that this company is different from the defendant is aimed at causing confusion and defeating justice in this matter and that the attachment is lawful and hence the objection should be dismissed with costs.

3. The Objector's advocate submitted in court in the absence of the Claimant that the attachment was unprocedural as the Claimant attached the Objector's goods and the attachment ought to be lifted. It was submitted that the Claimant had sued the Anchor Group of Companies and that the Objector is Anchor Flour Mills Company Limited. The Objector submitted that the attachment be lifted as being unlawful as the Claimant was working for a different company which he not sued. The Objector prayed that the application be allowed with costs.

4. The motion is what is the norm in objection proceedings. The objector – in this case Anchor Flour Mills Company Limited asserts the goods attached belong to it and not the Respondent's. Other than attaching the certificate of incorporation of Anchor Flour Mills Company Limited and the proclamation notice, there is no document attached that can show the goods attached indeed belong to the Objector. The essence of objection proceedings dictates that the objector must adduce evidence to show that at the date of the attachment there was a legal or equitable interest in the property attached. For this purpose one can attach receipts showing purchase, a logbook or the like. In this case there being no nexus shown between the Objector and the goods attached I find and hold that the objection is misplaced and I dismiss the objection proceedings with costs to the Claimant. Execution may proceed.

It is so ordered.

Dated and delivered at Nyeri this 19th day of October 2020

Nzioki wa Makau

JUDGE