



**JT Group Limited v Quaint Holdings Ltd; Kenya National
Highways Authority & another (Garnishee) (Civil Suit 153 of 2016)
[2023] KEHC 24370 (KLR) (Commercial and Tax) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 153 OF 2016
A MABEYA, J
OCTOBER 31, 2023**

BETWEEN

JT GROUP LIMITED PLAINTIFF

AND

QUAINT HOLDINGS LTD DEFENDANT

AND

KENYA NATIONAL HIGHWAYS AUTHORITY GARNISHEE

EQUITY BANK LIMITED GARNISHEE

RULING

1. This ruling determines the amended Notice of Motion by the decree holder dated 6/4/2022. The application is brought under section 1A and 3A of the *Civil Procedure Act* cap 21 Laws of Kenya, Order 23 rule 1(2), Rule 2 and Rule 9 and Order 51 rule 1 of the *Civil Procedure Rules*.
2. The application seeks orders for the attachment of the balance of the contract sum of ksh 5,752,971/- held by the 1st garnishee for the performance of the based contract for the maintenance of Mwekas-Mayoni Ekeru(B12) Road between the 1st Garnishee and the 1st Judgment debtor. That the 1st Garnishee be ordered to appear in court to show cause why it should not pay the outstanding decretal sum and costs. The application further sought that the 2nd Garnishee be ordered to hold monies received by it from the 1st garnishee into the judgment debtors account and have the same be applied to settle the decretal sum in full



3. In support of the application, the applicant relied on the grounds on the face of it and the supporting affidavit dated 6/4/2022 and supplementary affidavit dated 4/10/2022 both sworn by dr. Joseph Kamau Magachi.
4. The applicant's case is that, *vide* a mediation settlement agreement between the parties dated 12/6/2018, judgment was entered in favour of the applicant for a sum of ksh 4,100,000/-. Further, the parties recorded a consent on 1/12/2020 that the accrued interest would be payable on the decretal sum.
5. The applicant contends that the judgment-debtor has not complied with the terms of the consent and had discovered that the judgment owed the 1st garnishee some colossal sum pursuant to a performance debt contract. It was the applicant's contention that the sums owed therein should first be used to settle the balance of the decretal sum.
6. The judgment debtor opposed the application *vide* a replying affidavit of Monica Nduta sworn on 10/6/2022. It admitted the assertions of the applicant about the mediation settlement but averred that it had managed to pay ksh 5000,000/- before it fell back on the installments. That a further agreement was entered to the judgment-debtor was to pay ksh 300,000/- as an initial deposit and thereafter installments of ksh 100,000/-.
7. According to the judgment-debtor, the outstanding balance is ksh 1500,000/- having paid a total sum of ksh 2,600,000/- of the decretal sum. That the decree holders claim for interests was not part of the consent judgment and that the plaintiff had not produced evidence to show that there were attachable proceeds.
8. The 1st garnishee filed a replying affidavit dated 5/12/2022 sworn by eng. Andrew N Maiteka. It contended that the Kenya National Highway Authority had awarded the judgment debtor a 36-month performance based contract for the Mbwekas Mayoni Ekeru road. That the terms of the contract were that the contractor would only be paid for the certified works approved by the engineer in accordance to the interim certificates.
9. That it had been making payments through the 2nd garnishee banks and based on the type of the contract, the 1st garnishee requested to continue making payments with respect to the said contract to the 2nd garnishees account. The 2nd garnishee stated that this would aid in the accounting for public funds to the Auditor General, KENHA board as well as the Kenya Roads Board.
10. It was averred that the 1st garnishee was opposed to the decree holder being paid the amounts due but prayed that the same be recovered from the account where the contractual amounts are domiciled with the 2nd garnishee. That the costs of the 1st garnishee be borne by the judgment-debtor.
11. The 2nd garnishee filed a replying affidavit dated 15/6/2022 sworn by Stella Njoroge. It was stated that the judgment debtor's account no 0810260869343 as at 28/5/2022 held a debit balance of ksh 1,000,000/- and therefore the 2nd garnishee did not hold any funds on behalf of the judgment debtor. It also sought to have the costs of the garnishee proceedings be recovered from the judgment-debtor's account.
12. The application was canvassed by way of written submissions which I have considered.
13. I have considered the pleading the submissions and the authorities. The main issue for determination is whether based on the facts presented, the garnishee orders should be issued.



14. The legal provision governing garnishee proceedings is Order 23 1(1) of the [Civil Procedure Rules](#) which provides that: -

“1(1) 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.”

15. This provision gives a decree holder the right to move the Court for attachment of a debt owing from a third person to the judgment-debtor, on condition it is proved that the decree is in existence and it remains unsatisfied and that there is a debt due to the judgment debtor capable of being attached to answer the decree.
16. In the present case, the decree holder has premised its case on the performance contract between the 1st garnishee and the judgment debtor for the maintenance of the Mbwekas-Mayoni road. According to the applicant, the decretal amount should be paid out of the proceeds from the said contract.
17. The existence of the contract is not disputed by the 1st garnishee. However, the 1st garnishee is of the view that the decretal amount be recovered from the account held by the judgment-debtor with the 2nd garnishee. On its part the 2nd garnishee holds that the subject account did not have any sums in credit to satisfy the decree.
18. In *Mengich t/a Mengich & Co. Advocates & another v Joseph Mabwai & 10 Others* [2018]eKLR, the court held: -

“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.”

19. In the present case, it is not in dispute that there exists a decree in favour of the applicant and it had not been settled. It is also clear that the 1st garnishee acknowledged that pursuant to the contract between it and the judgment holder, money is payable to the latter on the certified works in accordance to the interim certificates. The money is paid into the judgment debtors account situate at the 2nd garnishees bank. From the statements, it is clear that as at 28/5/2022, the 2nd garnishee did not have any amount to satisfy the decree.
20. The Court is however of the view that the payments made by the 1st garnishee with respect to the contract are periodic and will only reflect in the account once the 1st garnishee makes payments with respect to the performance contract. The contract has not been cancelled or set aside. The decree holder is deserving of the fruits of its judgment and in this case, there is no evidence of the judgment debtor is willing to comply with the terms of the consent judgment.
21. Whilst the application may have been merited, there is no evidence that as at the time the application was made, there were any funds in the account held with the 2nd garnishee capable of being attached. The decree-holder can be vigilant and attach the same at an appropriate time in view of the position taken and disclosures made by the 1st garnishee.
22. Accordingly, the application is dismissed with costs of ksh 30,000/- each to the applicant, 1st garnishee and 2nd garnishee to be borne by the judgment-debtor.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2023.

A. MABEYA, FCI Arb

JUDGE

