

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 81 OF 2016

LEONARD KIPGETICH CHELULE T/A CHOKA

CHELULE & CO.....PLAINTIFF

VERSUS

WILSON KIPKEMBOI KIPKOTI....1ST DEFENDANT/JUDGMENT DEBTOR

JOHN NGATA KARIUKI.....2ND DEFENDANT/JUDGMENT DEBTOR

AND

BARCLAYS BANK OF KENYA.....1ST GARNISHEE

KENYA COMMERCIAL BANK2ND GARNISHEE

RULING

The plaintiff is a firm of advocates who brought a suit against the defendants jointly and severally to enforce a professional undertaking. Upon judgment, they moved the court to enforce the order against the defendants by way of garnishee proceedings. To that effect a Notice of Motion under Order 23 rule 1 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act was filed on 21st June, 2017.

The court was persuaded to issue a Order Nisi and ordered service upon the defendants and cited garnishees. Upon service, parties filed their reply to the application. Before the said application was filed Thurania J dealt with an application lodged by the defendants/judgment debtors to set aside the interlocutory Judgment entered against them.

The judge dismissed the application and held that the court had jurisdiction to address the matter; that the defendants were liable to the plaintiff and that there was a lawful judgment on record.

The matters raised by the defendant on jurisdiction and liability are therefore *res judicata* and cannot be revisited in an application for enforcement of the decree.

The account of the judgment debtors with the 2nd garnishee has no money. However, that is not the case with their account held in the 1st garnishee.

I have considered all the material in totality. The application by the plaintiff cannot be resisted. There is a decree due and payable. There is no application for stay of execution. The judgment debtors merely want to postpone an obvious eventuality. The court is not available to aid them along that path.

The application by the plaintiff therefore succeeds. The Order Nisi issued on 21st June, 2017 is hereby made absolute and shall be executed against the 1st garnishee in its entirety. The costs of this application shall be payable by the judgment debtors to the plaintiff.

Orders accordingly.

Dated, signed and delivered at Nairobi this 20th of March, 2018.

A. MBOGHOLI MSAGHA

JUDGE