



REPUBLIC OF KENYA



Directline Assurance v Abdalla; Safaricom Limited (Intended Interested Party) (Civil Appeal E012 of 2022) [2024] KEHC 12959 (KLR) (28 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CIVIL APPEAL E012 OF 2022
SM GITHINJI, J
OCTOBER 28, 2024**

BETWEEN

DIRECTLINE ASSURANCE APPELLANT

AND

BASHIR ALI ABDALLA RESPONDENT

AND

SAFARICOM LIMITED INTENDED INTERESTED PARTY

(Being an Appeal from the Ruling and Order of the Principal Magistrate's Court at Garsen delivered by Hon Eugene Kadima on 30th June, 2022 in Garsen PM's Civil Suit No. E052 of 2021)

RULING

Representation

Mr Kokul Advocates for the Appellant

Mr Maliambo Advocate for the Respondent

Mr Rweya for the Interested Party

1. This ruling determines the Respondent's Notice of Motion dated 12102023 brought under the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 10 rule 11 and Order 42 Rule 6 of the [Civil Procedure Rules](#). The applicant seeks the following orders: -

1. Spent.



2. That the intended interested party be enjoined to these proceedings solely for purposes of prosecuting this Application and confirming that indeed the funds had since been disbursed and/or wired to the Respondent's Account on the 26th day of July, 2022.
 3. That the Honourable court hereby do issue orders striking out the entire Appeal; and the subsequent Appellant's Application dated 22nd July, 2022 with costs in favour of the Respondent, as the same has since been superseded by events: in consequent to the disbursement of the decretal sum in Garsen PMCC No. E52 of 2021 which had since been remitted prior to service of the Appeal and Application by the Appellant.
 4. That the costs of the intended party be also borne by the Appellant Respondent.
2. The application was supported by the affidavit sworn by Bashir Ali Abdalla on even date. He deponed that their application for summary judgment dated 14th July, 2022 was allowed as prayed in the subordinate court in Garsen PMCC No. E052 of 2021. That a decree was extracted and the Respondent executed the said Garnishee proceedings. He also deponed that the remittance of the decretal amount was made by the intended interested party being the 'Garnishee herein' who deposited in the Respondent Applicant Decree Holder account on 26th July, 2022.
 3. According to him, upon satisfaction of the entire decree and certificate of costs, the claim before the subordinate court is now Res Judicata. That when the Appellant served the Respondent with the Appeal and enclosure Application, the same had already been overtaken by events. Further, that the application seeks to strike out the entire Appeal and the subsequent pending applications by the Appellant.
 4. The Intended Interested Party in Response filed a Replying Affidavit sworn by Daniel Ndaba on 31st January, 2024. He asserted that the subject Garnishee proceedings were served upon the Interested Party on 19th July, 2022 and he instructed the firm of Messer's Meritad Law Africa to represent the Interested Party. That in compliance with Order 23 of the Civil Procedure Rules, a Replying Affidavit was filed confirming the availability of funds in the Respondent Appellant's Pay Bill.
 5. Further, that during the hearing on 21st July, 2022, a Garnishee absolute was issued in the absence of the Respondent Appellant. That the amount of Kshs. 2,588,975- in compliance with the Garnishee Order Absolute was remitted to the Decree Holder's advocate. That there were no stay orders served upon them even as they administratively facilitated transmission of the funds.

Disposition

6. I have considered the application by the Respondent Applicant dated 12th October, 2023, the response by the Intended Interested Party as well as the submissions by counsel. The Appellant Respondent did not file any response to the said application. In my view, there are only two issues for determination; whether the Intended Interested Party ought to be enjoined to these proceedings for purposes of prosecuting this application and whether this court ought to strike out the appeal.
7. In my view the Interested Parties' presence in the proceedings does not violate the [Civil Procedure Rules, 2010](#). The provisions of Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) state;
 - 2) "The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence



before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

8. The above provision states that parties may be joined to proceedings at any stage. It has been held that in certain circumstances, a party may be enjoined to a suit at appeal stage. In the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* (2014) eKLR the Supreme Court of Kenya held that;

(22) "In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the *Mumo Matemo case* where the Court (at paragraphs 14 and 18) held:

“[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

9. In determining the application, I note that the intended interested party was a key party in the declaratory suit filed in the lower court and in fact, they participated in informing the court on the availability of funds in the Respondent Appellant’s Pay Bill and as such I see no prejudice if the Interested Party is enjoined in these proceedings.

10. On the 2nd issue for determination, the applicant contends that a decree was extracted and the Respondent enforced the execution of the Garnishee Proceedings dated 14th July, 2022. That the decretal sum was paid by the intended interested party on 26th July, 2022. I note that on 27th July, 2022, the appellant served the Respondent with an application dated 22nd July, 2022 seeking an order of stay of execution of the Ruling delivered on 30th June, 2022 pending the hearing of the intended appeal. The applicant further contends that at the moment the appellant served the Respondent with the Appeal and enclosure application, there were no stay orders.

11. As it is, there is evidence that the decretal amount was released to the respondent in the Garnishee Proceedings and therefore the issues in the matter have been overtaken by events. The conduct of the Appellant Respondent equally suggests that they are not interested in pursuing the appeal; they have not filed the record of appeal as directed by this court; and have neither filed any responses nor submissions in opposition of the application by the Respondent, and in the circumstances, this court strikes out the entire appeal as the same is overtaken by events.

12. In the end, the application dated 12th October 2023 is allowed with costs to the RespondentApplicant.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 28TH DAY OF OCTOBER, 2024.

.....

S.M. GITHINJI

JUDGE

In the absence of; -

1. All the Parties and their Advocate. They be notified.

S.M. GITHINJI

JUDGE



28/10/2024

