



Standard Investment Bank Limited v Bomas of Kenya Limited (Miscellaneous Case E230 of 2021) [2023] KEHC 26253 (KLR) (Commercial and Tax) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26253 (KLR)

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

MISCELLANEOUS CASE E230 OF 2021

A MABEYA, J

NOVEMBER 30, 2023

IN THE MATTER OF THE ARBITRATION ACT, 1995

BETWEEN

STANDARD INVESTMENT BANK LIMITED APPLICANT

AND

BOMAS OF KENYA LIMITED RESPONDENT

RULING

1. This is a ruling on the Decree Holder's Motion on Notice dated 1/8/2023. The same was brought, inter alia, under Order 22 Rules 6 and 7 of the *Civil Procedure Rules*. The same sought to garnishee A/C Nos. 110898xxxx and 110898xxxx belonging to judgment debtor held by KCB at its Moi Avenue Branch in satisfaction of the decree of this Court made on 11/7/2023 for Kshs 104,412,812/44.
2. The application was supported by the affidavit of Job Kihumba sworn on 1/8/2023. The grounds thereof were that; an Arbitral Award was published on 4/5/2020 and the same was recognized as a decree of this Court on 25/11/2022. The total amount due on the decree is Kshs 108,412,812/84. That the judgment debtor operates the subject accounts with the garnishee and that there is belief that the said accounts hold funds capable of satisfying the decree.
3. The Motion was opposed by the judgment debtor vide its Grounds of Opposition dated 3/8/2023. It contended that, a similar application had been dismissed on 1/8/2023. That the directions given in that ruling of the Court had not been complied with. That is the premises, the application was malicious, vexatious and an abuse of the court process.
4. The Judgment debtor also filed a replying affidavit of Peter Gitaa sworn on 15/8/2023. He swore that in the ruling of 1/8/2023, the court had directed that the Deputy Registrar does compute the interest



- payable on the Arbitral Award. That that had not been complied with. That the Board of the Judgment debtor had taken steps to secure funding to settle the decree.
5. The Garnishee filed a replying affidavit sworn by Wambugu Joseph Mwangi on 16/8/2023. He admitted that the Garnishee was holding a total sum of Kshs 52,955,653/54. That the garnishee did not hold enough funds to satisfy the entire amount due under the decree.
 6. The application was argued orally. Mr. Mueke Learned Counsel for the decree holder submitted that the directions in the ruling of 1/8/2023 had been complied with. That the interest due had been certified by the Deputy Registrar. That as held in *Jaribu Credit Traders Ltd v Nairobi County Government* [2018] eKLR, settlement of a Court decree is not conditional on budgetary allocation.
 7. On his part, Mr. Maina Learned Counsel for the Judgment debtor submitted that the issue of costs and interest had not been complied with as directed in the ruling of 1/8/2023. That the Judgment debtor was willing to settle the decretal sum. That a letter had been written to the parent Ministry seeking Financial Support. That given 90 days, the Judgment debtor would have paid the decretal sum. That the funds then in the subject accounts were salaries for the employees.
 8. I have considered the contestations of the parties. The submission that the application falls foul of the directions of this court of 1/8/2023 does not lie. The record shows that they had already been complied with and the decree is ripe for execution.
 9. The Judgment debtor has not denied that the decree remains unsatisfied. The fact that the amount is not capable of fully satisfying the decree is no reason to decline to grant the application.
 10. In view of the foregoing, I am satisfied that the application is meritorious and I allow the same as prayed.
- It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF NOVEMBER, 2023.

A. MABEYA, FCI ARB

JUDGE

