



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 131 OF 2016

(Consolidated with Kisumu Cause No. 130 of 2016, Kisumu Cause No. 132 of 2016 and Kisumu Cause No. 133 of 2016)

DAVID AMBULI NGOTACLAIMANT

V

UNIVERSAL NEWSPAPERS DISTRIBUTORS LIMITED.....RESPONDENT

AND

EBRAHIM ABDUL ZARIMOBJECTOR

RULING

1. On or around 24 September 2020, Lister Auctioneers moved to execute the judgment and decree of this Court and among the properties proclaimed were 2 motor vehicles and household items.
2. On 30 September 2020, Ebrahim Abdul Zarim (the Objector) filed a Motion seeking orders
 1. ...
 2. ..
 3. **THAT** the Honourable Court be pleased to raise the proclamation and/or attachment of motor vehicles registration numbers KBF 145K, KBS 762S and household items namely one flat-screen TV, two sofa sets, one dining table and one radio proclaimed by Messrs Lister Auctioneers in execution of the decree dated 30th April 2020.
 4. **THAT** the Honourable Court be pleased to order that motor vehicles registration numbers KBF 145K, KBS 762S and household items namely one flat-screen TV, two sofa sets, one dining table and one radio proclaimed by Messrs Lister Auctioneers in execution of the decree dated 30th April 2020 be released to the Objector.
 5. **THAT** the costs of this application be awarded to the Objector.
3. The Claimant filed a Notice of Intention to proceed with Execution and Sale and replying affidavit on 23 October 2020.
4. Pursuant to directives from the Court, the following documents were also filed
 - a. Claimant's submissions on 2 November 2020.
 - b. Objector's submissions on (should have been filed/served by 10 November 2020).
5. In support of the Motion, the Objector asserted that the proclaimed motor vehicles belonged to her while the household items were owned by the estate of her deceased husband (Dahya Abdulhussein Ebrahim) which had been bequeathed to her and, therefore, were exempt from attachment by dint of section 44(1)(x) of the Civil Procedure Act, 2010.
6. The Objector also contended that the Claimant was aware that Respondent had ceased operations in 2015 and had no attachable properties.

7. Lastly, the Objector maintained that she was a separate person from the Respondent and consequently it was unlawful to attach her properties (copies of vehicle registration records were exhibited).
8. Resisting the Motion, the Claimant deposed in the replying affidavit that the Motion was fatally defective and an abuse of the court process and that the Objector was a director of the Respondent.
9. On the merits, the Claimant asserted that the Objector being the closest surviving relative of the deceased was the legal representative of the estate of Dahya Abdulhussein Ebrahim and was liable under section 83 of the Law of Succession Act to pay out of the estate the decretal sums.
10. Further, the Claimant countered that the Objector had not established legal ownership over the proclaimed properties
11. The Court has considered the Motion, affidavits and submissions.
12. The Objector has produced *prima facie* evidence regarding the ownership of motor-vehicle number KBF 145K. It is registered under her name.
13. Motor vehicle registration number KBS 762J is under the name of Sammy Traders Ltd. No nexus was disclosed between this company, the Objector and the Respondent.
14. These 2 motor vehicles, the Court so finds were unlawfully proclaimed. Regrettably, the auctioneers did not carry out due diligence on the ownership of these properties before moving to proclaim.
15. In the Motion and the supporting affidavit, there was a reference to motor vehicle registration number KBS 762S but no supporting ownership records were placed before the Court.
16. If there was a typing error leading to confusion between KBS 762J and KBS 762S, the Court would have been minded to stay the proclamation until there due diligence on the ownership is conducted and disclosed to the Court.
17. In respect to the household items, the Claimant was under an evidential burden to demonstrate that the Respondent had a legal or evidential nexus with the items and the premises from where the proclamation/attachment was carried out.
18. The ownership of the premises where the proclamation was conducted not disclosed. It would therefore be legally imprudent for the Court to give its imprimatur to the action by the auctioneer.
19. In light of the foregoing, the Court finds merit in the Motion and orders
 - (a) THAT proclamation/attachment on 30 April 2020 of motor vehicles KBF 145K, KBS 762J and households items namely one flat-screen TV, two sofa sets, one dining table and the radio as proclaimed by Messrs Lister Auctioneer be raised.
 - (b) THAT the Auctioneer releases motor vehicles KBF 145K, KBS 762J and households items namely one flat-screen TV, two sofa sets, one dining table and the radio to the Objector forthwith.
 - (c) THAT the Objector files through an affidavit ownership records of motor vehicle registration number KBS 762S within the next 5 days.
 - (d) The Cause be mentioned on 7 December 2020 to confirm compliance.
20. The Claimant/Auctioneer did not carry out due diligence on the proclaimed properties. They are directed to pay the Objector's costs of the Motion.

Delivered through Microsoft teams, dated and signed in Kisumu on this 27th day of November 2020.

Radido Stephen

Judge

Appearances

For Claimant Mwakio Kirwa & Co. Advocates

For Objector Simon Wachira & Co. Advocates

Court Assistant Chrispo Aura