



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 956 OF 2006

J.G. KARIUKI T/A GACHIRI KARIUKI & CO. ADVOCATES ...APPLICANT

VERSUS

INVESCO ASSURANCE CO. LTD.....RESPONDENT

RULING

1. On 19.11.2018, the Advocate decree/holder failed the notice of motion dated 15/11/2018, and prayed that:-

i. THAT the application be certified as urgent.

ii. THAT the Honourable Court be pleased to issue an order nisi attaching forthwith the sum of Kshs.44,313/= held by the 1st Garnishee, KCB Bank Kenya Limited, to the credit of the Judgment-debtor, Invesco Assurance Company Limited, in Account Nos.1118724178, 1126483354 and 1146629397 held at the 1st Garnishee's Kipande House Branch, Nairobi.

iii. THAT the Honourable Court be pleased to issue an order nisi attaching forthwith the sum of Kshs.44,313/= held by the 2nd Garnishee, Co-operative Bank Kenya Limited, to the credit of the Judgment-debtor, Invesco Assurance Company Limited, in Account Nos.01136068932800 held at the 2nd Garnishee's Githurai Branch, Nairobi.

iv. THAT the Honourable Court be pleased to issue an order nisi attaching forthwith the sum of Kshs.44,313/= held by the 3rd Garnishee, Diamond Trust Bank Kenya Limited, to the credit of the Judgment-debtor, Invesco Assurance Company Limited, in Account Nos.0002291014 held at the 3rd Garnishee's Tom Mboya Branch, Nairobi.

v. THAT the application be served upon the Garnishees within 7 days of the issuance of the orders nisi.

vi. THAT inter-partes hearing be within 14 days from the date of the issuance of the orders nisi.

vii. THAT upon the inter-partes hearing of the application the Honourable Court be pleased to issue a Garnishee Order[Absolute] in terms of prayer 2 and/or 3 and/or 4 as is enough to satisfy the unpaid decretal amount of Kshs.44,313.

viii. THAT the costs of the application be provided for.

2. The reasons put forth to ground the application were that the decree-holder obtained a degree against the judgment debtor in the sum of Kshs.44,313.00 which the judgment had refused to settle freely hence with information that the judgment debtor operates the named bank accounts with the garnishees which held monies to the credit of the judgment-debtor, sum should be attached to answer to the decree-holder decree. Those same facts were repeated in the affidavit sworn by the decree holder, Mr. John Gachiri Kariuki.

3. On the 18/12/2018, the garnishee order nisi was issued against the garnishee as a consequence of which the 1st Respondent filed a Replying affidavit disputing liability on the basis that the sums held by them were not available to meet the decrees here on account of the fact that the same had been attached pursuant to previous garnishee orders nisi issued in Mombasa CMCC Nos. 191, 310 and 666 all of 2018.

4. For the second Garnishee, parties agreed that it be discharged from their proceedings notwithstanding the fact that it filed a replying affidavit admitting liability to the extent that the account cited only held the sum of Kshs.92,793/= and seeking courts directions on how the inadequate funds would be applied. The 3rd Respondent however did not respond at all despite service both the application and the order nisi.

5. On the basis of the filed Replying Affidavits, on the 7/2/2019 parties, decree holder and 1st and 2nd garnishees advocates, recorded a consent to the effect that the 1st garnishee be equally discharged from the proceedings on the basis of the denial of liability provided that the costs of the garnishee proceedings be recovered from the funds held by the garnishee.

6. For the 3rd garnishee, the decree holder prayed that all the sums held by it to the credit of the judgment debtor in **account no. 0002291014 Tom Mboya Branch**, Nairobi be attached to answer the decree-holder's decree. Counsel also applied that the submissions made in this file would be applied to Misc. Application 960 of 2006 and that a determination reached equally applies to that file.

7. Under Order 23 Rule 4, the Court is empowered to order execution against the garnishee who fails to dispute liability or fails to attend at the appointed date to show cause. Here there was filed an Affidavit of service which established that the 3rd garnishee was duly served with both the application and garnishee order nisi but despite that service, it never filed any opposition just as it did not attend court on the date appointed in the order nisi. Accordingly, I hereby order that all the sums held by the 3rd garnishee to the credit of the judgment debtor be attached to answer the decree holders' decrees in Misc. Application nos. 956 and 960 both of 2006, in the respective sums of **Kshs.44,313** and **Kshs.52,879**. Upon being so attached let the 3rd garnishee pay the said sums out of the sums held in account No. 0002291014 together with the costs of the garnishee proceedings in the sum of Kshs.5,000/=, for each of the files, within 7 days from the date this order shall have been extracted and served upon the Garnishee.

8. It is further ordered that if there shall be a default to pay, as so ordered, the decree holder shall be at liberty to take out execution proceedings against the movable assets of the garnishee as shall be sufficient to meet the decrees in the two suits together the costs hereby awarded.

9. It is so ordered.

Dated and delivered at **Mombasa** this **15th** day of **March 2019**.

P.J.O. OTIENO

JUDGE