



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1026 OF 2015

CHARLES AKIBA OKENO.....CLAIMANT/RESPONDENT

VERUS

GUARD FORCE SECURITY RESPONDENT/RESPONDENT

AND

GUARD FORCE GROUP LIMITED....OBJECTOR/APPLICANT

Mrs Khayesi for objector

Mr. Charles Akiba Okeno for claimant

RULING

1. The objector/applicant, Guard Force Group Limited objects to the attachment by M/S Icon Auctioneers of its properties on 14th November 2016 on the grounds that the judgment debtor is Guard Force Security and not Guard Force Group Limited.
2. That Guard Force Group Limited is a stranger to these proceedings and therefore its property cannot be attached in realizing the judgment sum.
3. The affected goods are listed in annex '1' to the application and include office equipment, furniture and motor vehicle KBD 718F.
4. Applicant has attached certificate of incorporation dated 16th February 2009 and a Tenancy Agreement between the applicant and the landlord in respect of the office situate at Diani Close apartment No. 5 LR No. 330/2010 from which premises the proclamation and attachment took place.
5. The decretal sum is Kshs.307,962.53 in favour of Guard Force Security.

Response

6. The claimant filed a replying affidavit on 7th December 2016 in which he states that he wrote to the respondent and attached a copy of the decree advising the respondent to settle the decretal amount. The respondent did not respond to the letter and did not settle the judgment debt.

7. The claimant instructed M/S Icon Auctioneers to attach the property of the respondent with a view of disposing the said property to settle the decretal sum.
8. That the Auctioneers exercised due diligence and established that Guard Force Security and Guard Force Group Limited are one and the same entity.
9. That in any event Guard force Group Company is a holding Company and/or a subsidiary company of the respondent.
10. That the objector is deluding the court that it is a different entity to frustrate the judgment of the court.
11. That the applicant must in terms of Order 22 Rule 51 of the Civil Procedure Rules demonstrate equitable interest in the property to be attached. That the objector has not attached any document to proof that the attached goods belong to it. That the application be dismissed with costs.
12. The applicant filed a supplementary affidavit on 10th December 2016 in which it reiterates that the fact that Guard Force Security and Guard Force Group Limited have similar names does not make them one entity. That the claimant has not shown that he was ever employed by the objector.

Determination

13. Order 22 Rule 51 reads;

“51 (1) Any person claiming to be entitled to or to have legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.”

14. It is the considered view of the court that, in an application under Order 22 Rule 51, the applicant must demonstrate on a balance of probability that, it has a legal or equitable interest in the whole or part of any property attached.
15. The applicant has failed to demonstrate by way of any or documentary evidence that it is indeed the legal owner or has equitable interest in any of the properties proclaimed to satisfy the judgment debt.
16. Nothing would have been easier than for the objector to produce the log book of the attached motor vehicle KBD 718F or purchase receipts of the office desks, computers and printing machines among other attached property.
17. It is in the interest of justice that the claimant who had served the respondent from 2004 to 19th June 2013, and therefore is aware of the location of his employer receive the fruits of his judgment.
18. The objection lacks merit and the same is dismissed with costs. Execution to proceed accordingly.

Dated and delivered at Nairobi this 3rd day of February 2017

MATHEWS NDERI NDUMA

PRINCIPLE JUDGE