



Kenblest Kenya Limited v Musyoka; NCBA Bank Limited (Garnishee) (Civil Appeal 136 of 2017) [2022] KEHC 497 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 136 OF 2017
MM KASANGO, J
MAY 26, 2022**

BETWEEN

KENBLEST KENYA LIMITED APPLICANT

AND

KITEMA MUSYOKA RESPONDENT

AND

NCBA BANK LIMITED GARNISHEE

RULING

1. Musyoka Kitema, the respondent obtained judgment in his favour before the Thika Chief Magistrate's Court on 30th September, 2016. Kenblest Kenya Limited, the appellant was aggrieved by that judgment and accordingly filed this appeal before this Court. Judgment in this appeal was delivered on 11th June, 2020. By that judgment the appellant was partially successful when the respondent's award was reduced to kshs.2,308,480. By an application dated 24th May, 2021 the respondent applied for the garnishee of funds belonging to the appellant in NCBA Bank Ltd Account (withheld). Garnishee nisi was issued by Deputy Registrar of this court on 23rd June, 2021. Subsequently, on 21st July, 2021 garnishee absolute was issued.
2. Objection was raised by the Law firm of Waiganjo Wachira & Company Advocates, the advocates representing the appellant. The objection was on the basis that the subject bank account to which garnishee orders were issued was the law firm's client account.

Analysis

3. I have considered the parties' written and oral submission and affidavit evidence. It needs to be stated that the appellant's advocates, Waiganjo Wachira & Company Advocates deponed that the respondent was paid Kshs.5,149,189.00. There is no specific rebuttal of that assertion from the respondent. The



respondent's advocate however swore an affidavit refuting such a payment. In my view, such a direct assertion that the respondent was paid needed the respondent personally to negate the same. It was not enough for the respondent's advocate to refute the assertion on his own knowledge without stating that the same was from information given by the respondent.

4. The issues I need to consider are:-
 - a. Has the respondent proved that he can garnishee funds in client account of the law firm Waiganjo Wachira & Company Advocates.
 - b. Can execution be undertaken in an appeal?

First Issue

5. One of the bank account a law firm is legally required to maintain is a client account. Client account is defined in the Advocates (Accounts) Rule 1966 as:-

“Client account” means a current or deposit account at a bank or with a building society or a financial institution (as defined in the *Banking Act* (Cap. 488)) in the name of the advocate but in the title of which either the word “client” or the word “trust” appears;”

6. It is instructive to note that generally, a law firm maintains one client's account for its several clients. Although it needs to be stated that Rule 3 of the Advocates (Accounts) Rule provides:-

“An advocate may keep one client account or several client accounts as he thinks necessary.”

7. In view of the above Rule and the general practice of law firms unless the respondent proves that the law firm is indeed indebted to the appellant which debt can be garnisheed the garnishee proceedings will fail. Client's money is defined in the advocates (Accounts) Rules, 1966 as:-

“Client's money” means money held or received by an advocate on account of a person for whom he is acting in relation to the holding or receipt of such money either as an advocate or, in connexion with his practice as an advocate as agent, bailee, trustee, stakeholder or in any other capacity, and includes:-

- (a) money held or received by an advocate by way of deposit against fees to be earned or disbursements to be incurred; and
- (b) money held or received as or on account of a trustee, whether or not the advocate is sole trustee or trustee with others, but does not include—
 - (i) money to which the only person entitled is the advocate himself, or in the case of a firm of advocates, one or more of the partners in the firm; nor
 - (ii) money held or received by an advocate in payment of or on account of an agreed fee in any matter.”

Second Issue

8. But perhaps the main reason why the garnishee proceedings fail is because respondent erred to seek execution in this Court. This Court as stated before only dealt with the appeal from the magistrate's court judgment. The decree the respondent seeks to execute was the decree of the magistrate's court. That decree was modified by the judgment of this Court of 11th June, 2020 but it however remained



the decree of the magistrate's court. There was no application made for that decree to be executed before this Court. Unless and until an order is made for that decree to be executed before this Court, the respondent's garnishee cannot succeed. This is the meaning one gets from Section 30 of the Civil Procedure Act which provides:-

“ 30. A decree may be executed either by the court which passed it or by the court to which it is sent for execution.”

Disposition

9. In view of the above finding the garnishee nisi issued on 23rd June, 2021 and garnishee absolute issued by this Court on 21st July, 2021 are hereby set aside and vacated. The notice of motion dated 24th May, 2021 is dismissed with costs to the law firm Waiganjo Wachira & Company Advocates.

10. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Appellant/Applicant : - Mr. Ondeng H/B Mr. Nyandoro

For Kitema Musyoka : Respondent :- No appearance

For Waiganjo Wachira & Co. Advocates : Garnishee:- N/A

Ruling delivered virtually.

MARY KASANGO

JUDGE

