



**Centurion Engineers & Builders Limited v Kenya Bureau of Standards;
National Bank of Kenya & 2 others (Garnishee) (Civil Case 506 of 2012)
[2024] KEHC 11173 (KLR) (Commercial and Tax) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 506 OF 2012
A MABEYA, J
SEPTEMBER 26, 2024**

BETWEEN

CENTURION ENGINEERS & BUILDERS LIMITED APPLICANT

AND

KENYA BUREAU OF STANDARDS RESPONDENT

AND

NATIONAL BANK OF KENYA GARNISHEE

COOPERATIVE BANK LIMITED GARNISHEE

KENYA COMMERCIAL BANK LIMITED GARNISHEE

RULING

1. Before Court is the application dated 11/4/2024 brought under section 1A, 1B, 3A, 44 and 63E of the [Civil Procedure Act](#), Orders 23 and order 50 rule 1 of the Civil Procedure Rules. The application seeks that the garnishee nisi be made absolute for the remaining decretal amount of Kshs 569,379,080/- as per the decree of 7/11/2023. It further seeks that this balance be transferred to the applicant's bank account via its advocate.
2. The application is based on the grounds set out on the face of it and the supporting affidavit of Eng. Samay Singh sworn on 11/4/2024. He stated that the Court of Appeal overturned the previous ruling and adopted the arbitrator's award of Kshs. 584,492,094.20. That a sum of Kshs. 15,113,014.20 had been recovered from a previous garnishee proceeding leaving an outstanding balance of Kshs. 569,379,080. That the respondent had made no other payment nor provided a proposal regarding it.



3. The 1st garnishee responded to the application through a replying affidavit of Christine K Makone sworn on 13/6/2024. It stated that account numbers 02003xxxxxxx and 010710xxxxxxx were not maintained by the respondent with the 1st garnishee. That account number 01071002830601 had no funds and was overdrawn with a debit balance of Kshs. 154,493,640.98 and that the 14 bank accounts attached did not contain sufficient funds to satisfy the decree. The 1st garnishee expressed its willingness to comply with the court's directions regarding the handling of any available amounts.
4. The 2nd garnishee filed a replying affidavit sworn by Dorcas Mueni on 25/4/2024. She stated that the respondent did not hold bank accounts nos. 2120504454700 and A/C No 11441504454700. She further stated that there was no evidence that had been provided as to the existence of such accounts with the 2nd garnishee.
5. The 3rd garnishee filed a response to the application via a replying affidavit of Gordon Winani sworn on 19/4/2024. He admitted that the respondent did hold account numbers 1107618355 and 1107839467 which had Kshs 506,365.44 and Kshs. 968,987.50, respectively. That however, the said amount was insufficient to settle the decretal amount sought in the garnishee application.
6. The respondent opposed the application vide a replying affidavit dated 24/5/2024 sworn by Mirium Kahiro. She contended that the respondent was a state corporation protected under section 21 of the Government Proceedings Act, rendering the application filed incompetent. That the application was premature because taxation proceedings had not been initiated as required by section 94 of the Civil Procedure Act. That allowing execution would significantly prejudice the respondent and hinder its ability to perform its statutory functions.
7. The application was canvassed by way of written submissions which I have considered. The applicant submitted that the garnishee proceedings were separate proceedings between the decree-holder and the garnishee and the judgment-debtor had no role therein whatsoever thus it lacked the locus standi to participate or object to such applications.
8. With respect to the 3rd garnishee, it was submitted that the 3rd garnishee had admitted holding account numbers 1107618355 and 1107839467 each holding Kshs 506,365.44 and Kshs 968,987.50, respectively. That the said sums should be released to settle the decree partly. That since the 1st garnishee did not file any response to the application, the garnishee order nisi should be made absolute against it in accordance with Order 23 rule 4 of the Civil Procedure Rules.
9. Garnishee proceedings are governed by Order 23 of the Civil Procedure Rules. Rules 1(1) which provides: -

- “ 1. A court may, upon the ex parte application of a decree-holder, and either before or after an oral examination of the judgment-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (hereinafter called the “garnishee”) to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree- holder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid



2. At least seven days before the day of hearing the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment-debtor.
3. Service on the judgment-debtor may be made either at the address for service if the judgment-debtor has appeared in the suit and given an address for service, or on his advocate if he has appeared by advocate, or if there has been no appearance then by leaving the order at his usual residence or place of business or in such manner as the court may direct.
4. An order nisi shall be in Form No. 16 of Appendix A.”

10. Rule 4 provides: -

“If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings; and the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.”

