



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2535 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 22nd June, 2017)

JAMES KIPCHIRCHIR SAMBU.....CLAIMANT

-VERSUS-

PATRIOTIC GUARDS LIMITED.....RESPONDENT

PATRIOTIC GROUP OF COMPANIES LIMITED.....OBJECTOR

RULING

1. Before the Court is a Notice of Motion Application dated 30th January 2017 for Orders:

- 1. That this Application be certified urgent and the same be heard exparte in the first instance.***
- 2. That this Honourable Court be pleased to grant a stay of execution commenced by the Claimant in this case on 16th January 2017 pending hearing and final determination of this application or until further orders of this Honourable Court.***
- 3. That this Honourable Court be pleased to lift the proclamation and warrants of sale of the tools of trade of the Objector effected by Mbusera Auctioneers on 16th January 2017 against the Objector herein.***
- 4. That the costs of this application be awarded to the Objector.***

2. The application is based on the following grounds and on the supporting affidavit of Dan Nyatiki and on any other ground to be adduced at hearing of this application.

3. That the Respondents instructed Mbusera Auctioneers who effected proclamation against a company called Patriotic Group of Companies Limited on 16th January 2017;

- 1. Patriotic Group of Companies Limited is Objector in this case.***
- 2. That the Objector is the owner of the offices from which the goods were proclaimed.***
- 3. That the Objector is not party to this suit.***

- 4. That the Claimant lacks the capacity to deal with or alienate the said goods.**
- 5. That the Claimant effected the proclamation forcefully without regard to the explanations rendered for this company and without regard to Auctioneers' Rules as laid down.**
- 6. That the Objector is now exposed without any protective orders.**
- 7. That if the proclaimed goods are carried away the Objector's operations will be paralyzed for the reason that it needs these goods to run its day to day affairs.**
- 8. That in fact there is no decree in this case capable of being enforced against the Objector herein.**
- 9. That if the proclamation is not lifted the Objector will suffer irreparable loss and damage.**
- 10. That it is fair and just that the orders prayed for be granted.**
- 11. That the Respondent will not suffer any prejudice if the orders prayed for are granted.**

4. In response the Claimant/Respondent has filed a Replying Affidavit deposed to by James Kipchirchir Sambu.

5. In it he avers that it is not true that the Respondent and the Objector are two different entities, and from documents presented before this Court it is clear that they both share the same postal address that is 10645 – 00100 Nairobi and have the same Directors.

6. He further avers that pay slips produced in his bundle of documents clearly show that the same were issued by the Objector who claims to be a stranger to the issues of employment.

7. He avers that motor vehicle log books presented in the supporting affidavit sworn by Dan Nyatiki is further proof that the Objector is trying to mislead the Court as NTSA records show that vehicle registration KBG 976E and KBG 977E are not owned by the Objector.

8. He avers that in their Memorandum of Response filed on the 30th of June 2014 produced in their bundle of documents is a copy of his resignation letter which was stamped received by the Objector.

9. He further avers in his further replying affidavit dated 2nd March 2017 that the Respondent filed in the Court of Appeal Civil Application No 5 of 2017 wherein he admits that he is the owner of the proclaimed goods, and its Director Mr. Titus Kigen avers in a sworn affidavit dated 17th January 2017 supporting the case that the proclaimed goods belong to Patriotic Guards Limited.

10. Therefore, they aver that the Objector is only trying to mislead the Court and that the application is an abuse of the Court process.

11. In his submissions, the Applicant state that the certificate of incorporation shows that the Objector is a different entity from the Respondent. They ask the Court to look at the certificate from the Registrar that indicates that vehicle registration number KBG 977E belongs to the Objector and cannot be attached to satisfy the decree. Further that KBG 976 E and KCE 437 Z also belong to the Objector.

12. They ask the Court to lift the attachment to the vehicle as the car registration certificates are clear indications that they do not belong to them. The Claimant was employed by the Respondent Company and not the Objector Company, the stamp he refers to is fabricated and they deny having such letter or stamp.

13. In their submissions, the Claimant Respondent submits that his searches as produced in his sworn

written Affidavit show that a search conducted at National Transport and Safety Authority indicate that the Motor Vehicles do not belong to the Objector but to the Applicant.

14. Further he submits that in a produced sworn affidavit the Applicant claims ownership of the motor vehicles.

15. He submits that it is clear the Objector is trying to mislead the Court and deny the Claimant the fruits of his judgment. He asks the Court to dismiss the application with costs.

16. Having considered submissions of both parties, I note from the proclamation that the proclaimed goods are Motor vehicles Registration No. KCE 437Z, KBG 976E, office desks, 3 complete computers, 20 office chairs, photocopying machine, filing cabinet and motor vehicle registration No. KBG 977E.

17. The duty of this Court is to determine who between the Respondent herein and the Objector own the proclaimed goods. The Objector has deponed that the office from where the goods were carted away belong to them and that they are not party to this suit.

18. From the averments of the Respondent Claimant, they state that the Respondent and Objector are the same and they share same postal address that is No. 10645-00100 Nairobi.

19. From the letter to the Counsel for Claimants dated 21.2.2017, from the Registrar of Companies, Patriotic Group of Companies Limited has 2 Directors – Benjamin Matsukhu Akatsa and Kibiwott Toroitich Cherono both of Box 10645-00100 Nairobi. The Respondent herein Patriotic Guards Limited on the other hand have the same address as per the documents exhibited in Court (see Claimant's Appendix 1 – Appointment letter).

20. That notwithstanding the rule in Salomon vs. Salomon is clear that a company and the directors of that company are two separate entities. If 2 companies share directors then the liabilities of one company cannot be said to be liabilities of the other.

21. The sharing of the same address cannot therefore fill the gap expressed in the Salomon case and the two remain distinctly different.

22. The Claimant Respondent has averred however that payslips he was given as he worked for Respondent emanated from Patriotic Group Limited who are the Objector herein. This is indeed true.

23. In relation to motor vehicle KBG 976E and KBG 977E the document Appendix (4 a) and Appendix JKG (4 b) from Kenya Revenue Authority states that the same is owned by Titus Kigen who is not the Objector as at 10.2.2017. Ownership of motor vehicle KCE 437Z is shown to belong to the Objector herein.

24. Another contention by the Claimant is that the Respondent filed an application in Court of Appeal CA No. 5/2015 where one Mr. Titus Kigen swore in an affidavit of 17th January 2017 that the proclaimed goods belong to Patriotic Guards Limited.

25. The affidavit under reference was filed in Court and is dated 17.1.2017. Paragraph 9 of the proclamation has no basis as pertains to the office furniture and the 2 motor vehicles No. KBG 976E and KBG 977E. The Objection in respect of the proclamation is therefore dismissed save for motor vehicle KCE 437Z which I order released to the Objector.

26. The Objector will pay costs of this objection.

27. Read in open Court this **22nd day of June, 2017.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Makori holding brief for Betty Rashid for Objector

Mungai holding brief for Namada for Claimant