



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL SUIT NO.11 OF 2017**

**ENDEBESS DEVELOPMENT COMPANY LIMITED.....PLAINTIFF**

**-VERSUS-**

**COAST DEVELOPMENT AUTHORITY.....DEFENDANT**

**AND**

**ABSA BANK KENYA PLC..... 1<sup>ST</sup> GARNISHEE**

**NATIONAL BANK KENYA LIMITED.....2<sup>ND</sup> GARNISHEE**

**RULING**

1. The court was moved vide a letter dated **18<sup>th</sup> May, 2021** addressed to the Deputy Registrar of the High Court by the Defendant. The said letter caused the matter to be cause listed before this Court on **25<sup>th</sup> May, 2021** and Counsel for the parties appeared.
2. I read through the said letter and after listening to the arguments by both Counsel for the parties, **M/S Abdi**, Counsel for the Defendant and **Mr. Onyancha**, Counsel for the Plaintiff, I have established that in its strictest sense, the Defendant is seeking the court to review its orders granted on **11<sup>th</sup> May, 2021**. It is therefore necessary to consider what orders were granted by this Court on **11<sup>th</sup> May, 2021**.
3. As rightly captured in the letter, save for the Account Numbers which appear different, this Court acceded to the Defendant's request to discharge an injunction order attaching its funds in Account No. [...] held in Absa Bank after its Counsel submitted that the said account is a salary account. In addition, the court extended interim orders restraining the transfer of funds on Account No. [...] held by the Defendant at the National Bank (K) Ltd, pending the determination of the pending application.
4. Now, the Defendant asserts that the orders and directives issued by this Court are impractical for the reason that the salary account is not the one held at Absa Bank but it is the one held at National Bank (K) Ltd. Therefore, the Defendant seeks that the court discharged the interim orders attaching funds in the Account NO. [...] at National Bank (K) Ltd. I first want to point out that the reason why the court issued the injunctive orders in the first place, was so as to compel the Defendant either abide by the conditional order for stay granted by this Court or fast-track the hearing of an application said to have been filed before the Court of Appeal in which they have sought to have the said orders or conditional stay granted by this Court set aside.
5. I also wish to point out that Court Orders must always be adhered to notwithstanding that the aggrieved party thinks that they are not correct. Thus, unless the orders are overturned an Appeal or reviewed, they remain effective and valid, and by virtue of the principle on equality before the law as enshrined in our Constitution, the parties concerned ought to abide with these orders.
6. In the instant case, the orders issued on **11<sup>th</sup> May, 2021** discharging the attachment of funds in the Defendant's Account held with Absa Bank was in exercise of this court's direction and those orders should not be assumed to be a mandatory injunction to have the Defendant's employees paid, so as to attract any necessary order for geared towards the payment of the Defendant's employees' salaries.
7. In other words, the question for consideration was not on what order the court should issue to ensure that the Defendant's employees are paid. I reiterate what I had stated earlier that the orders were issued on account of public interest and in exercise of court's discretion. If the Defendant has found it difficult to pay its employees even after lifting the attachment orders in respect of the Absa Bank Account, then let them furnish the bank guarantee imposed as a condition for stay or in the alternative await the determination of the two pending applications, being dated **30<sup>th</sup> April, 2021** and **20<sup>th</sup> April, 2021**.
8. Justice demands that he who seeks equity must also do equity and the court must strive to do justice for all the parties before it.

9. The upshot of the foregoing is that the Defendant's request for lifting the temporary injunction restraining the transfer of funds from Account No. [...] is hereby denied.

10. Parties to await the determination of the two applications pending before this Court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA ON THIS 28TH DAY OF MAY, 2021.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Onyancha counsel for the Plaintiff/Respondent

M/S Abdi Counsel for the Defendant/Applicant

Court Assistant - Winnie