



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1359 OF 2010

JOB MBALUKA.....CLAIMANT

VERSUS

PEGRUME LIMITED.....RESPONDENT

RULING

1. The applicant herein objects to the attachment of its properties in execution of judgment against the respondent/judgment debtor. The application was brought on the grounds that the objector has equitable and legal interest in the proclaimed and or attached properties and that it was not a party to the suit the subject of execution.

2. In support of the applications, Mr. Giri Babu stated in the main as follows:-

(a) That the Objector Company carries on business with its office being at the property known as Office No. 23, Longonot place, LR NO. 209/9525, Nairobi having leased the same from the Landlord. Longonot Place Limited.

(b) That on or about the 25th day of September 2014, the agents and or servants of Mbusera Auctioneers came to the Objector's Office aforementioned and purported to attach pursuant to the decree in this case but only served the Objector with the Warrants issued to it by the Honourable Court. The said auctioneers have not served any proclamations on the Objector Company but have stated that they shall carry away its assets if the decretal amount is not paid and despite request for the proclamation they have refused and or failed to serve any on the Objector.

(c) That all the assets and or equipment in the aforementioned office belongs to the Objector Company and not to the Defendant Company to justify the purported proclamation and or attachment.

(d) That Objector is a not a party to the suit leading to execution in this matter, it's a different entity from the Defendant in this matter and it does not have a dispute with any of the parties to the said suit.

3. In opposing the application the claimant deponed that averments that the objector company and the defendant are different was false. According to him the objector and the defendant were one and the same company and had the same logo, same address, same directors and used same office space and workers. He therefore deponed that the application was a plot by the defendant to deny him the fruits of his judgment.

4. Upon application by Counsel for the claimant, the Court ordered the appearance in Court of Mr. Giri Babu who swore the affidavit in support of this objection application for purposes of cross-examination.

5. Mr. Babu stated that he was the Chief Commercial Officer of the objector. He further stated that he heard about the judgment debtor and knew its directors whom he named as Anjum Kamal and Chaudhry. He further stated that he heard about a Mr. Jackson Samuel Maingi whom he was told was also a director of the judgment debtor.

6. Mr. Babu further named the directors of the objector as Azhar Kamal Chaudhry. It was further his testimony that the judgment debtor had its offices at the same premises as the objector and that they shared the same postal address with the objector.

7. Mr. Azhar Chaudhry in his further affidavit sworn on 19th January, 2015 deponed that as a result of being unable to continue operating as a viable company, the judgment debtor ceased operations and sold all its assets in order to settle outstanding liabilities. He further stated that upon ceasing operations, the judgment debtor moved its offices to its Advocate's Offices namely Simani & Associates on Suna Road, Nairobi. Mr. Babu further deponed that the judgment debtor has since 2010 ceased operations and does not own any assets. He further deponed that there was a winding up petition against the judgment debtor being cause No. 18 of 2013.

8. Counsel for the objector in support of the application submitted that the objector and the judgment debtor are two distinct legal persons and the sharing of directorship did not change that fact.

9. Counsel for the judgment debtor on the other hand submitted that the two companies shared directors, shareholders and office space at all material times. He further contended that the claimant served both companies while under the same management. Counsel therefore urged the Court to lift the corporate veil in order to serve ends of justice.

10. Objection proceedings are intended to protect third parties from wrongful attachment or execution of Court decrees which they are not a party to. The applicant herein is a body corporate which in law is separate and distinct from its shareholders and directors.

11. Being a body corporate, it is capable of owning property hence subject of attachment in execution of a decree. In the famous but old case of **Salmon v. Salmon** it was stated that a company is a different person altogether from the subscribers and directors. This can never be departed from except in instances where the statute or law provides for the lifting or piercing of the corporate veil.

12. The claimant has contended that both the judgment debtor and the objector shared directors, office premises and postal address but this does not change the legal position regarding the corporate personality of companies as distinct and separate from their shareholders and directors.

13. The rationale of the corporate personality is to separate the personal affairs of shareholders and directors from business ventures where their interest is limited to the amount of shareholding and not their entire worth. If no such protection was offered no one would risk investment for fear of being found liable for debts or obligations of a company in which the only interest therein is the extent of his or her shareholding.

14. The claimant has averred that the two companies are owned by the same people and that these objection proceedings have been brought to merely delay or frustrate the claimant from enjoying the fruits of his judgment. As much as the Court fully appreciates the claimant's concerns, the Court cannot make

any order in that regard without a substantive application to lift the corporate veil and have the judgment debtor's directors summoned for examination by the Court as to the whereabouts of its assets or show cause why execution cannot issue against them personally. Mere close association with the objector does not transfer liability on it for the judgment debtors' debts.

15. In the circumstances the Court upholds the objection and grants the application as prayed.

16. It is so ordered.

Dated at Nairobi this 10th day of July 2015

Abuodha J. N.

Judge

Delivered this 10th day of July 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge