



REPUBLIC OF KENYA



Machiri Limited v China Wu Yi Company Ltd; Highways Authority (Third party) (Civil Suit 213 of 2016) [2023] KEHC 1209 (KLR) (Commercial and Tax) (24 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 213 OF 2016
A MABEYA, J
FEBRUARY 24, 2023**

BETWEEN

MACHIRI LIMITED PLAINTIFF

AND

CHINA WU YI COMPANY LTD RESPONDENT

AND

HIGHWAYS AUTHORITY THIRD PARTY

RULING

1. Before court is an application dated 6/12/2022. It was brought under Order 23 Rule 1 and 2, Order 51 Rule 1 of the [Civil Procedure Rules](#), and section 3A of the [Civil Procedure Act](#).
2. Prayers 2 and 3 were granted in the interim vide orders issued on 7/12/2022 effectively attaching all debts and monies owing, accruing or due from the garnishee to the defendant to answer the sum of Kshs.139,471,809.71 being the amount outstanding on the partial decree issued on 8/9/2022. The orders also restrained the garnishee from making any payment to the defendant of any money owed to it until the aforesaid decree was paid in full.
3. The remaining prayer sought that the garnishee does show cause why it should not pay the plaintiff the debt due from the garnishee to the defendant in settlement of the amount owed to the plaintiff.
4. The grounds for the application were set out on the face of it, and in the supporting and supplementary affidavits of Eng. James Mbugua Macharia sworn on 6/12/2022 and 11/1/2023, respectively. It was contended that the plaintiff instituted a suit against the defendant for Kshs. 139,471,809.71 plus interest at 24% per annum from 18/6/2014 till payment in full plus cost of the suit.



5. That on 21/5/2019, the plaintiff and defendant entered into a consent and judgment was entered for the plaintiff against the defendant for 139,471,809.71, and the rest of the claim for interest and costs was to proceed to trial.
6. That all effort to obtain settlement of the partial decree were futile. That the plaintiff obtained leave to execute the partial decree vide a ruling dated 10/6/2021 and filed the instant application having been made aware that the garnishee owed the defendant a substantial amount of money which could be applied to satisfy the partial decree.
7. That there was a payment certificate on record dated 13/12/2022 where the defendant was asking for payment of Kshs. 230,218,496.19 from the garnishee. That therefore, there was sufficient amount held by the garnishee owing to the defendant which could be used to settle the partial decree.
8. That all issues raised by the garnishee were addressed in the defendant's application dated 3/8/2021 and vide the ruling of 4/2/2022, the consent judgment was upheld.
9. The defendant opposed the application vide the replying affidavit of Luo Zicheng sworn on 19/12/2022. He deponed that the plaintiff's claim was founded on a sub-contract agreement dated 25/7/2011 between the plaintiff and defendant for a project wherein the plaintiff was a sub-contractor. That upon completion of the project, the plaintiff inordinately delayed in sending its final account to the defendant as per their agreement. That the defendant proceeded to issue the resident engineer with its final accounts without those of the plaintiff for onward transmission to the 3rd party.
10. The defendant thus pleaded that it was the garnishee that was liable to the plaintiff for the payment, and not the defendant. That vide a ruling dated 4/2/2022, the court held that third party proceedings ought to be concluded and granted stay of execution for 120 days. That the third-party proceedings had not been concluded thus the plaintiff could not execute the partial decree, and that the defendant's liability had not been established.
11. The defendant pleaded that it had numerous projects with the garnishee and it was owed significant amounts by the garnishee, such that if the application was allowed, the defendant would be deprived of other payments arising from different projects.
12. The garnishee similarly opposed the application vide the replying affidavit sworn by Eng. Daniel Cheronon on 20/12/2022. It denied owing the defendant any money and averred that the only outstanding issue between it and the defendant was the issue of liability in the third-party proceedings which was yet to be determined. That execution of the partial decree was premature and should have awaited final judgment.
13. It was also contended that there was no payment certificate issued by the project manager in accordance with clause 42 and 43 of the sub-contract indicating an outstanding amount of 139,471,809.71 payable to the plaintiff to justify such payment. That the defendant entered into the consent herein without the knowledge or approval of the garnishee.
14. The application was canvassed by way of written submissions. The plaintiffs' were dated 11/1/2023 while those of the defendant were dated 16/1/2023. This Court has considered those submissions as well as the rival averments.
15. This Court has considered the court file and proceedings. In its ruling of 4/2/2022, this court granted a stay for 120 days to allow the defendant's suit for indemnity against the 3rd party to be determined. On 16/2/2022, the court directed that judgment having been entered against the defendant, the case between the defendant and third party would proceed in the normal manner and the issue of costs



and interest against the defendant and third party would be determined together with the third-party proceedings. Parties were then directed to comply with pre-trials and a hearing date of 11/5/2022 was fixed.

16. On 11/5/2022, parties dispensed with an application by the third party dated 10/5/2022 seeking to strike out the defendants amended statement of defence. Upon arriving on an agreement that disposed of that application, another hearing date of 27/5/2022 was fixed and the orders for stay were extended. The hearing never took off and the matter was mentioned severally before the Deputy Registrar. It was not until 20/12/2022 that the parties appeared before this court again to address the instant application for garnishee proceedings.
17. This court notes the plaintiff's right to enjoy the fruits of his judgment. The case between the defendant and third party cannot stand on its way and prevent it from realizing the fruits of its judgment. The defendant has admitted that the 3rd party holds amounts for it arising from other projects. Garnishee proceedings do not ordinarily relate the same transaction or debt arising from a transaction between the debtor and creditor.
18. All that is required is that a Garnishee owes a debtor such amounts are liable to be attached in satisfaction to the debt. In this regard, the 3rd party did not deny that the defendant has various projects with itself from which monies will be due to the defendant. Legal processes are not there for mere decoration. They are meant to ensure some tangible benefits for those who undertake them.
19. Accordingly, I am satisfied that the plaintiff has established its case. The Garnishee has not shown cause that it doesn't owe the defendant. The application is therefore allowed as prayed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2023

A. MABEYA, FCIArb

JUDGE

