

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 66 OF 2017

AKBARALI KARIM KURJI.....PLAINTIFF

-VERSUS-

ARGYRIOS SALIARELIS.....DEFENDANT/JUDGMENT DEBTOR

CHASE BANK LIMITED.....GRANISHEE

RULING

Having obtained a judgment against the Defendant/Judgment debtor, the Applicant instituted garnishee proceedings by way of a Notice of Motion dated 15th September, 2017 seeking orders that, all the money belonging to the judgment debtor and held by M/S Chase Bank Limited (the Garnishee) in the Bank's branch at Riverside Branch and elsewhere in the name of the Judgment debtor be paid to the decree holder to the extent of the decretal sum together with costs and interest including costs of this application.

In support of the application, the Plaintiff swore an Affidavit dated 15th September, 2017 and deponed that pursuant to a default judgment delivered on 6th June, 2017, the Applicant was awarded the sum of Kshs. 32,365,240/= . The Applicant extracted a decree for the said award which remained unsettled at the time of the application. He further deponed that the Judgment debtor has an account with the Garnishee at the said Riverside branch but he does not know the account number. Nonetheless, he depones that he believes that the account has enough monies to satisfy the whole of the decree or substantial part of it. Therefore, the Applicant seeks a garnishee order nisi to issue against the Garnishee to enable it satisfy all or part of the decretal amount. The Garnishee did not file a Reply to the Application despite having being served.

Order 23 Rule 1 under which the application herein is brought provides that,

“1. (1) 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.”

The Applicant has established that the Judgment debtor owes him the said sum of Kshs. 32,365,240/=. Annexed to his Affidavit is the decree to that effect. As deponed by the Applicant, this court finds that the Garnishee is within the jurisdiction of this Court. In the absence of the Garnishee's response to the Application and in the absence of evidence to the contrary, the Court can only presume that the Garnishee has not denied that the Judgment debtor has an account with it even though it may not be possible for the court to establish whether the Garnishee has funds in the said account to settle the decree. Nonetheless there is an Affidavit of Service on record showing that the Garnishee was properly served with this application.

The Applicant has a decree which he would like to execute by way of garnishee proceedings. He has made out his case to warrant the orders sought and I allow the Application as prayed.

Costs to the Applicant.

Dated, Signed and Delivered at Nairobi this 15th Day of March, 2018.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... For the Applicant

.....*FortheRespondent*