



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO 145 OF 2012

WACHIRA NDERITU NGUGI & CO, ADVOCATES.....APPLICANT

VERSUS

CITY COUNCIL OF NAIROBI.....RESPONDENT

AND

INVESCO ASSURANCE CO. LTDGARNISHEE

IN THE MATTER OF A GARNISHEE APPLICATION

RULING

1. This is a garnishee application (**notice of motion dated 19th March 2013**). The Applicant has a decree for costs against the Respondent for KShs 10,516,557/08 plus interest at 9% p.a. from 1st September 2012.

2. The Applicant seeks to attach a debt he alleges the Garnishee owes the Respondent **“in respect of the decree in HCCC No. 1108 of 2006”**. The debt is said to be **“the balance of the decretal sum outstanding” in the sum of KShs 28,938,868/00**. As evidence of this debt the Applicant has annexed to the supporting affidavit a copy of an order in Nairobi HCCC No. 1108 of 2006 given on 3rd July and issued on 2nd August 2012. The order provides –

“1. That the balance of the decretal amount due and payable by the Defendant/Judgment-Debtor (Invesco Assurance Co. Ltd) to the Plaintiff/Decree-Holder (City council of Nairobi) as at 3rd July 2012, is KShs 28,939,868/00 (inclusive of interest).

2. That the aforesaid sum of KShs 28,939,868/00 to be paid by the judgment-debtor directly to the decree-holder by way of monthly installments of KShs 1,000,000/00 with effect from 15th July 2012, and on the 15th day of each succeeding month until payment ... in full.

3. That the judgment-debtor do on or before 15th July 2012 execute an irrevocable standing order in favour of the decree-holder with a reputable bank for the full payment of the aforesaid amount.

4. That in default of the judgment-debtor meeting any of the above conditions, execution to issue forthwith.”

3. The Garnishee has opposed the application by **replying filed on 9th May 2013**. It is sworn by one PAUL GICHUHI, the Claims Manager of the Garnishee. The grounds of opposition emerging therefrom include –

(i) That the Applicant already has orders in judicial review for recovery of the decretal sum owed to it by the Respondent vide **Nairobi HC JR Misc. Application No. 354 of 2012**, and that therefore another parallel process should not be permitted as the two would be in conflict.

(ii) That in any event allowing the second process of recovery of the decretal sum would amount to variation of the order entered between the Garnishee and the Respondent for payment of the outstanding decretal sum in HCCC No. 1108 of 2006.

(iii) That the Respondent, the city Council of Nairobi, has since ceased to exist in law following establishment of County governments.

4. There is **further replying affidavit** (wrongly titled supplementary affidavit) filed by the Garnishee on 16th may 2013. It is sworn by the same Claims Manager of the Garnishee. To this affidavit is annexed an account statement print-out that shows that the Garnishee still owes the Respondent the sum of KShs 16,876,798/00. It is pleaded that should the court be inclined to make the garnishee order *nisi absolute*, then the court should order that the Garnishee pay to the Applicant by the same installments as contained in the order in HCCC No. 1108 of 2006.

5. The garnishee application was canvassed by way of written submissions. Those of the Applicant were filed on 31st May 2013 and the Garnishee’s on 6th June 2013. The Respondent did not file any submissions. I have considered the submissions. No authorities were cited.

6. The decree that the Applicant has against the Respondent has not been disputed. Indeed the Respondent has not opposed the garnishee application.

7. The Garnishee has not disputed its indebtedness to the Respondent. Indeed it has disclosed that it still owes to the Respondent the sum of KShs 16,876,798/00, more than enough to satisfy the Applicant’s decree against the Respondent.

8. It is true that these garnishee proceedings are parallel to the orders in judicial review already obtained by the Applicant in Nairobi HC JR Misc. Application No. 354 of 2012. Those orders, given on 4th and issued on 8th February 2013, were penal in nature. They were –

“1. ...

2. That the Respondent (Town Clerk, City Council of Nairobi) ...is hereby directed to pay to the Applicant (Nderitu, Ngugi & Co., Advocates) the sum of KShs 31,333,689/83 within 30 days and in default the Applicant be at liberty to take out notice to show cause against the (Town) Clerk why he should not be cited for contempt of court.

3. ...”

9. There is no longer a Town Clerk of the City Council of Nairobi with establishment of the Nairobi County, and the penal order as it is cannot be enforced against the new chief executive officer of the county who is the Governor of Nairobi County. Indeed there is no longer a City Council of Nairobi,

but I have no doubt that there must be in place legislation providing for continuity and succession. In these circumstances the Applicant was entitled to pursue other means to recover its decretal sum. I find absolutely no conflict between the garnishee order sought here and the orders in judicial review previously obtained.

10. In my view the only serious plea that the Garnishee has made is that if the court is inclined to make *absolute* the garnishee order *nisi* the Garnishee should be permitted to pay to the Applicant at the rate provided in the order in Nairobi HCCC No. 1108 of 2006 given on 3rd July and issued on 2nd August 2012. That is eminently reasonable. The Garnishee ought not to be pushed away from the bargain it entered into in the said order.

11. I will therefore allow this application and make the garnishee order *nisi absolute* upon the condition that **the Garnishee shall pay to the Applicant the debt owed by the Garnishee to the Respondent sufficient to discharge the decree herein by monthly installments of KShs 1 million with effect from 15th July 2013 and on the 15th of each succeeding month until payment in full of the decree.** The costs of this application are awarded to the Applicant as against the Respondent and they shall be part of the decretal sum. Those shall be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF JUNE 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 21ST DAY OF JUNE 2013