



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 2410 OF 2012

JACKSON OMONDI MELA.....CLAIMANT

VERSUS

VISHAK CONSTRUCTION COMPANY LIMITED.....RESPONDENT

AND

VISHACK BUILDERS LIMITED.....OBJECTOR

RULING

1. The objector herein by a Motion dated 11th February, 2016 objected to the attachment of its properties pursuant to the decree of Honourable court. (Nduma J).
2. The objection was on grounds that the goods that have been proclaimed belong to the objector and that the objector has never been a party to the present suit therefore not liable to satisfy any order or decree emanating from the suit. In support of the averments concerning the distinction between the objector and the judgement debtor, the applicant attached a copy of certificate of incorporation showing its name as distinct from that of the judgment debtor.
3. The claimant opposed the application stating in the memo that the same had not been brought in good faith and that no evidence had been tendered by the objector to show the goods proclaimed belonged to it. The claimant further objected to the fact that the firm of Nelko Misati & Co Advocate who have brought the application are the same as the ones who are acting for the respondent/judgement debtor.
4. The purpose of an objection application is to protect the property of the objector from wrongful attachment pursuant to a decree emanating from a suit which the objector was not a party. The goods concerned were proclaimed from the premises which the objector claims belonged to it whereas the claimant avers that the objector had not exhibited any evidence to show the goods proclaimed belonged to it. I tend to think the onus was more on the claimant to ascertain that although the goods proclaimed were found at the objectors premises, they indeed belonged to the judgement debtor.
5. There could be similarity in names between the objector and the judgment debtor but that alone is not enough to impute that the objector and the judgement debtor are one and the same person. This is especially so where the objector has exhibited a certificate of incorporation clearly showing its own distinct corporate identity. On the issue of the same counsel acting the objector as well as the judgement debtor, this is a clear case of conflict of interest which should be taken up with appropriate professional disciplinary body to address and deal with as appropriate. The court would lend its support to such a

move in order to discourage unethical practices and restore the dignity of the bar.

6. Concerning the application before me, I will uphold the objection and lift the attachment.

7. There will be no order as to costs.

8. It is so ordered.

Dated at Nairobi this 10th day of February 2017

Abuodha J. N.

Judge

Delivered this 10th day of February 2017

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge