



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 156 OF 2014

JOSPHAT MACHARIA GATHII

CLAIMANT

v

KUNDAN SINGH INTERNAIONAL LTD

RESPONDENT

AND

GEOFFREY KARIUKI T/A DIRECT OF SERVICES

RULING

1. For determination is a motion by the Respondent dated 6 May 2016 seeking

1.

2. An order of stay do issue restraining the attachment, removal, sale, disposition or any other interference with the assets listed in the Proclamation Notice dated 18th of April, 2016 issued by Direct O. Services Auctioneers pending the full hearing and determination of this application.

3. The warrant of Attachment dated 15th April, 2016 and Proclamation Notice dated 18th April, 2016 relating to the Applicant's assets be lifted.

4. The costs of this Application be awarded to the Applicant.

2. When the motion came up on 15 September 2016, the Claimant sought for time to file a replying affidavit and or grounds of opposition but the Court declined to accede to the application because in the view of the Court, the Claimant had more than sufficient time after service of the application to file appropriate responses.

3. The Respondent contends that it was placed under receivership on 18 February 2015 by Bank of Africa Kenya Ltd and again on 20 March 2015 by Kenya Commercial Bank Ltd and I & M Bank, and therefore all the charges crystallised in favour of secured creditors and in that respect any debt due to the Claimant as decree holder became unsecured and any execution after the appointment of a Receiver is void.

4. As a background, the Court had on 13 March 2015 delivered judgment in which the termination of the Claimant's employment was found unfair and he was awarded a total of Kshs 1,447,384/-.

5. The execution and attachment was as a result of the judgment.

6. It is not clear why the Court was not informed that the Respondent had been placed under receivership before the delivery of judgment as that was a material fact.

7. Although the facts as presented by the Respondent remain unchallenged, the Claimant presented to the Court from the bar, a Court order issued on 4 May 2016 in Nairobi Commercial & Admiralty Division Civil Case No. 446 of 2015, *KSC International Ltd (under Receivership) & Ors v Bank of Africa (Kenya) Ltd & Ors*, which order barred the Receivers from interfering with the instant Respondent's affairs and assets until 19 May 2016.

8. The Court was not informed of what transpired on 19 May 2016 or whether the orders were confirmed after *inter partes* hearing.

9. The Respondent must have been aware of what took place at the *inter partes* hearing before the High Court or the current status of the said civil case but it did not bother to disclose the same.

10. Therefore, as far as the material placed before Court on 15 September 2016 goes, the Receivers have been stopped from interfering with the Respondent.

11. With that, the anchor ground on which the Respondent's application has been predicated falls by the way side with the effect that the Court declines to grant any of the orders sought in the motion dated 6 May 2016 and filed in Court on 10 May 2016.

12. Before concluding, the Court must observe that the parties did give the application the seriousness it deserved.

13. The upshot being that the Court dismisses the said motion with costs to the Claimant.

Delivered, dated and signed in Nakuru on this 2nd day of November 2016.

Radido Stephen

Judge

Appearances

For Claimant Ms. Muthoni instructed by Karanja Mbugua & Co. Advocates

For Respondent Mr. Opar instructed by Walker Kontos Advocates

Court Assistant Nixon