



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 208 of 2010

RAPHAEL MUSYOKA NGUMBI
CLAIMANT

VERSUS

PAEM AGENCIES COMPANY LTD.....
....RESPONDENT

AND

RAPHAEL KIOKO KITHUKU
(T/A RAKJOM & COMPANY INVESTMENTS).....
OBJECTOR

Mr. Nyaribo for Objector

Mr. Nyabena for Respondent/Judgment Creditor

RULING

The claimant was awarded terminal dues by this court on 3rd November 2010, amounting to Kshs.224,000 plus costs.

The decretal amount is not yet satisfied to date. The Claimant in a bid to execute for the amount instructed auctioneers who proceeded to proclaim on the 30th November, 2011 the objector's assets.

The objection to the proclamation is on the following grounds;

1. The objector is a duly registered company under the Provision of the Companies Act as from 13/10/09.
2. The objector undertakes various businesses primarily tours and travel, but also carries out purchase and sale of motor vehicle parts accessories and supplies as per its Memorandum and Articles of Association in the Dagoretti Corner area of Nairobi.
3. The objector is and has been a tenant of its commercial premises in Dagoretti Corner area of Nairobi since 1st April 2011.

4. The objector's goods were proclaimed by Messrs Beeline Kenya Auctioneers on the 30th November, 2011.
5. The goods proclaimed belong to the objector and other unknown third parties.
6. It would be in the interests of justice to lift the proclamation undertaken by Messrs. Beeline Auctioneers on the 30th November 2011 as the Objector has legal and equitable interest in the proclaimed goods.
7. The Objector is a separate legal entity from the respondent/judgment debtor in this matter.

The Application is supported by the Affidavit of Simon Kisoi Mwase who states that he is the director of the Objector Company and is duly authorised to swear to the Supporting Affidavit. He has reiterated the grounds of objection in the Affidavit and has attached the Certificate of Registration of Starox Tours Adventures Limited dated 13th October 2009 and the Memorandum and Articles of Association that shows him as holder of 20% shares of the Company and one Charles Ndung'u Waweru as holder of 20% shares. He adds that all the goods indicated in the proclamation notice cited above are goods from the shop of the objector save the motor vehicle registration number KAR 666S and KAU 020U which are registered in the name of unknown third parties being Solomon Karindare and Sheikh Osman. He attaches true copies of the searches conducted at the Registry of Motor Vehicles. He prays that the Proclamation be lifted accordingly.

The Claimant filed a replying affidavit dated 13th March 2012 to the objection deposed to by Mr. Raphael Musyoka Ngumbi. He states that on 3rd November, 2010 this Honourable Court made an award in his favour directing the Respondent, PAEM AGENCIES COMPANY LIMITED to pay Kshs.224,000 being his terminal dues for loss of employment.

That the said award remains unsatisfied because the Respondent has employed all manner of tactics to defeat the award of the court and the current objection proceedings are part of the Respondent's scheme to avoid satisfying the award. That he was incurring enormous costs in seeking execution. That the proclaimed goods belong to the Respondent herein who is using all manner of excuses and tricks to avoid satisfaction of the award.

That this is so because the premises which the goods were attached are occupied and operated by one Emily Ngei who is a director of the Respondent herein and she is still operating from the premises on a day to day basis.

That the Objector has not produced any documents by way of receipts or otherwise to demonstrate that any of the goods belong to it. That also the search at the Registry of Motor Vehicles shows that the motor vehicles registration numbers KAR 666S and KAU 020U do not belong to the Objector and no third party has approached court to object to their proclamation. The Objector has not shown or demonstrated any legal or equitable interest in the said motor vehicles.

That having worked for the Judgment Debtor, he knows the premises in question where the proclamation took place belongs to the Judgment Debtor and even now it is being operated by the Judgment Debtor's director, one Emily Ngei who has even forwarded to this court fake documents from the Registrar of Companies on previous occasions to defeat and frustrate the execution of the award of this court. That the application by the Objector is fatally defective and an abuse of the process of the court and same be dismissed with costs.

The general principle is that he/she who alleges must prove the allegations on which the relief of the Court is based. The Objector herein has made general allegations that the attached goods described in Anex 'SM4' to the Application belong to 'Starox Tours Adventures Limited'. No single documentation has been produced and/or annexed to the Application to authenticate this allegation. On the other hand, the Respondent/Judgment Creditor who had worked for the Respondent has stated under oath that he is

very familiar with the premises of the Judgment Debtor and is sure the attached goods belong to the Judgment Debtor who continues to carry out its business in the said premises.

The Director of the Judgment Debtor, Mrs. Emily Ngei has not been candid with the court and the court finds that she has deliberately put road blocks to deny the Judgment Creditor the fruits of the court award.

No Objection has been received by the Court with respect to the two attached motor vehicles which clearly demonstrates that there are no third parties involved in the matter.

Accordingly, the court finds that the Objector has failed on a preponderance of evidence to establish ownership and/or equitable interest in the proclaimed properties and the Objection is dismissed with costs. The interim orders are lifted accordingly.

It is so ordered

Dated and Delivered on this 22nd day of May, 2013.

Mathews N. Nduma
PRINCIPAL JUDGE
INDUSTRIAL COURT