



**Mwangi v Wambui & another; Chege Wainaina & Co. Advocates (Garnishee) (Commercial Case 185 of 2009) [2022] KEHC 16718 (KLR) (Commercial and Tax) (22 December 2022) (Directions)**

Neutral citation: [2022] KEHC 16718 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**COMMERCIAL CASE 185 OF 2009**  
**DO CHEPKWONY, J**  
**DECEMBER 22, 2022**

**BETWEEN**

**LUCY WAIRIMU MWANGI ..... PLAINTIFF**

**AND**

**MONICA JACKLINE WAMBUI ..... 1<sup>ST</sup> DEFENDANT**

**PAULINE MUKUHI NGANGA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**CHEGE WAINAINA & CO. ADVOCATES ..... GARNISHEE**

**DIRECTIONS**

1. When the parties appeared before this court yesterday on December 20, 2022, there appeared to be confusion as to whether there are two pending applications in this matter that is the recusal and garnishee applications.
2. Mr Olukaka, counsel for the Defendant/Judgment Debtor has sought for time to file a response to the said application and Garnishee's affidavits.
3. According to Mr Olukaka, there is a recusal application dated August 24, 2022 seeking Justice Abigael Mshilla to recuse herself and the garnishee application dated September 19, 2022. On the other hand, Mr Nyboma, counsel for the Plaintiff argued that the recusal application was dispensed with and that is how the matter ended up before this court.
4. I have perused the court file to establish the true position and indeed find Mr Nyboma was correct. The record reflects that on October 18, 2022, upon hearing the parties submissions with respect to the recusal application dated August 24, 2022, Hon Lady Justice Mshilla recused herself and directed



that the matter be mentioned before the Presiding Judge for re-allocation. On December 13, 2022, the matter was then allocated to this court.

5. That having been said, there is only one pending application dated September 19, 2022 seeking for garnishee orders against the 1<sup>st</sup> Defendant. Mr Nyboma, the Plaintiff's/Garnishee holder's counsel has asked the court to grant prayer No.(3) of the said application which seeks to make the garnishee order absolute. The learned counsel for the Plaintiff/Garnishee holder submitted that since the garnishee has confirmed vide an affidavit dated December 8, 2022 that it holds monies for the Judgment Debtor, the order for garnishment should be made absolute in the interest of justice. According to the Plaintiff's counsel, Order 23 of the Civil Procedure Rules is a self-contained process pitting the Garnishor and Garnishee only and the Judgment Debtor has no right to respond on the garnishee application.
6. Order 23 of the Civil Procedure Rules governs the manner in which garnishee proceedings shall be conducted. It recognises that such proceedings shall be brought by a Decree Holder either before or after oral examination of the Judgment Debtor. This rule presupposes that the Judgment Debtor has a right to address the court on the correctness and propriety of the execution proceedings brought against him/her before or even after the Decree Nisi is entered on court record.
7. Having noted the above, I am inclined to allow the Defendants an opportunity to file a response on the correctness and propriety of the execution brought against them. In the premises, the following orders do hereby issue:-
  - a. That the Defendants do file responses to the application dated September 19, 2022 within fourteen (14) days from the date hereof.
  - b. Thereafter the parties to canvass the application by way of written submissions.
  - c. The Applicant is granted seven (7) days leave to file and serve written submissions upon being served with the response by the Defendants.
  - d. The Respondent is equally granted seven (7) days corresponding leave to file and serve their written submissions, upon being served with the Applicant's submission.
  - e. Mention on February 20, 2023 for highlighting and fixing ruling date.

It is so ordered.

**DIRECTIONS DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 22<sup>ND</sup> DAY OF DECEMBER \_\_, 2022.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr Nyboma holding brief for Mr Ojiambo for Plaintiff/Garnishor

Mr Olukaka holding brief for M/S Wambui Kibicho counsel for Defendants

M/S Mati holding brief for Mr Kairaria counsel for 2<sup>nd</sup> Defendant/Counter-claim/Garnishee

