



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NUMBER 744 OF 2009

PETER O. NGOGE T/A

O. P NGOGE & ASSOCIATES.....DECREE HOLDER

VERSUS

STEPHEN KIPKEBUTT T/A RIVERSIDE LODGE AND ROOMS.....JUDGMENT DEBTOR

BARCLAYS BANK OF KENYA LIMITED.....GARNISHEE/APPLICANT

R U L I N G

The application for determination by this Honourable Court is the Notice of Motion dated 13th November, 2015. The same is brought under Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya.

The Applicant seeks the following orders: -

1. That this Honourable court be pleased to deem as abandoned and/or withdrawn the application filed on the 30th day of January, 2013 by the Decree Holder for want of prosecution.
2. That the cost of the application be borne by the Decree Holder/Respondent in any event.

It is premised on the grounds that: -

- a. The decree holder/respondent filed a Notice of Motion application on the 30th day of January, 2013, the garnishee in response to the said Notice of Motion filed grounds of opposition on the 11th day of February 2013, the application came up for hearing on the 13th February, 2013 when the same could not proceed as the presiding judge of the Environment and the land court raised concerns with the manner in which the manner was transferred to the court. It was stood over to 21st day of March 2013 when it was not listed and since then, the decree-holder has not taken any step to set it down for hearing. It is evident that the decree holder is no longer interested in prosecuting the same and it should be deemed as abandoned and/or withdrawn.

It is supported by the affidavit of Alfred Deya who is the advocate having the conduct of the matter on behalf of the Garnishee. The said affidavit reiterates the contents of the grounds in support of the application. He depones that as long as the same remain ns pending, the garnishee is put under a lot of anxiety as the orders sought against it are very weighty and cannot be taken lightly. He further avers that it is unfair and unjust for the garnishee to have the application hanging over its head. That it is in the interest of justice that the business and proceedings before court should be efficiently and timeously dispensed with. He further depones that the delay in prosecuting the application is inordinate and its

continued pendency is prejudicial to the applicant.

The application is not opposed and when it came up for hearing on the 21st day of January, 2016, it proceeded ex parte in the absence of the decree-holder and the judgment-debtor. Though both parties had been served with the application they failed to respond to the same and/or attend court during the hearing.

I have considered the materials before me and the oral submissions made by the learned counsel for the Garnishee/Applicant when the application came up for hearing on the 21st January, 2016.

I have also read and understood the ruling dated the 19th day of December, 2014 by the Honourable Justice Onyancha. The said ruling was for the application dated 3rd June, 2013 which had sought orders for striking out of the Decree-Holder’s application dated 8th May, 2014 which had sought a review or setting aside of consent letter dated the 18th March, 2013 and filed in court on the 23rd March, 2013. One of the terms of the consent letter aforesaid was to lift the garnishee order nisi issued on the 21st August, 2012 attaching the Respondent’s Account Number 1646/03 at Barclays Bank of Kenya, Karen Branch and though the Respondent had sought to review or set aside the said court order, it was not successful as the application was struck out and dismissed with costs.

It was a further term of the said consent that the costs taxed in High Court Misc. Civil Application No. 744 of 2009 (the matter herein) be settled at a sum of Ksh.250,000/- all inclusive and that the matter be marked as settled on payment of the said sum. Though it is not clear whether the costs were paid in full, my understanding of the consent is that the lifting of the garnishee order was not conditional upon payment of the costs.

Be that as it may, the Notice of Motion dated 29th January, 2013 serves no purpose of its existence and as rightly submitted by the counsel for the Garnishee/Applicant, it is unfair and unjust for the garnishee to have the suit continue hanging over its head as a liability. The same is, therefore, marked as abandoned with costs to the Garnishee/Applicant.

Dated, signed and delivered at Nairobi this 9th day of June, 2016.

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L NJUGUNA

JUDGE

In the presence of

..... *for the Decree Holder*

..... *for the Judgment Debtor*

..... *for the Garnishee/Applicant*