



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
CAUSE NO. 1488 OF 2010

RAHAB WOTHAYA ESIROMO

JOSEPH KAMAU RUOYA

SIMON MAINA CHEGE

LABAN MAINA CHEGE..... CLAIMANTS

DAVID MUIRU NJOROGE

MICHAEL GIKONYO KINYANJUI

NOBERT OMANYO WABWIRE

STEPHEN WAMBUGU WAWERU

VERSUS

BLUE SHIELD INSURANCE

COMPANY LIMITED 1ST RESPONDENT

SHIELD ASSURANCE

COMPANY LIMITED 2ND RESPONDENT

STATUTORY MANAGER, BLUE SHIELD

INSURANCE COMPANY LIMITED

(UNDER STATUTORY MANAGEMENT) 3RD RESPONDENT

M/S Wetende for applicant

Mr. Kirimi for respondent

RULING

1. By a notice of motion application filed on 24th March 2016, the 2nd respondent Shield Assurance Company Limited seeks *inter alia* orders that;

the warrant of attachment of movable property in execution of decree for money issued by the Honourable court on 24th February 2016 as against the 2nd respondent/Applicant to Elijah Mbuthia Irura of Warleen Auctioneers and all consequential orders and or actions attendant thereto be set aside and that Warleen Auctioneers be restrained from attaching the applicant's goods proclaimed on 29th January 2016 or any of its goods or property.

2. The application is based on the grounds set out on the notice of motion.

3. The sole basis of the application is that there is no judgment against the applicant to warrant any attachment of its property as alleged or at all and therefore, the applicant will suffer substantial loss and damage if the orders sought are not granted. The application has been brought timeously and no prejudice will be suffered by the claimant.

4. That in her Judgment delivered on 29th April 2013, at page 10 thereof, Hon. Lady Justice Onyango held *inter alia* that the claim against the applicant had been overtaken by events as the claim for pension benefits against the second respondent has been met by Roberts Insurance Brokers. The Judge also held that there was no order for costs in respect of the 2nd respondent.

5. Furthermore, upon application by the second respondent on 19th March 2014, Hon. Maureen Onyango reviewed the Judgment and from the bottom of page 5 of her ruling she held *inter alia* that

“the Judgment does not say the 2nd respondent will pay the outstanding debt.”

6. The applicants pray the application be allowed.

Responses

7. In the replying affidavit filed on 30th March 2016, the claimant states that the application for review of the Judgment was dismissed on 19th March 2014. That the respondent dissatisfied with the ruling filed an appeal vide a notice of appeal dated 2nd April 2014.

8. The court has never ordered that the 2nd respondent is not liable. The claimants pray that the application be dismissed with costs.

Determination

9. The court has perused the Judgment of Hon. Maureen Onyango J. and in particular at page 10 thereof and it reads;

“the claim against the second respondent has been overtaken by events as the claim for pension benefits against the 2nd respondent has been met by Roberts Insurance Brokers. There shall be no orders for costs in respect of the 2nd respondent.”

10. It is alleged further that, in a ruling delivered on 19th March 2014, the Judge reviewed the Judgment at page 5 of her ruling and held *inter alia* that;

“the Judgment does not say the 2nd respondent will pay the outstanding debt.”

11. Indeed, the learned Judge clarified her statement on page 10 of the Judgment aforesaid thus;

“the issues I was to determine are set out at page 10 of the Judgment. I only absolved the 2nd respondent from payment of costs in respect of pension benefits which responsibility had been met by Roberts Insurance Brokers on intervention of the respondent benefits Authority.”

12. The Judge went to find that the 2nd respondent having been a party to the claim and having applied and failed to be released from the case the 2nd respondent is to pay costs.

13. The Judge went further to clarify that;

“the Judgment does not say that the 2nd respondent will pay the outstanding debt but the judgment says;

Any balance is to be recovered from the 1st and 2nd respondents as part of the debt to be paid by the 3rd respondent in accordance with law under which the receiver manager has been appointed.”

14. Accordingly, the application lacks merit. The 2nd respondent was not released from the Judgment debt in its entirety. Any ambiguity was clarified in the ruling of Maureen Onyango J. delivered on 19th March 2014.

15. The application is dismissed with costs to be met by the 2nd respondent/applicant.

Dated and delivered at Nairobi this 9th day of December 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE