



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 111 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 9th March, 2018)

MARTIN BARASA LUTIL.....APPLICANT/DECREE HOLDER

-VERSUS-

FOTON EAST AFRICA LIMITED.....JUDGEMENT DEBTOR

KING TOP INDUSTRY LIMITED.....OBJECTOR

RULING

1. This ruling is in respect of Objection Proceedings lodged in this Court on 16/11/2017 by the Objector herein King Top Industry Limited. The objection proceedings were filed through a Notice of Motion brought under Order 22 rule 51 of the Civil Procedure Rules Section 28 of the Civil Procedure Act and all enabling provisions of law.
2. The Objector/Applicant sought orders that the goods proclaimed herein are theirs and not for the Judgment Debtor. They averred that they are not parties to this suit and so sought by injunction an order restraining the selling and disposing of goods attached on 15th November 2017 belonging to them who are not the Judgment Debtor.
3. The application is based on the grounds that they were never a party to this claim and that there was an attempt to execute warrants against the Judgment Debtor Messers General Rift Valley Auctioneers on 15/8/2017 the outcome which remains unknown.
4. They aver that the premises which were broken into on 15/11/2017 by General Rift Valley Auctioneers have been occupied by them since February 2017 as per the lease marked ZWJ3 and has never been shared by the Judgment Debtor and their company. They therefore aver that the properties attached belong to them and they seek their release to them.
5. The application is also supported by the supporting affidavit sworn by one ZHI WEI JIN the Director of the Objector Company who has deponed that the Auctioneers came into their premises along Mombasa Road and proclaimed their goods as per the proclamation notice marked ZWJ1. They contend that the goods proclaimed belong to them and not the Judgment Debtor.
6. The Claimant Decree Holder herein opposed this application. He filed his replying affidavit on 29.11.2017 deponing that the Objector has not proved averments in his annexure XWJZ. The Applicant wants the Objector to prove the averments made. The Applicant contends that the Objector is working in cahoot with the Judgment Debtor.
7. I have examined the averments of both parties. The Objector has submitted a lease agreement as proof that the premises where the goods were proclaimed are theirs and therefore the goods belong to them.
8. The goods proclaimed on 15/11/2017 include some Motor vehicle parts, engines and radiators. Those proclaimed on 16/8/2017 include motor vehicles and office furniture. The only evidence adduced by the Objector as proof that these items are his is the lease agreement. Indeed, for this Court to find for the Objector, he must prove that the items proclaimed are his and the only way to prove this is through purchase receipts for the items and log books for the motor vehicles. The Objector has not attempted to prove this.
9. I therefore find that the objection proceedings lack merit. I dismiss them and order that execution proceeds. Costs of this application be borne by the Objector.

Dated and delivered in open Court this **9th day of March, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Koima holding brief for Onduso for Objector

No appearance for Respondent