



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 657 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 22nd October, 2019)

JUDITH KAGAI SHILLINGI.....PLAINTIFF

VERSUS

HARUN NAYA.....DEFENDANT

AND

SHIKHA NAYAR.....OBJECTOR

RULING

1. The Objector Shikha Nayar filed these objection proceedings on 2/10/2019 under Certificate of Urgency through Kiplangat & Associates contending that the proclamation carried out by the Auctioneer on motor vehicle KBZ 442 V on 25.9.2019 be set aside.
2. The Objector contends that the proclaimed household goods and motor vehicle belong to him and should be released to her.
3. The Objector avers that she has equitable and legal interest in the said goods and will suffer irreparable damage unless the orders sought are granted.
4. The Objector annexed a lease agreement dated 31/1/2017 showing that she is in occupation of the apartment No. D2 where the proclamation was done. She also annexed receipts to show she has been paying rent for the said premises and therefore has the exclusive possession of items in the suit premises.
5. The Objector further annexed an undated transfer form from KRA showing transfer of motor vehicle KBZ 442V to the Objector. The form however bears no date and it is not clear whether it has been executed or not.
6. The Decree Holder objected to the application by the Objector and filed Grounds of Objection on 8/10/2019.
7. The Decree Holder in his oral submissions in Court also pointed out there is no evidence of ownership of the motor vehicle KBZ 442 V by the Objector as no log book was exhibited in Court.
8. On the issue of the lease agreement, he has also submitted that the lease has not been registered as provided under the Stamp Duty Act and is not registered at the Lands Office and neither has stamp duty been paid.
9. I have considered the averments of both Parties. Under Section 19(1) and (2) of Cap 480 Laws of Kenya:-

“subject to the provisions of subsection (3) of this section and to the provisions of sections 20 and 21, no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever, except:-

a) in criminal proceedings; and

b) in civil proceedings by a collector to recover stamp duty,

unless it is duly stamped.....

10. The import of the above provisions and which is couched in mandatory terms, the lease agreement which is not registered cannot be used in this Court as evidence.

11. The lease the Objector therefore wishes to rely on to show she is in possession of the apartment where the proclamation was carried on remains of no evidential value.

12. As for the issue of the motor vehicle, the Objector seeks to rely on an undated transfer form. There is only one document which is of evidential value in proving ownership of a motor vehicle and this is a log book. In any event, the Objector has presented before Court an undated unexecuted transfer form, which has no evidential value.

13. In the circumstances, the evidence before court by the Objector does not point to any ownership legal or otherwise by the Objector of the proclaimed goods. The Application has no merit and therefore is dismissed accordingly.

Dated and delivered in open Court this 22nd day of October, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties