



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

MISC. CIVIL APPLICATION NO. 75 OF 2017

NGAYWA NGIGI & KIBET ADVOCATES.....APPLICANT/DECREE HOLDER

VERSUS

INVESCO ASSURANCE COMPANY.....RESPONDENT/JUDGEMENT DEBTOR

AND

DIAMOND TRUST BANK.....GARNISHEE

(TOM MBOYA AND KOINANGE STREET BRANCHES)

R U L I N G

A. Introduction

1. This ruling pertains to the application dated 18th October 2019 in which the applicant seeks for orders of attaching monies in the custody of the garnishee and belong to the respondent in account numbers [xxxx] and [xxxx] at the garnishee's Tom Mboya and Koinange street branches in satisfaction of the decretal amount of Kshs. 160,606/= as well as costs of this suit.
2. It is the applicant's case that he has reason to believe that the judgement debtor operates account numbers [xxxx] and [xxxx] at the garnishee's Tom Mboya and Koinange street branches and that the same should be attached as the respondent may withdraw its monies held by the garnishee herein hence making it impossible for the applicant to satisfy his decree.
3. Despite service on the respondent and on the garnishee, no response was filed herein.
4. The applicant later filed submissions in support of their application.

B. Applicant's Submissions

5. It is submitted that that the judgment debtor has not sought to have the decree issued herein on the 20th August 2019 set aside neither is there an order of stay of execution of the said decree and further that the judgement debtor has no role to play in the garnishee proceedings as was held in the case of **Otieno Ragot & Co Advocates v City Council of Nairobi [2015] eKLR.**
6. It is further submitted that the applicant has established to this court by way of attaching a copy of the judgement debtor's remittance advice, that there is a sum of money held by the garnishee that is due and recoverable by the judgement debtor that would constitute a debt for the purpose of these garnishee proceedings and that the applicant has reasons to believe that the accounts sought to be garnished hold funds sufficient to satisfy the decree herein fully.
7. It is submitted that despite service, the garnishee did not attend court to dispute its liability to the judgement debtor or deny that the attached accounts belonged to the judgement debtor and as such the court in consideration of all the evidence tendered by the applicant should find that the application has merit.

C. Analysis & Determination

8. On perusal of the pleadings herein, the submissions as well as the authorities relied on by the applicant, it is my considered view that the issue for determination is whether the applicant has established a proper case for issue of garnishee orders.

9. The starting point in deciding this matter are the Provisions of Order 23 Rule 1(1) of the Civil Procedure Rules: -

“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. The object of garnishee proceedings is to enable a decree holder to reach a debt due to the judgment debtor from the garnishee as may be sufficient to satisfy a decree. It is therefore crucial to satisfy that the garnishee is indebted to the judgement debtor.

11. In the instant case, there is no dispute that there is a decree in favour of the applicant that has not been settled. The applicant avers that the subject account numbers [xxxx] and [xxxx] at the garnishee’s Tom Mboya and Koinange street branches hold credit balances which are sufficient funds to settle the decretal sum of Kshs. 160,606/=.

12. The garnishee having been duly served with the application and the other relevant notices, chose not to oppose the application.

13. Ordinarily, the judgment-creditor only makes allegations of the garnishee’s indebtedness that it holds funds in its organization for the judgment debtor who is indebted. In this regard, to discharge that burden, the garnishee has to produce strong, sufficient and convincing evidence that the funds in its hands or the debt is not due or payable.

14. In my considered view of the foregoing, it is irresistibly clear that the funds in the accounts named herein belong to no other person but the judgement debtor a fact that this court has satisfied itself. It is an undisputed fact that the judgment debtor is yet to clear the decretal amount. The said funds being held by the garnishee at the direction of the judgement debtor.

15. I find this application dated 18th October 2019 merited and it is hereby allowed.

16. It is hereby ordered that the garnishee order nisi is hereby made absolute and the garnishee ordered to pay forthwith to the applicant’s advocates, a sum of Ksh. 160,606/= to satisfy the decree herein from monies attached and held in account numbers [xxxx] and [xxxx] at the garnishee’s Tom Mboya and Koinange street branches respectively. The garnishee will also pay the costs of this application.

17. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF JANUARY, 2020.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Ngige for Applicant