



Ngigi t/a Joe Ngigi & Co Advocates (Formerly Ngaywa Ngigi & Kibet Advocates) v Xplico Insurance Company Limited; National Bank of Kenya (Westlands Branch) (Garnishee) (Miscellaneous Civil Application E252 of 2020) [2022] KEHC 14281 (KLR) (Civ) (21 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION E252 OF 2020

JK SERGON, J

OCTOBER 21, 2022

BETWEEN

JOSEPH NGIGI T/A JOE NGIGI & CO ADVOCATES (FORMERLY NGAYWA NGIGI & KIBET ADVOCATES) APPLICANT

AND

XPLICO INSURANCE COMPANY LIMITED RESPONDENT

AND

NATIONAL BANK OF KENYA (WESTLANDS BRANCH) GARNISHEE

RULING

1. The application herein dated June 24, 2021 is seeking for orders that;
 - i. spent
 - ii. garnishee orders nisi do issue against the garnishee to attach any monies held by them in favor of the respondent’s account numbers 020xxxxxxx, 010xxxxxxxxxxx, 010xxxxxxxxxxx, 010xxxxxxxxxxx, 010xxxxxxxxxxx and 013xxxxxxxxxxx held at the garnishee National Bank of Kenya, Westlands branch and any other account by the aforesaid held at the garnishee bank in satisfaction of the decretal sum of Kshs 165,976.00 in this matter;
 - iii. The garnishee do appear before court to show cause why they should not pay to the decree holders Kshs165,976.00 plus costs from the amount held by the respondent at their account numbers. 020xxxxxxx, 010xxxxxxxxxxx, 010xxxxxxxxxxx,



010xxxxxxxxxx, 010xxxxxxxxxx and 013xxxxxxxxxx held at the garnishee National Bank of Kenya

- iv. The garnishee order nisi be made absolute
2. The application is anchored on the grounds on the face of it and the depositions in the supporting affidavit by Joseph N Ngigi sworn on June 24, 2021. It is the applicant's contention that the decree holder obtained judgment against the respondent on May 18, 2021 for Kshs 165,976.00 which the respondent has failed, neglected and/or refused to settle hence the need to attach its monies held in the aforementioned accounts.
 3. Further that the applicant has sufficient reason to believe that respondent operates the aforementioned accounts held by the garnishee as per the statement annexed and marked JNN-2 which the applicant believes that for the decretal sum to be satisfied, the said monies should be attached.
 4. The applicant is apprehensive that the respondent may withdraw the monies held by the garnishee and make it difficult to execute the decree awarded by this court.
 5. In its replying affidavit sworn by Richard Orora on August 9, 2021, the garnishee opposes the application and states that it is a complete stranger to the depositions in paragraphs 1,3 and 3 in the supporting affidavit by the applicant. Further that the respondent does not hold bank account numbers 020xxxxxxx, 010xxxxxxxxxxx and 010xxxxxxxxxxx with the defendant/judgment debtor and as such, it does not hold any funds in the said accounts to the credit of the judgment debtor to satisfy the decretal sum. The garnishee confirms that it hold account numbers 010xxxxxxxxxxx, 010xxxxxxxxxxx, 010xxxxxxxxxxx and 010xxxxxxxxxxx with the judgment debtor at its Westlands branch.
 6. The garnishee further contends that the applicant served the garnishee order nisi on July 29, 2021 attaching a sum of Kshs 165,976.00 at the time when the garnishee held at the credit of the judgment debtor a total sum of Kshs 213,763, Kshs 53,615.53, Kshs 10,974.50, Kshs 308,491.50 in respect to the bank account numbers 010xxxxxxxxxxx, 010xxxxxxxxxxx and 010xxxxxxxxxxx respectively. Further that as at July 1, 2021 the accounts were marked with liens in respect of previous garnishee *order nisi* as listed from page 2 to 8 of the replying affidavit.
 7. It is the garnishee's prayer that based on the foregoing, it does not have sufficient monies to settle the already existing garnishee orders nisi let alone the applicant's hence it is in the interest of justice that the garnishee order absolute is not issued. The garnishee agrees to pay costs of the application and proposes an assessment of Kshs 100,000 and that the same is to be deducted from the funds held by it to the credit of the judgment debtor.
 8. This application was canvassed by way of written submissions which I have duly considered together with the application and the affidavits in support and against.
 9. *Order* 23, rule 1 on attachment of debts states;
 - (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.

10. On the consequences of being served with a garnishee *order nisi*, this court is in agreement with the position taken in [Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Co Ltd; Diamond Trust Bank \(garnishee\)](#) [2020] eKLR, where reference was made to the case of *Choice Investments Ltd v Jeromnimon (Midland Bank Ltd, garnishee)* [1981] 1 All ER 225 at page 227 where it was stated:

“As soon as the garnishee order nisi is served on the bank, it operates as an injunction. It prevents the bank from paying the money to its customer until the garnishee order is made absolute, or is discharged, as the case may be. It binds the debt in the hands of the garnishee, that is, creates a charge in favour of the judgment creditor: see *Joachimson v Swiss Bank Corpn* [1921] 3 KB 110 at 131, [1921] All ER Rep 92 at 102, per Atkin LJ. The money at the bank is then said to be ‘attached’, again derived from Norman-French. But the ‘attachment’ is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay.”

11. The garnishee claims that it does not have sufficient funds to be attached to settle the decretal sum. When the garnishee *order nisi* was served upon the garnishee, there was enough money in the respective accounts to settle the decretal sum herein. There is a list of other garnishee orders that the garnishee claim to have been served with no evidence whether the same indeed exist or is it just a list. The applicant herein is entitled to a share of the monies already in the accounts same as those who the garnishee claim to have served them.
12. The garnishee gave a proposal for costs to be assessed at Kshs 100,000 to be deducted from the decretal sum as part of the payment of the decretal sum.
13. I allow the application in the following terms;
- i. Costs of the application is assessed at Kshs 100,000/= to be paid to the applicant to partially settle the decretal sum
 - ii. A garnishee order absolute is hereby confirmed for the remaining Kshs 65,976/=.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant/Decree holder

..... for the Respondent/Judgment Debtor

..... for the Garnishee

