



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NUMBER 1782 OF 2014**

**AUGUSTUS MBUSYA NDILO.....CLAIMANT/DECREE HOLDER**

**VERSUS**

**SWEDKEN TOURS.....RESPONDENT/JUDGEMENT DEBTOR**

**AND**

**SWEDKEN KENYA TRAVEL AND TOURS LIMITED.....1<sup>ST</sup> OBJECTOR**

**SAMUEL NGETHA CHUMA.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. By an application dated 19<sup>th</sup> May, 2017 the objector sought stay of execution of the decree of this court on the ground that the property proclaimed by the agents of the claimant, namely Moran Auctioneers belong to the objectors.

2. The application was supported by the affidavit of one Dr Philomen Kiprop Chebon who deponed on the main that:

*a. That the 1<sup>st</sup> Objector herein is a limited liability company which was incorporated under the Companies Act Cap 486 Laws of Kenya on the 24<sup>th</sup> August, 2015. The 1<sup>st</sup> Objector deals primarily with provision of professional and reliable travel and tour solutions as well as taxi cab services.*

*b. That the 1<sup>st</sup> Objector operates the taxi cab service using a fleet of vehicle which are leased from their respective registered owners for consideration. In this instance, the 2<sup>nd</sup> Objector herein is the registered owner of Motor Vehicle Registration Number KCF 448L which vehicle has been leased to the 1<sup>st</sup> Objector.*

*c. That the 1<sup>st</sup> Objector operates from its office situated at Fatima Court Flat number 9 (Old) Marcus Garvey road off Arwings Kodhek road which property is also known as L. R. Number 1/822 Argwings –Kodhek road.*

*d. That the 1<sup>st</sup> Objector is the lawful proprietor having legal title and possession of 4 computers containing data, databases, tracking and monitoring programs of the movement of its fleet at any given time, office desks and 14 chairs, 2 printers all which are used by the 1<sup>st</sup> Objector's staff in the carrying out of its trade.*

*e. That on or about 10<sup>th</sup> may, 2017 Moran Auctioneers under instructions from the decree holder's advocates visited the 1<sup>st</sup> Objector's office and proclaimed various movable goods belonging to the 1<sup>st</sup> and 2<sup>nd</sup> Objectors that were tools of trade used in the taxi cab business and which were situated in the said office.*

*f. That the auctioneer also supplied us with a copy of the Warrant of attachment which included that in a case 1782 of 2014 filed before the Employment and Labour Relations court, the claimant/decree holder "AUGUSTUS MBUSYA NDILO" had successfully sued and obtained judgement against an entity known as "SWEDKEN TOURS" for the sum of Kshs 360,108/= following passing of a decree on 14<sup>th</sup> October, 2016.*

*g. That I informed the auctioneer Mr Kariuki that the case at hand had been filed against "SWEDKEN TOURS" in 2014 while the 1<sup>st</sup> Objector herein was a limited liability company which was known as "SWEDEN KENYA TRAVEL AND TOURS LIMITED"*

which had only been incorporated on 25<sup>th</sup> August, 2015 well after the case had been filed and the 1<sup>st</sup> Objector was therefore not the judgement debtor in that case and therefore the 1<sup>st</sup> Objector was the wrong party served with the warrants and proclamation of attachment. The auctioneer vowed to go and investigate but he declined to take back the proclamation of attachment or the warrant of attachment of movable property.

*h. That I have since been able to obtain a copy of the certificate of registration with respect to "SWEDKEN TOURS" and it shows that on 25<sup>th</sup> August, 2006 "MISS ANNE CHARLOTTE HELLSTROM, LARS ERIC DAHLBERG AND ERIC OPONDO OKEYO" are duly registered under the Registration of Business names Act as trading and carrying on business in the name of "SWEDKEN TOURS" at Plot No. 6 Lavington Argwings Kodhek road Nairobi and whose postal address is P.O. Box 529 00600 Sarit Centre, Nairobi.*

3. The claimant filed a replying affidavit in opposition to the application in which he deponed on the main that:

*a. That I was employed by Swedken Tours as a driver and brought this suit against them.*

*b. That the offices of Swedken Tours were at the time of my termination of employment, located at a premise on Wood Avenue on Komu Lane in Nairobi.*

*c. That I served the court process at the said premises and my employers did appoint an advocate to come on record for them.*

*d. That I am aware that current director of Swedken Kenya Travel and Tours Ltd, one Dr Philomen Kiprop Chebon was a customer of Swedken tours at the time of my employment as he used to supply vehicles to Swedken Tours for hire and use in taxi business.*

*e. That I am aware that the said Dr Philemon Kiprop Chebon entered into an agreement with the previous owners of Swedken Tours to take over the assets and liabilities of Swedken Tours after the termination of my employment.*

*f. That I saw a notice to staff and all the customers of Swedken Kenya of this fact.*

*g. That I have made effort to get this notice to no avail as it was issued a while back and brought to my attention by my former colleagues and clients at Swedken Tours.*

*h. That both Swedken Tours and Swedken Kenya Travel and Tours currently operate from the some business premises.*

*i. That the said Dr Philemon Kiprop Chebon did sign a letter, upon being served with the proclamations and warrant of attachment requesting for time to come up with a payment proposal towards settling the decretal sum.*

*j. That it is also not explained how the Dr Philemon Chebon got into possession of the original certificate of registration of Swedken Tours which he has annexed as "PKC7" in his affidavit.*

4. In objection proceedings the court does not make a conclusive finding on the ownership of the property subject of the objection proceedings but the court will decide whether or not the objector has interest in the property attached. The burden of proof is on the objector to establish ownership.

5. The court has considered the application and depositions in the affidavit of Dr Chebon and three things raised curiosity. First the 1<sup>st</sup> objector's name is similar in all respects to the respondent/judgement debtor something the Registrar of Companies could not have allowed. Second, Dr Chebon depones that he has since obtained a copy of the Certificate of registration in respect of Swedken Tours, the respondent but does not state how he came into possession of the same. That is to say whether he applied for a copy from the Registrar General or from what source he obtained it. Thirdly, by a letter attached to the claimant's affidavit as "AMN3", Dr Chebon sought indulgence from the auctioneer to enable the 1<sup>st</sup> objector come up with proposal towards settling the decretal sum. The question then is, why would the 1<sup>st</sup> objector propose to settle a decretal sum they had no idea about?

6. The foregoing inconsistencies lead only to one conclusion which is that respondent herein must have changed hands and reconstituted as Sweden Kenya Travel and Tours Limited. The 1<sup>st</sup> objector objection is therefore found without merit and is hereby dismissed with costs. As concerns the 2<sup>nd</sup> objector, the agreement for lease of motor vehicle dated 1<sup>st</sup> December, 2015 between him and the 1<sup>st</sup> Objector sufficiently show that vehicle registration number KCF 448L belongs to him. His objection to the attachment is therefore upheld.

7. It is so ordered.

**Dated at Nairobi this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**Delivered this 6<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

..... for the Claimant

..... for the Respondent