



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 932 OF 2013

EMRIS INVESTMENT LIMITED.....DECREE HOLDER

VERSUS

CYRUS SHAKALAGHA KWA JIRONGO1ST JUDGMENT DEBTOR

CYPER ENTERPRISES LIMITED2ND JUDGMENT DEBTOR

OFF SHORE TRADING COMPANY3RD JUDGMENT DEBTOR

AND

NAIROBI CITY COUNTY.....1ST GARNISHEE

KUZA FARMS & ALLIED LIMITED2ND GARNISHEE

THE COUNTY GOVERNMENT OF NAIROBI.....3RD RESPONDENT

RULING

1. Coming up for determination is a Notice of Motion application by the Decree Holder dated 30th September 2021 seeking orders for the reinstatement of the application dated 21st November, 2016 which was dismissed on 28.9.2021 for want of prosecution as well as the reinstatement of the Garnishee Order Nisi given on 2nd December, 2016. Mr. Mutembei Marete, advocate for the applicant has sworn an affidavit averring that on 28.9.2021 when the application dated 21st November 2016 was scheduled for hearing, the advocate on record for the applicant tried to log into the virtual court from 8.45am and only managed to join in at 9.25am. By that time the application had already been called out and dismissed for want of prosecution. He states that by then, they had already filed submissions in their endeavour to prosecute the application dated 21st November 2016 as well as the 1st Garnishee's preliminary objection dated 24th April 2018.
2. The applicant contends that the Garnishee Order Nisi dated 2.12.2016 had lapsed, and the applicant was apprehensive that the 1st Garnishee would release the sum of Kshs. 42,429,742 due to the Decree Holder to the 2nd Garnishee and those funds were the only chance for the decree holder to recover the decretal sum from the judgement debtors who were on the verge of bankruptcy.
3. The 1st Garnishee in their replying affidavit dated 14th October 2021 opposed the application stating that the applicants had slept on their rights for 5 years and should not blame connectivity to the virtual court. They aver that the 5 year delay since the said application was filed could not be explained and that they had been improperly enjoined since they owed no money to the decree holder or judgement debtors, neither did they have a relationship with the judgement debtors. They added that as per the Government Proceedings (Amendment) Act 2015, the said proceedings against the government were illegal, since the Rules prohibits attachment of debts against the Government. They stated that should the application be reinstated, then an order removing 1st Garnishee from the proceedings should issue.
4. The application was to be canvassed by way of written submissions, but the Respondents did not file any. It was submitted for the applicant that they got into the virtual court session after the matter had been called out and the act was not deliberate, hence the mistake of the advocate should not be visited upon the client. Reference was made to the cases of **Shah v Mbogo (1967) EA 116**, **Fatuma Hamisi Mwarasi v Orini Limited & 40 others (2020) eKLR**, and **Bank of Africa Limited v Put Sarajevo General Engineering & 2 others (2018)eKLR**.
5. I have considered all the issues raised herein. The issue for determination is; **Whether the application dated 21st November 2016**

dismissed for want of prosecution should be reinstated along with the orders of 2.12.2016.

6. This court is not able to ascertain the averments made by the counsel for the applicant that they had tried to log into the virtual court from 8.45 am but only managed to join in at 9.45 am only to find that their application had been dismissed. But again the court cannot shut its eyes to the realities of hitches in technology. I will therefore give the applicants the benefit of doubts noting that the current application was filed promptly.

7. This court cannot consider the issues as to whether the 1st respondent is properly joined in these proceedings or whether execution should be undertaken against them since as at now the court is only dealing with the issue of the proceedings of 28.9.2021.

8. The application dated 30.9.2021 is allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Okare for the Garnishee

Koyyoko for the Decree-holder

Court Assistant: Eddel Barasa