



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1622 OF 2014

JONATHAN MASILA MUTIA.....CLAIMANT

VERSUS

LEO INVESTMENTS LIMITED.....RESPONDENT

AND

GEMINI PROPERTIES LIMITED.....OBJECTOR

RULING

1. This application is brought by the Objector who states that in execution of an award of this Court delivered in favour of the Claimant as against the Respondent on 28th March 2016, its goods have been wrongly attached.
2. Towards execution of the award, Warrants of Attachment and Sale were issued on 1st August 2016 and the goods in issue were attached on 2nd August 2016. The Objector seeks orders to set aside the execution and attachment.
3. The Application, which is supported by the affidavit of Abdul Maje sworn on 5th August 2016 is based on the following grounds:
 - a) That on 2nd August 2016, Upstate Kenya Auctioneers on instructions of the Claimant proclaimed and attached office furniture owned by the Objector;
 - b) That the proclaimed property does not belong to the Respondent but is in fact owned by the Objector;
 - c) That the Objector is not a party to the proceedings herein hence the proclamation was wrong, illegal and ought to be lifted altogether.
4. In the supporting affidavit sworn by the Objector's Chief Accountant, Abdul Maje on 5th August 2016, he reiterates that the proclaimed goods belong to the Objector.
5. In a replying affidavit sworn by the Claimant on 11th August 2016, he depones that the Respondent, Leo Investments Limited and the Objector, Gemini Properties are companies under the Chatur Group of

Companies, which is a business owned by family members. He adds that Chatur Group of Companies and the Objector have common Directors.

6. The Claimant further depones that the attachment took place at the management office of Chatur Group of Companies located at Diamond Plaza, Parklands, which is also the Respondent's office.

7. The Claimant avers that the Respondent and the Objector are in collusion to defeat justice, citing the fact that Abdul Maje who has sworn the affidavit in support of the Objector's application, also testified for the Respondent in the main claim. Additionally, a cheque for part payment of the decretal sum was signed by Madat Ali Chatur, a Director of Chatur Group of Companies.

8. In his oral submissions before the Court, Counsel for the Objector stated that the Claimant had failed to comply with Order 22 Rule 54 of the Civil Procedure Rules which requires an attaching creditor who has been served with an objection to file a notice of intention to proceed with the attachment. The Claimant had only filed a replying affidavit and the attachment could not therefore be sustained.

9. In response, Counsel for the Claimant submitted that the Objector had not served a notice of objection as required under Order 52 Rule 51 of the Civil Procedure Rules. He stated that had an objection notice been served, the Claimant would have complied with Order 22 Rule 54 by serving a notice of intention to proceed with the execution. Counsel added that the Claimant had only been served with a court order giving him ten (10) days to respond and he had duly complied.

10. I have considered the arguments advanced by both the Objector and the Claimant on the procedural steps set out under Order 22 Rules 51, 52 and 54 of the Civil Procedure Rules and find that in moving the Court, the Objector failed to issue the requisite objection notice thus making it impossible for the Claimant to serve notice of intention to proceed with the execution.

11. The Objector cannot therefore fault the execution process on the basis of the Claimant's failure to comply with Order 22 Rule 54. Consequently I find that this application turns on the question whether the Objector has demonstrated a legal and equitable interest in the attached goods.

12. As held by **Kasango J** in *Harley's Limited v Wockaine (K) Limited (HCCC No 1753 of 2001)* Order 22 Rule 51 of the Civil Procedure Rules places the burden on the Objector to prove that he has a legal and equitable interest in the goods being attached.

13. In support of its application, the Objector produced some invoices and delivery notes showing several pieces of office furniture in the name of the Objector. Office furniture is by nature fairly generic and without further evidence, it is impossible to assign a particular piece of furniture to the Objector and another to the Respondent. I say so because the Objector chose not to respond to the averments made by the Claimant that the Respondent and the Objector operate under the umbrella of a common Group of Companies known as Chatur.

14. Faced with a similar situation in *Colour Print Limited v Pre-Press Productions (HCCC No 187 of 2000)* **Njagi J** (as he then was) held that it is not enough for an Objector to demonstrate that it is a legal entity separate from the Judgment Debtor; where the two entities share directors and an office, it would not be far-fetched to conclude that the Objector is a façade for the Judgment Debtor.

15. The Claimant's assertions on the close nexus between the Objector and the Respondent were not controverted and the Court therefore finds that the Objector failed to establish a definite interest in the attached goods.

16. In light of the foregoing I make the following orders:

- a) The Objector's application dated 5th August 2016 is dismissed with costs to the Claimant to be borne by the Objector;

b) The Auctioneer's charges shall be borne by the Respondent;

c) The interim orders granted on 5th August 2016 are hereby vacated.

17. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 4TH DAY OF
NOVEMBER 2016**

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyakiangana for the Claimant

Mr. Kwameh for the Objector