



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**  
**(BIMA TOWERS)**  
**CAUSE NO. 159 OF 2013**

**REUBEN MWABOGA.....CLAIMANT**

**v**

**BAHNHOF BAR & RESTAURANT.....RESPONDENT**

**PATRICIA MARY HUTCHISON.....OBJECTOR**

**RULING**

1. On 1 November 2013 the Court awarded the Claimant Kshs 204,398/- after finding and holding that his dismissal was unfair.
2. The Respondent filed a motion dated 2 April 2014 seeking stay of execution and in a ruling delivered on 23 May 2014 the Court dismissed the application.
3. On 17 June 2014, a Patricia Mary Hutchinson (Objector) filed an Objection to Attachment and a motion seeking a stay of execution on the ground that her properties her been attached in execution of the decree of the Court.
4. The Motion was certified urgent and the Court ordered that it be served upon the other parties for *inter partes* hearing on 26 June 2014.
5. On 26 June 2014 the Objector informed the Court that though the application had been served, an affidavit of service had not been filed. The Court adjourned the application to 8 July 2014.
6. On 8 July 2014, the Objector appeared in the absence of the other parties and sought that the objection application be allowed because it was not opposed. The Court directed the Objector to file a further affidavit and postponed the application to 23 July 2014 with an order that a hearing notice be served.
7. On 23 July 2014, the objection application proceeded in the absence of the Claimant and the Respondent. The Objector informed the Court that she had not filed a further affidavit as directed by the Court and that she would rely on the supporting affidavit filed earlier.
8. According to the supporting affidavit of the Objector, Sure Auctioneers proclaimed her properties kept at the Respondent's premises on 31 March 2014. The said properties had been loaned to the Respondent, a Mr. Ian Paul Hutchison trading as the Respondent on a gentleman's agreement.
9. The Objector's supporting affidavit further deposed that the goods had been purchased on her behalf by one Getrude Mwanyota while she was in England.

**Evaluation**

10. Most of the goods attached were primarily items used in restaurants and bars and included alcoholic beverages. The Objector exhibited cash purchase receipts for the goods. Most of the receipts were issued in or after December 2013.

11. Some of the receipts are in the name of the Respondent, Bahnhof Bar & Restaurant. Others are in the name of Getrude Mwanyota and a few in the name of the Objector. Several have no details of the purchasers.
12. Getrude Mwanyota in whose name some of the receipts were issued was mentioned during the hearing of the main Cause as the Respondent's Manager. The Objector has not placed sufficient evidence before Court to lay legal ownership of these goods or explained the dual role played by this person.
13. Again, because several of the receipts did not have the identity of the purchaser the Court is unable to connect the Objector to the legal or beneficial ownership of the goods mentioned in these receipts.
14. Further, documents on record also suggest that the Respondent was a business carried out by one Hutchison Ian Paul. The name of Hutchinson is common to both the Objector and the Respondent's proprietor. This fact was not explained or at all whether there is a relationship between the two Hutchisons.
15. The Court is not satisfied that the Objector has placed sufficient material in Court to connect it either to the beneficial or legal ownership of the goods which were proclaimed and or attached.

### **Conclusion**

16. The upshot is that the objection proceedings/motion is dismissed with costs to the Claimant.
17. The Court wishes to express its displeasure at the fact that the Advocates for the Claimant and Respondent though served failed to appear in Court, without any explanation. Once a party has taken a brief, it behoves them to attend to the matter until final determination or withdrawal of instructions. It is their professional obligation to their clients and to the Court.

**Delivered, dated and signed in open Court in Mombasa on this 29<sup>th</sup> day of August 2014.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant No appearance during Motion

For Respondent No appearance during Motion

For Objector Mr. Wafula instructed by Cootow & Associates Advocates