



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC.APPL NO. 334 OF 2018

KINYANJUI NJUGUNA & CO. ADVOCATES.....DECREE/ HOLDER

VERSUS

INVESCO INSURANCE CO.LTD.....JUDGMENT/ DEBTOR

AND

JAMII BORA BANK.....GARNISHEE

RULING

1. This is a ruling on application dated 1st July 2020. It seeks: -

a. Prayers 1 to 4 spent

b. That this Court be pleased to order the credit deposits in account number Jamii Bora in Nakuru account number 5071679423001 be utilized to settle the decree herein and costs of the decree holder.

c. That costs of this application be borne by the decree holder and be recovered and retained out of the money under garnishee order.

2. The application is supported by affidavit sworn by **Kinyanjui Theuri** on 1st July 2020 and supplementary affidavit sworn on 17th July 2020.

3. In response, the respondent filed a replying affidavit sworn by garnishee's legal officer **Valence Mmuka** on 15th July 2010 and further replying affidavit dated 10th August 2020.

4. In the replying affidavit dated 15th July 2020, the garnishee confirmed that the judgment debtors account no. 5071679423001 had credit balance of kshs 553,209.85 as at 14th July 2020 and attached the statement of the account to confirm the balance. The garnishee averred that they are not opposed to remitting the said amount towards satisfying part of the decree.

5. In a rejoinder the applicant filed a further affidavit dated 17th July 2020 and averred that at the time Decree Nisi was served on the bank/garnishee on 3rd July 2020, the credit balance in the account was kshs 1,407,346.85 and during the currency of the order issued on 2nd July 2020, the judgment debtors account had a balance of kshs 4,003,809.85; that after the garnishee being served with the order on 3rd July 2020, kshs 1,300,000 was transferred the same date and further on 8th and 9th July 2020 kshs 2,000,000 and kshs 1,500,000 was transfer from the account herein to another account.

6. In a further replying affidavit dated 10th August 2020 the garnishee averred that they were served with Order Nisi on 3rd July 2020 at 4.30p.m and at that time money was already paid out; further amounts of kshs 2,000,000 and kshs 150,000 were paid out on 8th and 9th July respectively as per arrangements made with the judgment debtor for automatic payment for overdraft.

7. The applicant further averred that the applicant was at all times capable of effecting the garnishee Order Nisi issued by this Court but decided to disobey the Court Order thereby exposing the decree holder to loss as recovery of judgment debt has been deliberately impeded. Applicant attached account statement.

8. The applicant averred that it is evident the garnishee and judgment debtor have colluded to deny the decree holder opportunity to recover the decretal sum; that the garnishee has acted in contravention of the Court Order and should be held accountable and be punished for

contempt.

ANALYSIS AND DETERMINATION

9. The applicant sought for consolidation of the following files in application dated 26th March 2019. The Court allowed consolidation and upon consolidation entered judgment for the applicant against the judgment debtor for cumulative amount of kshs 3,242,350.

10. After entry of judgment, counsel for the applicant filed the application herein dated 1st July 2020 seeking garnishee order against the garnishee herein. Decree Nisi was issued against the garnishee on 2nd July 2020.

11. The applicant argues that the garnishee transferred fund which were in account after being served with order of Decree Nisi. On the other hand the bank argues that the transfer of 1,300,000 had been transferred by the time the order was served on 3rd July 2020 and transactions of 8th and 9th July 2020 were effected in respect of overdraft judgment as the judgment debtor and the bank had an arrangement for automatic transfer of monies once account was credited& the said monies were not therefore subject of attachment.

12. I have perused the account statement and do confirm that as at close of 2nd day of July 2020, the credit balance in the account herein were a sum of kshs1,407,346.85. I note from the account statement that Kshs 1,300,000 was paid out to GL account on 3rd July 2020. It is not disputed that the garnishee was served with Order Nisi on 3rd July 2020. The garnishee aver that it was served at 4. 30p.m no document has however been filed to confirm it was served at 4.30 pm and what time the money was paid out; but even if money was paid out before service of the order on the said date, further amounts of kshs 2,000,000 and kshs 150,000 were paid out on 8th and 9th July respectively, 5 and 6 days after service of the order.

13. There is no doubt that the effect of Order Nisi was to prohibit the garnishee from releasing money from the account until the order is discharged or applied to satisfy decree if made absolute.

14. It is evident that the bank chose to disobey the Court Order which is frustrating the decree holder from making recovery to satisfy the court’s judgment. I find that the garnishee is in contempt of Court Order issued on 2nd July 2017.

15. The Order Nisi is hereby ordered absolute and the Garnishee is ordered to pay to the applicant’s fund that were in the account and paid into account from the date of Decree Nisi to date an amount which adds up to a sum above the decretal amount herein.

16. FINAL ORDER

- 1) The Garnishee acted in disobedience of Court Order issued on 2th July 2020.
- 2) The Garnishee to release the decretal amount herein being kshs 3,242,350 to the applicants herein.

Ruling dated, signed and delivered via zoom at Nakuru this 17th day of December, 2020

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RACHEL NGETICH

JUDGE

In the presence of:

Jenifer - Court Assistant

Ms. Odhiambo for the Decree Holder

Ms. Ngumo counsel for the Garnishee