

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1517 OF 2010

OBADIAH KIIRU MUCHIRI.....CLAIMANT/DECREE HOLDER

VERSUS

KIAMBU CLUB.....RESPONDENT/JUDGMENT DEBTOR

KIAMBU CLUB REGISTERED TRUSTEES.....OBJECTOR/APPLICANT

RULING

1. The application before me is the Objector/Applicant's Notice of Motion Application dated 11th May 2012. The Application seeks the lifting of the proclamation of 8th May 2012 by Jumbo Airlink Auctioneers and that the attached good be returned unconditionally to the Objector/Applicant. The Application is supported by the Affidavit of Fidelis Muia sworn on 11th May 2012. The main thrust of the Application is that the Objector is the purported owner of the goods attached vide the proclamation issued pursuant to a decree of this Court in the suit against the Respondent/Judgment Debtor.
2. The Claimant/Decree Holder is opposed to the Application and filed an Affidavit sworn on 21st May 2012. The Decree Holder depones that he sued the Respondent who is the same as the Objector and that there is estoppel as the Respondent did not deny being the correct party.
3. Parties consented to the filing of written submissions in support and opposition to the Application. The Objector/Applicant filed its submissions on 27th October 2014. In the submissions, the Objector/Applicant submitted that at the time the Decree Holder instituted the Claim herein the Judgment Debtor was an unknown entity in law which could not sue or be sued. It was submitted that the company by the name of Kiambu Club Limited is a company limited by guarantee. The Objector/Applicant relied on the decided cases of **In Re Standard Ltd Ex Parte Tricom Paper International BV [2002] KLR 644, Mohamed Adan Molly v Linksoft (K) Ltd & Another [2013] eKLR, K-Rep Bank v Basilio Pascal Kiseli & 2 Others [2012] eKLR, Equitorial Commercial Bank Ltd v Bubacon Agencies Ltd & 3 Others [2013] eKLR** all supporting the position the Objector/Applicant had taken.
4. The Claimant/Decree Holder did not file submissions in opposition and thus recourse is to the Affidavit and Notice of Intention to proceed with Execution filed by the Claimant. In the Affidavit sworn on 21st May 2012, the Claimant/Decree Holder deponed that the Objector herein and the Respondent/Judgment Debtor are one and the same person. It was further deponed that the Judgment Debtor and the Objector had represented their name as Kiambu Club in the letter of appointment and subsequent correspondence then they could not avoid execution of judgment by claiming otherwise.
5. The cases cited by the Objector are a treatise on legal entities. In the case of **Standard Ltd ex parte Tricom Paper** (supra) Ringera J. (as he then was) held that "a limited liability company is a legal person and there is a neat difference in law between it and its shareholders or directors or business. The East African Standard being a business name is nothing in law and if by any stretch of the imagination it was anything it is wholly different from the Standard Limited, the company

that owns the business name.” I agree that in company law there is a distinction between a business name and a limited liability company.

6. In the present case, the Respondent herein Kiambu Club upon being sued filed a Memorandum of Defence on 26th January 2011. In the defence the Respondent admitted that it had employed the Claimant as a club manager (paragraph 3 of the defence) and the only dichotomy is the averments in paragraph 2 of the Memorandum of Defence where the Respondent averred as follows: The description of the Respondent is denied and the Respondent shall seek to have the Claim struck off. The record does not bear out an attempt to have the Claim struck off.
7. The Respondent it would seem held out to be an entity that could sue and be sued. There is no averment in the defence that holds the Respondent as an entity incapable of suing or being sued in its own name. The acquiescence by the Respondent to the suit estops the Respondent from raising the issue of wrong legal entity.
8. The Employment Act is a complete code and provides that an employer is any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company. The statute requires an employer to provide a contract which must contain the following particulars *inter alia* – the name and sex of the employee, the name of the employer and the hours and place of work. The employer, in this case the Objector, was required in law to provide these particulars. The Objector instead gave itself the business name as employer in the contract dated 5th September 2005 it cannot resile from it. It will not run away from it. There is also no denial of service upon the Objector as the Chairman of the Objector is the one who gave instructions to counsel to defend the suit as deposed to by the Advocate for the Respondent David Njeru Nyaga.
9. The Objector it would appear is the legal person the Respondent represented using the name Kiambu Club. From the authorities cited and legal precedent, it is clear the there is a distinction between the cases cited and the present case. The challenge mounted could count for something in contract law or in the arena of commercial claims. However in this Court granted the provisions of the Employment Act and the conduct of the Respondent which is a factor of the Objector there is **estoppel in pais**. The Respondent cannot assert otherwise as the Respondent is prevented by its previous conduct during the employment and consequent termination and now execution held itself out as the correct party.
10. The Application is thus devoid of merit and is dismissed with costs to the Claimant/Decree Holder. All the costs ordered by Njagi Marete J. be paid forthwith as well.

Orders accordingly.

Dated and delivered at Nairobi this 13th day of **January** 2015

Nzioki wa Makau

JUDGE