



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA
(BIMA TOWERS)
CAUSE NO. 128 OF 2012
(Originally Nairobi Cause No. 74 of 2010)

JOSEPH
LICHOTICLAIMANT

v

KENYA CROCODILE FARM
LTDRESPONDENT

and

MAMBA VILLAGE CENTRE LTD.....INTERESTED
PARTY/OBJECTOR

RULING

1. Joseph Lichoti (Claimant) sued Kenya Crocodile Farm Ltd (Respondent) alleging unlawful termination. The parties will be referred to as Claimant, Respondent and Interested Party/Objector. A brief background may be in order to understand the subject of this ruling.
2. On 14 September 2010 Madzayo J (as he was then) found the termination of the Claimant wrongful and illegal and awarded him Kshs 406,084/- as terminal benefits. He was also awarded costs. A decree was issued on 1 November 2010.
3. After the award, the Claimant commenced execution against the Respondent. Warrants of attachment and sale were issued to Tip Top Auctioneers. The auctioneers proceeded to proclaim the Respondent's properties.
4. When the auctioneers went to remove the proclaimed goods they were served with a restraining order against execution of the decree in Nairobi Cause No. 74 of 2010, granted in Mombasa High Court Misc Civil Application No. 469 of 2010, Mamba Village Centre Ltd v Joseph Lichoti.
5. One of the grounds relied on in the High Court was that Mamba Village Centre Ltd had taken over the business previously carried on by the Respondent (Kenya Crocodile Farm Ltd) in 2005. This ground was repeated in the supporting affidavit of Hezron Awiti Bolo. Mr. Bolo also deposed in paragraph 7 of the affidavit that the Claimant had been absorbed by it from the Respondent.
6. The Court record also bears that on 7 March 2011, the Interested Party applied and the Industrial Court granted it (Mamba Village Centre Ltd) leave to be enjoined in Nairobi Cause No. 74 of 2010 as an Interested Party and further stayed execution of the decree issued on 1 November 2010.
7. On 26 May 2011 the parties by consent agreed that the application by the Interested party be stayed and status quo be maintained pending ruling in Mombasa High Court Misc Civil Application No. 469 of 2010.

8. On 30 July 2012, Ibrahim J (as he was then) upheld a preliminary objection raised by the Claimant and discharged the interim orders he had issued earlier.
9. The record also bears that this Cause was mentioned on 9 February 2012, 22 March 2012, 19 April 2012, 17 May 2012 and 7 June 2012 when the Court directed hearing on 10 September 2012.
10. The next time the file was placed before a judge was on 19 July 2013 when a motion under certificate of urgency was filed. This, it appears was necessitated by a new attempt by the Claimant to execute by attachment against the Objector/ Interested party on 10 July 2013 through Trophy Auctioneers.
11. This latest attachment is the subject of this ruling. The objector/ Interested Party filed its submissions on 21 March 2014 while the Claimant had filed his submissions on 12 March 2014.
12. The Interested party submits that it is a different legal entity from the Respondent/judgment debtor; that the warrants were taken out before taxation of costs and without seeking notice to show cause.
13. The Claimant in his submissions did not address the issues raised by the motion under consideration and the Court need not analyse them in any depth.
14. One of the issues raised by the Objector was that it was not the judgment debtor. This objection can only be procedurally and technically correct. The affidavit of Mr. Bolo already referred to admit the relationship between the Claimant, Respondent and Interested Party. Mr. Bolo deposed he was the Managing Director of the Interested Party and that the Interested Party took over the Respondent's business in 2005.
15. Further in the first motion filed on 7 March 2011, one of the orders which the Objector sought was grant of leave to file pleadings in response. When the motion was placed before Madzayo J he granted the Objector leave to be enjoined as an Interested party and further ordered it to file a Defence and replying affidavit on or before 10 March 2011. The defence has never been filed.
16. In my view the Objector is trying to use the technicalities of the law to ensure that the Claimant does not enjoy the fruits of an award made in his favour. I say so because after the orders given by Kosgei J on 7 March 2011, the Objector/ Interested party never bothered to set the motion filed in Court on 7 March 2011 for *inter partes* hearing or to file a substantive Response.
17. Were the Court to accede to the present motion by the Objector, it means the Cause would become muddled further, seeing as it is the Objector was added as an Interested party but it has not filed a Response and the Claimant would not have much room to maneuver, seeing as it is, execution was stayed but decree/proceedings not set aside.
18. As regards the execution, the law regarding execution is clear and simple and it is all there in black and white in the Civil Procedure Act and Rules. Section 94 of the Act mandates the Court to allow execution before ascertainment/taxation of costs. All the two attempts at execution were before taxation. Further, Order 22 rules 6 require notice of entry of judgment where there was judgment in default of appearance/defence like in the present case. There is no indication on record a notice was given.
19. That the Claimant and his legal advisers have tried to take short cuts is also clear.
20. Both Advocates have been dilatory with their professional duties at best. The Objector/Interested party did not actively attempt to pursue its application after the dismissal of its application by the High Court on 30 July 2012. It went to sleep. The Claimant has also attempted to short circuit the applicable rules on execution. However, it is not the duty of the Court to advise or direct them on how to approach the issue(s) at hand.
21. The upshot of the foregoing is that the motion dated 19 July 2013 is declined and is therefore dismissed.

Delivered, dated and signed in open Court in Mombasa on this 30th day of May 2014.

Radido Stephen

Judge

Appearances

Mr. Asige instructed by Asige Keverenge & Anyanzwa Advocates for Claimant

Respondent did not participate Mr. Amuga instructed by Amuga & Co. Advocates for Interested Party/Objector