



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 831 OF 2015

BETWEEN

MAURICE OTIENO OLUNYA.....CLAIMANT

VERSUS

1. TRANSOCEANIC PROJECTS DEVELOPMENT LIMITED

2. TRANSOCEANIC PROJECTS DEVELOPMENT LIMITED SOMALIA....RESPONDENTS

3. TRANSOCEANIC GLOBAL GATEWAY LIMITED.....OBJECTOR

RULING

1. Judgment was delivered in favour of the Claimant/Employee against the Respondents/Employers, by Hon. Justice Onesmus Makau, on 8th December 2017. The Claimant was granted notice pay and compensation for unfair termination, at US dollars 34,500. The Respondents did not attend Court upon trial to give evidence.

2. The Claimant set in motion execution proceedings. The 1st Respondent filed an Application on 29th May 2018, seeking to have Judgment set aside, and hearing reopened. Hearing of this Application was slated for 5th June 2018. Neither Respondent attended Court, with the result that the Application was dismissed for non-attendance.

3. On 6th June 2018, the Objector filed an Application, claiming to be the legal owner of attached motor vehicles. The vehicles do not belong to the Judgement-Debtor, the Objector argues. The Objector seeks to have attachment stopped, and the vehicles released to the Objector.

4. The 1st Respondent similarly filed another Application on 6th June 2018, the same date the Objection was filed, asking for reinstatement of the Application which was dismissed on 5th June 2018.

5. Parties agreed on 10th July 2018, that the 1st Respondent's Application dismissed on 5th June 2018 is reinstated. The 1st Respondent was to pay thrown-away costs of Kshs. 10,000. It was agreed also that 1st Respondent's reinstated Application, and the Objection, are disposed of through Written Submissions.

6. Parties confirmed to have filed their Submissions on 17th September 2018.

The Court Finds:-

7. The 1st Respondent has not satisfied the Court that failure to participate in the hearing of the Claim was due to genuine and inadvertent mistake which can be excused. There are various Affidavits of Service filed by Licensed Court Process- Servers, showing Mention Notices and Hearing Notices were served upon the 1st Respondent in person, after 1st Respondent's Advocates ceased acting for the 1st Respondent. The 1st Respondent did not attend Court, though clearly notified of proceedings before the Court. The Application filed by the 1st Respondent on 29th May 2018 has no merit. It is purposed on resisting a Judgment which was validly, legally, and procedurally obtained by the Claimant. The Application is declined.

8. The Claimant's Replying Affidavit with regard to the Objection, establishes the Respondents and the Objector are Companies with common directorship and shareholding. The attached vehicles have the 1st Respondent's logo. The legal entities could be separate, but the business which employed the Claimant, is commonly owned and controlled.

9. The Director to the 1st Respondent and the Objector, Arval Daniel Headrick, has all along been aware of the Claim filed against his business vessels. The Employee pursued this Claim against his known Employers. The legal and business structures adopted by the Employers, which are aimed at avoiding legal and regulatory burdens, should not be of concern to the Employee. The Employee pursued identifiable and known Employers, and has attached vehicles which bear the business logo of his Employers. He is not to be compelled to pursue an entity which is part of the same enterprise, in Mauritius or Somalia, to recover the proceeds of a judicial process which took place and concluded in Kenya. The Objection, like the 1st Respondent's Application to set aside Judgment, is devoid of merit. It is meant to frustrate execution proceedings. It is rejected.

IT IS ORDERED:-

[a] The Application filed by the 1st Respondent on 29th May 2018 is rejected with costs to the Claimant.

[b] The Objector's Application filed on 6th June 2018 is rejected with costs to the Claimant.

[c] The Claimant is at liberty to execute.

Dated and delivered at Mombasa this 30th day of October 2018.

James Rika

Judge