11. In *Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd; Diamond Trust Bank (Garnishee)* [2020] eKLR, the court cited with approval the case of *Choice Investments Ltd vs. Jeromnimon (Midland Bank Ltd, Garnishee)* (1981) 1 All ER 225, wherein at page 227 it was stated that: -

“The word ‘garnishee’ is derived from the Norman-French. It denotes one who is required to ‘garnish’, that is, to furnish, a creditor with the money to pay off a debt. A simple instance will suffice. A creditor is owed £100 by a debtor. The debtor does not pay. The creditor gets judgment against him for the £100. Still the debtor does not pay. The creditor then discovers that the debtor is a customer of a bank and has £150 at his bank. The creditor can get a ‘garnishee’ order against the bank by which the bank is required to pay into court or direct to the creditor, out of its customer’s £150, the £100 which he owes to the creditor. There are two steps in the process. The first is a garnishee order nisi. Nisi is Norman-French. It means ‘unless’. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors: see *Pritchard v Westminster Bank Ltd* [1969] 1 All ER 999, [1969] 1 WLR 547 and *Rainbow v Moorgate Properties Ltd* [1975] 2 All ER 821, [1975] 1 WLR 788. If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if he himself directed the bank to pay it. If it is a deposit on seven days’ notice, the order nisi operates as the notice.”

12. In the present case, it is not in dispute that there is a decree in favour of the applicant and the same has not been settled. The role of the garnishees herein was to appear in Court to either acknowledge the debt or dispute the same.

13. In its replying affidavit of 13/6/2024, the 1st garnishee stated the two bank account numbers 02003xxxxxxx and 010710xxxxxxx were not maintained by the respondent. That that account number 010710xxxxxxx did not hold any funds and was overdrawn to the tune of Kshs.



154,493,640.98. That ac no. 010030xxxxxxx held Kshs 779,262/-, ac no 01001xxxxxxx Kshs. 32,443.70, ac no 010030xxxxxxx Kshs. 480.75, ac no. 010030xxxxxxx Kshs. 774,042.49 and ac no 01020002820601 Kshs. 816,777.00.

14. On the foregoing, it is evident that the amount held by the 1st garnishee cannot fully settle the decretal sum but can only partly satisfy the decree.
15. With respect to the 2nd garnishee, it was contended that it did not hold the bank accounts listed by the applicant.
16. The 3rd garnishee, in its replying affidavit sworn by Gordon Winani, confirmed that respondent held account numbers 1107618355 and 1107839467 which had Kshs 506,365.44 and Kshs 968,987.50 respectively.
17. In accordance with Order 23 Rule 4 of the Civil Procedure Rules, the Court finds that monies held in the identified accounts to the credit of the respondent should be applied to partially satisfy the decree.
18. The respondent raised the issue that it was a state corporation protected by the provisions of section 21 of the [Government Proceedings Act](#) and that therefore the application was incompetent.
19. Section 21(4) of the [Government Proceedings Act](#) provides that: -

“... save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.

20. In *Ikon Prints Media Company Limited vs. Kenya National Highways Authority & 2 Others* [2015] eKLR, it was held that: -

“Foremost though, it is important to point out that it would not be tenable to invoke the [Government Proceedings Act](#) (Cap 40) as a bar to any execution herein. The 1st Respondent is a body corporate with perpetual succession and a common seal. It is a corporate entity capable of subsisting independently. It is dependent on Government funding but it is not government or servant of or agent of Government for the purposes of the [Government Proceedings Act](#). The 1st Respondent is an independent judicial person capable of being sued and suing. Its litigation does not involve the Government. Any judgments decreed against the 1st Respondent are not judgments against the government but against an independent juridical body...”

21. The same position was taken in *Miscellaneous Civil Application No. 278 of 2017: Greenstar Systems Limited vs. Kenyatta International Convention Centre (KICC) & 2 Others* [2018] eKLR thus: -

“From 2015 when the Arbitration commenced to the point of execution the Applicant has always participated and held itself out as a body corporate and not as a Government department or agency. It is too late in the day for the Applicant to now seek to don a different coat. Its invocation of the [Government Proceedings Act](#) is but a last-ditch attempt to scuttle the execution proceedings against it. Based on its previous engagement in this matter the Applicant is estopped from relying on the provisions of the [Government Proceedings Act](#) as a challenge to execution against it.”



22. The court notes that the respondent is a state corporation capable of suing and being sued in its own name and capacity. The provisions of the [Government Proceedings Act](#) do not necessarily preclude the applicant from pursuing this application for that reason.
23. In light of these findings, the Court finds merit in the application dated 11/4/2024. Consequently, the Decree nisi is hereby made absolute as follows:-
- a. The 1st and 3rd Garnishee do forthwith pay over to the decree-holder, all sums of money that stand in credit in all the accounts held by them as follows: -
 - i. 1st garnishee - Kshs. 2,403,005.90
 - ii. 3rd garnishee - Kshs.1,475,352.90
 - b. The costs of the 1st and 3rd Garnishee of Kshs. 50,000/- is awarded to the said garnishees to be deducted from the amounts in a) above.
 - c. The costs of the application is awarded to the applicant in any event.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024.

A. MABEYA, FCI Arb

JUDGE

