



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1235 OF 2015

EMILIO KIRIMI NJERU.....CLAIMANT

v

NEW BAKERS LIMITED.....RESPONDENT

AND

NEW BAKOR MUTHAIGA BAKERS LTD.....OBJECTOR

RULING

1. New Bakor Muthaiga Bakers Ltd (Objector) moved the Court on 3 June 2019 to challenge the warrants, proclamation and attachment of its properties in execution of a judgment/decree issued on or around 23 May 2019.
2. On the same day, the Court granted interim stay of execution pending *inter partes* hearing on 10 June 2019.
3. The Claimant filed a replying affidavit in opposition to the objection application on 10 June 2019, and because the Objector sought for time to file a further affidavit, the *inter partes* hearing was rescheduled to 26 June 2019.
4. The Objector filed a further affidavit on 12 June 2019 and the Court heard submissions on the scheduled date.
5. It is not disputed that the Objector and the Respondent are related companies, sharing shareholders/directors.
6. It is also not disputed that the Claimant moved to execute from premises leased out to the Objector. The Respondent initially operated its business from the same premises before a surrender of lease was effected.
7. Although the Objector and the Respondent share directors, in company law, they have distinct and separate juristic personalities.
8. Without clear evidence that the proclaimed properties were owned by the Respondent and/or that the Respondent was still operating from the premises where the proclamation was carried out, it is the view of the Court that the execution against the Objector was irregular.
9. The Court will therefore issue an order setting aside the execution.
10. The Court notes that the Claimant and Respondent reached a consent on settlement of the decretal amount and payment of auctioneer's charges and that a consent was filed in Court on 26 June 2019.
11. The Court orders
 - (a) The proclamation and attachment including the warrants issued on 23 May 2019 are hereby set aside.
12. Each party to bear own costs of the objection proceedings.

Delivered, dated and signed in Nairobi on this 15th day of July 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Nyabena instructed by Nyabena Nyakundi & Co. Advocates

For Respondent Githinji Mwangi & Associates Advocates

For Objector Mr. Siagi instructed by Moses N. Siagi & Co. Advocates

Court Assistant Lindsey