



CM Advocates LLP v Urithi Housing Co-operative Society Limited; Family Bank Limited & 5 others (Garnishee) (Miscellaneous Application E705 of 2021) [2022] KEHC 12907 (KLR) (Commercial and Tax) (19 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12907 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E705 OF 2021
DO CHEPKWONY, J
AUGUST 19, 2022**

BETWEEN

CM ADVOCATES LLP APPLICANT

AND

URITHI HOUSING CO-OPERATIVE SOCIETY LIMITED RESPONDENT

AND

FAMILY BANK LIMITED GARNISHEE

SIDIAN BANK LIMITED GARNISHEE

NATIONAL BANK LIMITED GARNISHEE

UNAITAS BANK LIMITED GARNISHEE

HOUSING FINANCE COMPANY OF KENYA GARNISHEE

PRIME BANK LIMITED GARNISHEE

RULING

1. Vide a Notice of Motion application dated 21st July, 2022, expressed in terms of Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 23 Rule 1 and Order 51 Rule 1 of the [Civil Procedure Rules](#), 2010, the Decree Holder/Applicant is seeking for the following orders;
 - a. Spent;
 - b. Spent;
 - c. Spent;



- d. That the Garnishees herein be directed, to within 7 days of an order of this Honourable Court furnish a full account of all monies held in favour of the Judgment Debtor/ Respondent sufficient to pay the Decree Holder the sum of Kshs.4,230,375/= in order to satisfy the Decree issued by this Honourable Court on 24th June, 2022;
 - e. That the Garnishee herein be summoned to appear before this Honourable Court on an appointed date and time to show cause why they should not pay the Plaintiff/Decree Holder's Advocates the sum of Kshs.4,230,375/= being the Decretal sum as per the decree issued by this Honourable Court on 24th June, 2022 in favour of the Plaintiff herein and further costs of these Garnishee Proceedings;
 - f. That a Garnishee Order absolute be and is hereby issued directed to Family Bank Limited, Sidian Bank Limited, National Bank Limited, Unaitas Bank Limited, Housing Finance Company of Kenya and Prime Bank Limited the Garnishees herein, to release and/or remit to the Decree-Holder; CM Advocates LLP, the sum of Kshs.4,230,375/= held in favour of the Judgment Debtor/Respondent - Urithi Housing Co-operative Society Limited in order to satisfy the Decree issued by this Honourable Court on 24th June, 2022;
 - g. That the Costs of this Garnishee proceedings be awarded to the Decree Holder/Applicant.
2. The Motion is premised on the grounds on the face of the application and further supported by the annexed affidavit of Philip Chelilim who describes himself as the Chief Accountant of the Applicant.
 3. In summary the applicant's grounds are that this Honourable Court entered a Judgment in favour of the applicant vide a ruling delivered on 7th June, 2021.
 4. A decree was issued on 24th June, 2021, in the sum of Kshs.4,230,375/= in favour of the Applicant and despite the Decree being served, the Respondent has failed, neglected and refused to settle the Decree.
 5. The Respondent holds an account with the Garnishee and that the Garnishee hold to the credit of the Respondent have sufficient funds which can be used to satisfy the Decree and the Decree Holder prays that the said funds be garnished towards settlement of the Decree.

Response by 1st Garnishee

6. In opposition to the application, the 1st Garnishee filed a Replying Affidavit sworn by Sylvia Wambani on 27th July, 2022 who is employed as a Legal Officer by the 1st Garnishee.
7. She deposed that the Respondent holds an account with 1st Garnishee identified as 0050xxxxxxx and the account has been dormant since September, 2020 with zero balance.
8. She further deposed that the 1st Garnishee is not in a position to settle the decretal sum and the inclusion of the 1st Garnishee is therefore a nullity noting that it cannot enforce any order relating to payment of the decretal sum.

Response by 2nd Garnishee

9. The 2nd Garnishee filed a Replying Affidavit in response to the application sworn by Stella Kendi on 26th July, 2022.
10. She deposed that she is a Senior Legal Officer working with the 2nd Garnishee and that the Judgment Debtor is a customer and the holder of Account Number 0101xxxxxxxxxx.



11. She avers that as at 26th July, 2022 when the 2nd Garnishee was served with the Garnishee Order Nisi, the account did not have any funds, the same is not still funded.
12. Consequently, the 2nd Garnishee is unable to comply with the Garnishee order issued by this Court.

