



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1542 OF 2013

**CATHERINE ROTICH HOLDEN.....CLAIMANT/DECREE
HOLDER**

VERSUS

BOARD OF GOVERNORS NAIROBI

**INTERNATIONAL SCHOOL.....1ST RESPONDENT/JUDGMENT
DEBTOR**

**RADHIKA LEE.....2ND RESPONDENT/JUDGMENT
DEBTOR**

AND

SAFE HAVEN T/A

**NAIROBI INTERNATIONAL
SCHOOL.....OBJECTOR/APPLICANT**

RULING

1. This application is brought by the Objector seeking orders declaring the proclamation by Domicile Auctioneers on 4th November 2016 unlawful on the ground that the proclaimed property belongs to the Objector and not the Judgment Debtor.
2. The Objector states that it has a legal and equitable right in the property proposed to be auctioned.
3. The application which is supported by the affidavit of Kingsley Makokha is based on the following grounds:
 - a) The property proclaimed on 4th November 2016 belongs to the Objector;
 - b) The Objector is not a party to the suit in respect of which the execution proceedings are being carried out;
 - c) The Respondents/Judgment Debtors do not have any legal or equitable interest in the property proclaimed;
 - d) The Respondents are a non-existent entity and are unknown to the Objector.

4. In a supporting affidavit and further affidavit sworn by the Objector's Head of Operations, Kingsley Makokha it is deponed that the Objector is a limited liability company trading as Nairobi International School with Safe Haven being the beneficial owner.

5. The issue for determination in this application is whether the Objector has made out a case for nullification of the execution process already commenced. The Objector's application is grounded on the assertion that the proclaimed property belongs to it and that it was not a party to the suit giving rise to the execution.

6. In objection proceedings, it is not enough for the Objector to show that it is a legal entity separate from the Judgment Debtor. If a close nexus between the two is established, the Court must satisfy itself that the Objector is not a façade for the Judgment Debtor (see *Colour Print Limited v Pre-Press Productions (HCCC No 187 of 2000)*).

7. The Objector in this application admits that it is the beneficial owner of Nairobi International School where the Claimant was employed as a teacher.

The Court therefore finds no basis for the Objector's assertion that it is a stranger to these proceedings. The argument that the Respondents are non-existent ought to have been ventilated at the main hearing and not at the execution stage.

8. In light of the foregoing, the Objector's application is declined with no order for costs.

9. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF NOVEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Miss Kasira for the Objector

No appearance for the Claimant/Decree Holder