



**Esther v Samuel Onyango Oyoo t/a Crosslink Services & 2 others;  
Crosslink Services Limited (Objector) (Civil Suit E466 of 2019)  
[2023] KEHC 20982 (KLR) (Commercial and Tax) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20982 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E466 OF 2019  
JWW MONG'ARE, J  
JULY 31, 2023**

**BETWEEN**

**KAVIRA MALONGA ESTHER ..... PLAINTIFF**

**AND**

**SAMUEL ONYANGO OYOO T/A CROSSLINK SERVICES ..... DEFENDANT**

**AND**

**BANK OF AFRICA KENYA LIMITED ..... 1<sup>ST</sup> GARNISHEE**

**EQUITY BANK LIMITED ..... 2<sup>ND</sup> GARNISHEE**

**AND**

**CROSSLINK SERVICES LIMITED ..... OBJECTOR**

**RULING**

1. The parties herein have filed several applications before this court. The Decree-Holder on August 18, 2022 and November 11, 2022 filed two separate garnishee applications seeking to garnish funds held in two separate accounts in Equity Bank. Subsequently, an order for garnishee nisi was issued by the court. On March 13, 2023 the decree-holder filed another application seeking to pierce the corporate veil of the Objector, Crosslink Services Limited.
2. The Judgment-Debtor filed an application on September 28, 2022 seeking to overturn the recognition of the foreign judgment from which these proceedings emanated.



3. On November 14, 2022 and November 18, 2022 two objection applications were filed by the Objector herein objecting to the garnishee applications against Account Number 0470279XXXXXX held at Equity Bank Limited, Moi Avenue Branch, Nairobi, the 2<sup>nd</sup> Garnishee herein.
4. The parties agreed to have all the applications argued together since they were interrelated and one decision rendered by the court.
5. I have carefully considered all the applications and the responses and grounds of opposition filed by the respective parties. The Decree-Holder submitted in respect the application dated August 18, 2023 that the funds held in Account number 04702797XXXXXX held by the 2<sup>nd</sup> Garnishee in the account of the Objector ostensibly belonged to the Judgment-Debtor who was hiding behind the corporate veil to deny the Decree-Holder the fruits of her judgment. The Decree-Holder urged the court to issue orders of garnishee absolute on the said account and allow the execution to proceed in satisfaction of the judgment recognised by the court. The Decree-Holder also urged the court to order that the 2<sup>nd</sup> garnishee to make available funds that had been removed from the 2<sup>nd</sup> account belonging to the judgment debtor in account no 0470283XXXXXXX when an order for decree nisi had been granted by the court and that the garnishee bank to provide a bank statement in both accounts from October 1, 2022 to December 31, 2022 to the decree-holder. The Decree-holder urged the court to make absolute the garnishee nisi and allow attachment.
6. To the two application, the objector filed an application on November 14, 2022 seeking to lift the order of garnishee nisi on account number 047028XXXXXXX, held at Moi Avenue Branch of the 2<sup>nd</sup> garnishee. The objector argued that the funds so held belonged to the objector which was a separate entity from the judgment debtor.
7. The objection proceedings were opposed by the decree holder who sought to have the court pierce the corporate veil by filing an application dated November 14, 2022. The Decree-Holder argued that Judgment-Debtor is hiding behind the corporate entity to escape from his obligations under the judgment herein. That Crosslink Services was a partnership between the Judgment-debtor, Samuel Onyango Oyoo and Ruth Atieno odera up to and until the judgment herein was entered and upon realising that a judgment had been entered herein they then transformed into a limited liability company and formed Crosslink Services Limited, the same name as the partnership business name and the first subscribers were Samuel Onyango Oloo and Ruth Atieno Odera. Subsequently, the judgment debtor resigned from the company and transferred his shares to a third party. This was done to allow the incoming payments to be diverted to the company account and avoid the execution process that was on going. The Decree-Holder urged the court to pierce the corporate veil and find that the funds were held for the benefit of the Judgment-Debtor and could be attached for the payment of the judgment debt herein.
8. The Judgment-Debtor filed an application seeking to overturn the foreign judgment herein and declare the process a nullity. The Judgment-Debtor argued that an appellate court in Democratic Republic of Congo, from where the original Judgment emanated, had on Appeal, overturned the judgment and therefore there was nothing for the court to attach in execution. The Judgment-Debtor argued that the said order was issued on September 22, 2022 and it was a suit between the Judgment-Debtor and the Decree-Holder.
9. The garnishee confirmed that indeed there were two accounts held by it, one in the name of the Judgment-Debtor which held the sum of USD 2.50 and the second one in the name of the Objector and which held the sum of USD 32,374.59 and attached Bank statements thereto.



**Analysis and Determination:-**

10. I have considered carefully all the applications filed by respective parties. I will consider the applications in seriatim in the reverse order.
11. On the application seeking to overturn the judgment herein I agree with the arguments put forth by the Decree-Holder that the said purported Order of the Court of Appeal is not in conformity with the requirements of the *Foreign Judgments (reciprocal Enforcement) Act*. The said judgment of the Appellate court had not been recognised by this court as a valid judgment in the proper manner and is therefore not capable of being admitted into these proceedings. The annexed copy of the said Judgment did not bear any stamp of the Court that issued it and that the decree holder who is a resident of DRC Congo had not been made aware of the proceedings in order to file a response. I find therefore that this application has not been proved to the required standard and I shall dismiss the said application by the Judgment-Debtor.
12. The second applications I shall consider are the ones filed by the Objector and the application to pierce the corporate veil of the objector by the Decree-Holder. I have considered these two applications together and the respective arguments by the parties. I note that the Judgment-Debtor was a partner in the business known as Crosslink Services where the partners were Ruth Atieno Odera and Samuel Onyango Oyoo. Subsequently, the objector was incorporated with the two partners as the original subscribers and directors in accordance with the law that where a business name transforms into a company, the partners are the first subscribers. I note that the conversion from a partnership took place in the pendency of these execution proceedings. I am therefore satisfied that this is a case where the court can lift the corporate veil and allow the attachment of the company property to proceed. I have seen the CR 12 emanating from our Companies Registry and note that the shares of the Judgment-Debtor were subsequently transferred to a third party. I am however persuaded that the funds held in the garnished accounts are the property of the judgment-Debtor and are capable of being attached irrespective of the fact that the business transformed into a limited liability company. I find that the said application has merit and I shall allow the same.
13. Finally on the garnishee applications, I am satisfied that the decree holder has made a case for the order of garnishee absolute to issue. I therefore hold that the funds held in the two accounts be released forthwith to satisfy the judgment debt herein to the decree-holder,
14. Costs of the garnishee proceedings shall be paid from the garnished funds upon assessment by the court in the proper manner. Costs of the rest of the applications are issued in favour of the decree-holder against the judgment debtor. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2023**

.....

**J. W. W. MONG'ARE**

**JUDGE**

**In the Presence of:-**

Mr. Muriuki for the Decree-holder.

No appearance for the Judgment-debtor.

No appearance for the 1<sup>st</sup> Garnishee.

Mr. Nyachio for the 2<sup>nd</sup> Garnishee-Equity Bank.



Mr. Momanyi for the objector.

Sylvia- court Assistant

