



Advocates v Xplico Insurance Company Limited & another; Ncba Bank Kenya Plc (Garnishee) (Civil Miscellaneous Application 744 of 2019) [2022] KEHC 13049 (KLR) (Civ) (20 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION 744 OF 2019
JK SERGON, J
SEPTEMBER 20, 2022**

BETWEEN

KIBET ADVOCATES APPLICANT

AND

NCBA BANK KENYA PLC GARNISHEE

AND

XPLICCO INSURANCE COMPANY LIMITED RESPONDENT

AND

NCBA BANK KENYA PLC GARNISHEE

*(Originating from Milimani CMCC no 6468 of 2018
(Peter Ouma v Xplico Insurance Company Limited))*

RULING

1. The applicant/decreed holder herein took out the notice of motion dated September 8, 2021 supported by the grounds set out on its face and the facts deponed in the affidavit of Joseph N Ngigi whereof he sought for the following orders:
 - i. Spent.
 - ii. That garnishee orders nisi do issue against the garnishee to attach any monies held by them in favour of the respondent's account numbers xxxxxx, xxxxx and xxxxxxx held at the garnishee I & M Bank and any other account by the aforesaid held at the garnishee bank in satisfaction of the decretal amount of Kshs 122,251/= in this matter.



- iii. That the garnishee do appear before the court to show cause why they should not pay to the decree holder Kshs 122,251/= plus costs from the amount held by the respondent at their account numbers xxxxxx, xxxxxx and xxxxxx at the garnishee bank and/or any other account held by the aforesaid.
 - iv. That the garnishee order nisi be made absolute.
 - v. That costs be provided for.
2. The garnishee responded to the motion by putting in the replying affidavit sworn by its legal officer, Doreen Otieno, on November 4, 2021.
 3. The respondent/judgment debtor did not participate in these proceedings.
 4. At the interparties hearing of the motion, the parties relied on the averments made in their respective documents.
 5. I have considered the grounds featuring on the face of the motion; and the facts deponed in rival affidavits.
 6. A brief background of the matter is that the applicant herein filed the advocate-client bill of costs dated November 19, 2019 against the respondent in the present matter, arising out of Milimani CMCC no 6468 of 2018 (Peter Ouma v Xplico Insurance Company Limited) in which the applicant acted for the respondent at all material times.
 7. The bill of costs proceeded for taxation and was taxed by the taxing master at the sum of Kshs 122,251/= and a certificate of taxation was issued on April 15, 2021. Consequently, a decree was issued to that effect on August 4, 2021.
 8. It is apparent that the applicant is now seeking to recover the aforementioned decretal sum by way of garnishee proceedings.
 9. In his affidavit in support of the motion, John N Ngigi, states that he has reason to believe that the respondent's account numbers xxxxxxxx, xxxxxxxx and xxxxxxxx ("the accounts") held with the garnishee, hold sufficient funds to satisfy the decree.
 10. The applicant also states that he is apprehensive that unless the orders sought herein are granted, the respondent will proceed to withdraw the monies held in those accounts, thereby making it impossible for the applicant to execute the decree in place.
 11. In response, Doreen Otieno avers that the garnishee recently filed an interpleader suit namely High Court Commercial Case No E804 OF 2021 (*I & M Bank Limited v Xplico Insurance Company Limited & others*) seeking the determination by the court on various matters including the monies held in the respondent's bank accounts.
 12. The deponent further avers that the garnishee filed an application in the abovementioned suit and sought for various orders, which includes the freezing of the respondent's various accounts, including the accounts which are the subject of the instant motion, and a stay of execution of all garnishee and related proceedings in relation to the said accounts.
 13. It is the averment of the deponent that the court granted the orders sought and hence this court cannot adjudicate over the present matter.
 14. It is also the averment by the deponent that the garnishee also filed another application in the interpleader suit in which it sought to be released from liability.



15. Upon my perusal of the record, I observed that the garnishee annexed various documents to the replying affidavit of Doreen Otieno to support the averments made therein.
16. Upon my further perusal of the record, it is clear that the High Court-commercial division, upon hearing the application seeking for a stay of execution and for the freezing of the respondent's accounts; granted the freezing orders sought and further stayed execution of the decrees and garnishee orders made in respect to various matters listed therein in the interim.
17. It is clear from the record, there is nothing to indicate whether a determination has ever been made on the aforementioned application. There is also nothing to indicate that the suit before the commercial court has been concluded.
18. In the premises, I am hesitant to grant the orders sought in the instant application at this stage, since it is apparent that the suit placed before the commercial court relates to the material accounts herein.
19. Consequently, the notice of motion dated September 8, 2021 is found to be without merit. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2022.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant/Decree holder

..... for the Respondent/Judgment debtor

..... for the Garnishee

