



Rentworks East Africa Limited v Mediheal Diagnostics & Facility Center Ltd; Bank of India (Kenya) (Garnishee) (Commercial Case E525 of 2023) [2024] KEHC 11195 (KLR) (Commercial and Tax) (26 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11195 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E525 OF 2023
A MABEYA, J
SEPTEMBER 26, 2024**

BETWEEN

RENTWORKS EAST AFRICA LIMITED DECREE HOLDER

AND

MEDIHEAL DIAGNOSTICS & FACILITY CENTER LTD JUDGMENT DEBTOR

AND

BANK OF INDIA (KENYA) GARNISHEE

RULING

1. Before Court is an application dated 1/8/2024. It was brought under Order 23 rules 1, 2, 3 & 4 and Order 51 rule 1 of the *Civil Procedure Rules* 2010, sections 1A, 1B and 3A of the *Civil Procedure Act*. It sought that the garnishee order nisi herein be made absolute.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Sarah Nyamche sworn on 1/8/2024. The applicant stated that on 14/2/2024, the Court entered judgment against the judgment-debtor for a sum of Kshs 155,491,211/= plus interest at court rates together with costs of the suit.
3. That the judgment-debtor has refused to settle the decretal sum and have closed their offices in Nairobi preventing the decree holder from picking their equipment. That it received credible information that the judgment-debtor held accounts in the garnishee bank with sufficient funds to settle the decretal sum. It therefore sought the attachment of the said funds in the name of the judgment-debtor to satisfy the decretal sum.



4. In response to the application, the garnishee filed a replying affidavit sworn by Ramarao Bogani on 7/8/2024. He averred that the account the decree-holder sought to garnish was not in the name of the judgment-debtor but rather Mediheal Hospital and Facility Center Limited. That the judgment-debtor and Mediheal Hospital and Facility Center Limited were separate legal entities having different registration numbers.
5. Based on the foregoing, the garnishee averred that it was contractually and legally precluded from disclosing customer information with respect to a party not in these proceedings. Consequently, the garnishee did not have any funds held in favor of the judgment-debtor to satisfy the decretal amount.
6. The decree-holder filed a further affidavit dated 9/8/2024. It was averred that Mediheal Hospital and Facility Center Limited shared a similar name with the judgment-debtor and had the same directors. That the judgment-debtor had always presented itself as being the same entity as Mediheal Hospital and Facility Center Limited and had made payments to the decree-holder using accounts held in its name as well as related companies. It was contended that according to the conduct of the judgment-debtor, the decree-holder thought the accounts belonged and were operated by the judgment-debtor.
7. In a rejoinder, the garnishee filed a further undated replying affidavit sworn by Ramarao Bongani. He averred that there was a distinction between the judgment-debtor and the account holder whose accounts had been garnished. That the decree-holder was attempting to garnish an account belonging to a third party who was not involved in the original lawsuit. That both Mediheal Hospital and Facility Center Limited and the judgment-debtor were currently undergoing insolvency proceedings and seeking the appointment of an administrator.
8. I have considered the application and the responses. The main question for determination is whether the garnishee order nisi should be made absolute.
9. Order 23 Rule 1(1) of the [Civil Procedure Rules](#) provides: -

“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.”
10. In [Mengich t/a Mengich & Co. Advocates & Another vs Joseph Mabwai & 10 Others](#) [2018]eKLR, it was held that: -

“Garnishee proceedings is done in two different stages. The first stage is for the garnishee *order nisi*, while the second stage is for the garnishee order absolute. At the first stage, the judgment creditor makes an application ex parte to the court that the judgment debt in the hands of the third party, the garnishee, be paid directly to the judgment creditor unless there is an explanation from the garnishee why the order nisi should not be made absolute. If the judgment creditor satisfies the court on the existence of the garnishee who is holding money due to the judgment debtor, such third party (garnishee) will be called upon to show cause



why the judgment debtor's money in its hands should not be paid over to the judgment creditor, and if the court is satisfied that the judgment creditor is entitled to attach the debt, the court will make a garnishee order nisi attaching the debt.

The essence of the order nisi is to direct the garnishee to appear in court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order nisi must be served on the garnishee and judgment debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the garnishee fails to attend court or show good cause why the order nisi attaching the debt should not be made absolute, the court may subject to certain limitations make the garnishee order absolute. The garnishee, where necessary also have an option of disputing liability to pay the debt.

The primary object of a garnishee order is to make the debt due by the judgment debtor available to the decree holder in execution without driving him to the suit.”

11. The position of the decree-holder was that the decree dated 14/2/2024 remained unsatisfied for the total sum of Kshs 155,419,211/- plus interest. That the judgment-debtor held accounts in the garnishee bank capable of satisfying the decree. On its part the garnishee contended that the account number 005251700019640 did not belong to a judgment-debtor but a third party whose name was disclosed and that therefore, it was barred from disclosing the information with respect to the said account.
12. In a garnishee application, the garnishee is called upon to give information as to whether it holds any funds for the judgment-debtor. In the present case, the garnishee was adamant that the judgment-debtor did not own the said account as it belonged to a third party who was not a party to these proceedings. In support of this position, the garnishee produced a copy of the company CR12 to show that the account number is not in the name of the judgment-debtor.
13. The purpose of attachment via garnishee proceedings is to enforce a court judgment by directing a third party, the garnishee, to hand over money or property belonging to a judgment-debtor to the decree holder. In this case, the garnishee has presented evidence showing that there are two distinct companies involved, the judgment-debtor and one Mediheal Hospital and Facility Center Limited.
14. The judgment on record is as against the judgment-debtor and not Mediheal Hospital and Facility Center Limited. The latter company, whether or not is related to the judgment-debtor, retains its own separate legal personality. Even where a company is a wholly owned subsidiary of a judgment-debtor, its funds cannot be attached to satisfy the debt of the holding company and vice-versa.
15. In the present case, the decree-holder's contention is that the two entities are related and that payments to it by the judgment-debtor used to be from the attached account. That may be so but cannot be the basis of garnishing an account belonging to a 3rd party, which Mediheal Hospital and Facility Center Limited is.
16. Consequently, the Court is restricted from issuing orders that would impact the property of a third party not involved in the case. Therefore, unless the company directors are examined under oath regarding the location of any other assets or accounts, the court cannot issue orders to attach assets belonging to a stranger in the case.
17. Accordingly, the Court finds no merit in the application and the same is dismissed with costs.

It is so ordered.



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

A. MABEYA, FCI Arb

JUDGE

