



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION

MISC. CIVIL APPLICATION NO. 453 OF 2017

CONGRESS RENTAL SOUTH AFRICA.....APPLICANT

VERSUS

KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC).....RESPONDENT

AND

CO-OPERATIVE BANK OF KENYA LIMITED.....1ST GARNISHEE

KENYA COMMERCIAL BANK LIMITED.....2ND GARNISHEE

RULING

1. By a Notice of Motion dated 11/01/2021, brought under **Order 23 Rules 1, 2, 3, 4, 8 & 10 of the Civil Procedure Rules and section 3A of the Civil Procedure Act**, the applicant sought for a Garnishee Order against the respondent's **account number XXX** held with the 1st Garnishee and **account number XXX** held with the 2nd Garnishee.
2. The said accounts were to be attached to answer the Certificate of Accrued Interest dated 21/12/2020 to the extent of **US \$ 264,478.79/-** together with the costs of these Garnishee Proceedings.
3. The grounds for the application were contained in the body of the Motion and the supporting affidavit of **Geoff Muisyo** sworn on 11/01/2021. These were that; an Arbitral Award was issued by the Honourable **Mr. Calvin Nyachoti**, a Chartered Arbitrator, on the 18/09/2017 in which he awarded the applicant a sum of **US \$ 158,000.00** together with interest thereon at the rate of 14% p.a. as from 18/12/2015.
4. That the said Award was upheld by the High Court which granted a thirty (30) days stay of execution. Pursuant thereto, the respondent filed an application in the Court of Appeal in Nairobi vide CA No. NAI 231 of 2018 seeking leave to appeal against the said decision but the same was dismissed.
5. Subsequently, the applicant commenced execution by way of Garnishee Proceedings against the respondent for the outstanding balance of the principal debt of **US \$ 158,000.00** together with costs taxed in the sum of **Kshs. 635,125.00**. The application was successful but to-date interest amounting to US\$ 110,478.79 remained unpaid
6. The application was opposed by the respondent vide the replying affidavit of **Jane Frances Mutisya** sworn on 26/01/2021. She contended that; the respondent had honoured the decree nisi order from the previous garnishee proceedings and had made payment of the principal amount and costs of US \$ 158,000.00 on the 30/11/2018 and 3/12/2018, respectively. That the Court had been misled by non-disclosure of this fact.
7. That the application presupposed that interest accrued till the 21/12/2020 while the principal amount was paid on or about 30/11/2018 and 3/12/2018, respectively. That interest should not have continued to accrue on a settled principal amount. That in the premises, the alleged interest calculation was erroneous as the applicant deliberately misled and failed to disclose to Court, the payment of the principal sum. The Deputy Registrar was also misled to arrive at an erroneous calculation.
8. The 1st and 2nd Garnishee filed their responses wherein they acknowledged holding certain monies in the respective accounts for the

benefit of the respondent. For reasons set out hereinafter, I need not consider their respective contestations.

9. The Court has considered the record in its entirety, the depositions of the parties and the submissions of Learned Counsel.

10. In its replying affidavit, the respondent produced as 'JFM1' evidence to the fact that the principal sum of US \$158,000.00 and costs amounting to Kshs. 635,125.00 was paid in 2018. This fact had not been disclosed by the applicant in its supporting affidavit. To my mind that is a serious indictment on the applicant.

11. I have also looked at the Certificate of Accrued Interest prepared by the Deputy Registrar on 21/12/2020. The same is clear that the interest due was calculated on the presumption that interest due was from the date of the judgment, to wit, 18/12/2015 to 21/12/2020. The said interest was charged on the entire decretal sum of US &158,000 yet the said sum had been settled way back in December, 2020.

12. To my mind, the moment the decretal sum was paid, interest stopped to accrue on the principal sum. Once the respondent failed to settle any interest due as at that date, all that should have happened is interest to accrue on the accrued interest as at December, 2018 to the date of payment and not otherwise.

13. In this regard, I find the Certificate of Accrued Interest dated 21/12/2020 to be erroneous to the extent that it was charged on the principal sum for the period 18/12/15 to 21/12/2020. What should have been calculated should have been the interest that had accrued on the principal sum for the period until December, 2018 when the decretal sum was settled. Then interest on the outstanding interest as at December, 2018 until the date of issuing the Certificate.

14. In view of the foregoing, the entire proceedings were founded on an erroneous and illegal Certificate of Accrued Interest and cannot therefore stand. I find the applicants application dated 11/1/2020 to be fatally defective in so far as it was predicated on an erroneous certificate of Accrued Interest.

15. I therefore strike out the application dated 11/1/2021 with costs to the respondent and the Garnishees. I also set aside the Certificate of Accrued Interest dated 21/12/ 2020 and direct that the Deputy Registrar do prepare a proper Certificate based on facts as to when the decretal sum was settled as set out above.

It is so ordered.

DATED and **DELIVERED** at Nairobi this **11th** day of **February, 2021**.

A. MABEYA, FCIArb

JUDGE