



**Kwengu & Company Advocates v Gold Lida Limited & another (Miscellaneous Application 391 of 2018) [2023] KEHC 21648 (KLR) (Commercial and Tax) (18 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21648 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 391 OF 2018**

**A MABEYA, J  
AUGUST 18, 2023**

**BETWEEN**

**KWENGU & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**GOLD LIDA LIMITED ..... 1<sup>ST</sup> CLIENT**

**FOTON EAST AFRICA LIMITED ..... 2<sup>ND</sup> CLIENT**

**RULING**

1. Before Court is the Motion on Notice by the Advocate/Applicant dated 2/8/2023. It was brought, inter alia, under Order 48 and Section 52 of the *Advocates Act* Cap 16 Laws of Kenya.
2. The application was in the nature of a garnishee proceeding for payment of a sum of Kshs. 106,736,84/83 held by the Nairobi City County Government in satisfaction of a decree in favour of the advocate made on 1/8/2023.
3. The Advocates Case is that he obtained the said decree for legal fees. That the 2<sup>nd</sup> respondent has a decree of Kshs. 142,064,075/= made in its favour on 29/6/2023, against the Nairobi City County in NBI HCCOM NO. 588 of 2015 Foton East Africa Ltd vs Nairobi City County.
4. That the 2<sup>nd</sup> respondent had closed shop in Kenya and its directors and shareholders relocated to China. That the 2<sup>nd</sup> respondent has no known assets in Kenya save for the said decree. That the fruits of his judgment should not be rendered nugatory.
5. Although the court directed that the application be served upon the parties, the Advocate only served the respondents. He did not serve the Garnishee. The proper procedure was to have a preliminary Garnishee Order Nisi issued to attach the monies held by the Nairobi City County and require the Garnishee Show Cause why it should not release and/or pay the attached sum to the Advocate.



6. Since the Nairobi City County was never served, the Court cannot make a final order against it and require it to pay the claimed amount without first hearing it.
7. Accordingly, I direct that the application be reserved upon both the Garnishee and respondents forthwith for hearing on 25/8/2023.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF AUGUST, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**