Response by 4th Garnishee

13. In opposition to the Notice of Motion application, the 4th Garnishee filed a Replying Affidavit sworn by John Chomba dated 1st August, 2022.
14. The deponent who describes himself as the Legal Assistant with Unaitas Sacco Society Limited as 4th Garnishee but incorrectly identified as Unaitas Bank Limited.
15. He deposed that Unaitas Sacco Society Limited was served with a Garnishee Order Nisi on 22nd July, 2022 attaching funds held in credit for the Judgment Debtor in Account Number 0100xxxxx.
16. The Judgment Debtor holds an account at Thika Branch Unaitas Sacco Society Limited, which the account changed from what is indicated in the garnishee order nisi to 1008xxxxxx in April, 2018.
17. The deponent avers that the statement of accounts in respect of the account confirms that the account has been dormant since 31st December, 2020 and the balance is a sum of Kshs.5,69235/= which would not even be sufficient to defray the costs of participating in the proceedings.
18. He further states that it is apparent from the foregoing that Unaitas Sacco Society Limited does not hold any money belonging to the Judgment Debtor that may be utilized to satisfy the decree.
19. The deponent on behalf of the 4th Garnishee, has urged this Court to discharge Unaitas Sacco Society Limited from the Garnishee proceedings.
20. This application came up for hearing on 2nd August, 2022 and both counsel for the parties made their oral submissions in support and opposition to the application dated 21st July, 2022.
21. This Court upon listening to both counsel for the parties, this court discharged the 1st, 2nd and 3rd Garnishee from these proceedings. This Ruling is therefore in respect to the 4th, 5th and 6th Garnishee.

Analysis and Determination

22. Upon careful consideration of the application before Court, the responses thereto and the oral submissions by both parties through their respective Counsel. The only issue for determination by this Court is whether the garnishee order nisi should be made absolute?
23. The guiding law on Garnishee proceedings is provided for under Order 23 of the *Civil Procedure Rules*, 2010 which provides as follows;

“(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.

- (2) At least seven days before the day of hearing the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment-debtor.
- (3)
- (4) If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings.”

24. The procedure relating to Garnishee proceedings was clearly laid down in the case of *Mengich t/a Mengich & Co. Advocates & Another –vs- Joseph Mabwai & 10 Others* [2018] eKLR, where the Court stated as follows;

“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 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 Applicants ignored these procedures.

The primary object of a garnishee order is to make the debt due by the debtor of the Judgment debtor available to the decree holder in execution without driving him to the suit.”

25. It is not in dispute that on 7th June, 2022, the Applicant obtained a Judgment of this court for the sum of Kshs.4,230,375/= against the Respondent, whereby a decree was eventually extracted and served upon the parties.
26. Failure to satisfy the decree resulted into the filing of this application before Court in order for the Applicant to recover the decretal sum against third parties who hold funds for the Judgment Debtor/ Respondent.



27. I have perused the Court record and noted that the applicant obtained a Garnishee Order Nisi on 28th July, 2022 which was served upon all the Garnishee as evidenced by the Affidavit of Service dated 27th July, 2022.
28. Again the court record shows that this Court discharged the 1st, 2nd and 3rd Garnishee from these proceedings on 2nd August, 2022.
29. Counsel for the 4th, 5th and 6th Garnishee submitted that the 4th Garnishee account has a balance of Kshs.5,692.35. In regards to the 5th Garnishee, the amount in credit is Kshs.71,385.44. Counsel also confirmed to this court that the amount held in the credit is Kshs.134,108.25. Counsel has also asked for costs with regard to the 5th Garnishee.
30. From the arguments by both parties and it is evident that the 4th, 5th and 6th Garnishee have admitted to holding funds for the Respondent in its respective accounts though not enough to settle the decretal sum.
31. The record clearly shows that the Applicant has satisfied the procedure as outlined under Order 23 of the *Civil Procedure Rules*, 2010 as well as the aforementioned authority
32. The prayer for costs of defending this application as submitted by counsel for the 5th Garnishee fails as the Advocates Remuneration Order is very clear on this. Counsel can move the court appropriately to recover fees for defending this application.
33. In conclusion, the Applicant's application dated 21st July, 2022 be and is hereby allowed in terms of prayers No.4, 5 and 6 as against the 4th, 5th and 6th Garnishee to the extent demonstrated in their respective Replying Affidavits.
34. I however make no orders as to costs.
Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI THIS 19TH DAY OF AUGUST , 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Kendie counsel holding brief for Mr. Chelanga for Applicants

Mr. Mutua counsel for 4th, 5th and 6th Garnishee

Court Assistant - Sakina

