



**Mwangi Keng'ara & Co Advocates v Kibe; SBM Bank Kenya & another
(Garnishee) (Environment and Land Miscellaneous Application
E058 of 2021) [2022] KEELC 13294 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13294 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E058 OF 2021
JA MOGENI, J
SEPTEMBER 29, 2022**

BETWEEN

MWANGI KENG;ARA & CO ADVOCATES APPLICANT

AND

JOEL KAMAU KIBE RESPONDENT

AND

SBM BANK KENYA GARNISHEE

CO-OPERATIVE BANK OF KENYA LIMITED GARNISHEE

RULING

1. Before this court for determination is an application dated September 16, 2022 and is brought under the provisions of order 23 rule 1, 2 and 10, order 49 rule 5 of the *Civil Procedure Rules (2010)* and sections 1A and 1B of the *Civil Procedure Act*, cap 21 of the laws of Kenya. The applicant/decree holder is seeking for the following orders:
 1. Spent.
 2. That, this honorable court do issue an order nisi for the attachment of the debt of Kshs 2,912,526.76 cents owed by the judgment debtor to the decree holder owing and accruing from: -
 - a. The 1st garnishee SBM Bank Kenya Limited (formerly Chase Bank Limited) account number 2058950001, at village market branch;
 - b. the 2nd garnishee Co-operative Bank of Kenya Limited Bank account number 5118609930, Co-operative house branch to answer this honourable court's decree



passed against the judgment debtor in favor of the decree holder on the July 13, 2022 in the above-named suit, and the costs of this proceedings as certified by this honourable court, by deducting the sum of Kshs 2,912,526.76 cents from the debt due from the garnishees jointly and severally to the respondent/judgment debtor.

3. that, a garnishee order (absolute) do issue compelling the 1st, 2nd and 3rd garnishees to pay to the applicant /decree holder, jointly and severally, the sum of Kshs 2,912,526.76 cents and the costs of this proceedings as certified by this honourable court held as deposit in the following judgment debtor's bank accounts: -
 - a. The 1st garnishee SBM bank kenya limited (formerly chase bank limited) account number 2058950001, at village market branch;
 - b. The 2nd garnishee Co-operative bank of kenya limited bank account number 5118609930, Co-operative house branch;in satisfaction of this honourable court's decree dated July 13, 2022, in the above-named suit, and the costs of this proceedings as certified by this honourable court.
4. That, the costs of this garnishee proceedings be certified by this honorable court and be added to the amount of the decree and be retained out of the money recovered by the decree holder in priority to the amount of the decree.
2. The application is premised on the grounds annexed thereto together with the supporting affidavit of Mercy Nduta Mwangi, the proprietor of the applicant/decree holder sworn on September 16, 2022.
3. The deponent avers that the applicant has a judgment in its favor entered on July 13, 2022 against the respondent in terms of the decree issued on July 27, 2022 and that the said judgement remains unsatisfied to date as the respondent/judgment debtor has failed to satisfy the decree dated July 13, 2022 and is indebted to the applicant/decree holder in the sum of Kshs 2,912,526.76 cents plus costs and interest. That the respondent/judgment debtor holds bank accounts with the 1st and 2nd garnishees and the garnishees are indebted to the respondent/judgment debtor on the said bank accounts.
4. This is an *ex parte* application.
5. The key issue for determination herein is whether the application is merited.
6. I find it useful to start by referring to the definition of the word garnishee proceedings in the [*Black's Law Dictionary Bryan Garner, 5th Edition*](#), p 612 which is: - “a statutory proceeding whereby a person’s property, or credit in possession or under control of, or owing by, another are applied to payment of former debt to third person by proper statutory process against debtor and garnishee.”
7. The Nigerian Supreme Court in [*CBN v Auto Import Export*](#) [2013] 2 NWLR (Pt 1337) 80 p 126 paras E – F offered an explanatory yet concise definition of garnishee proceedings in the following words:

“garnishee proceedings are special specie of process by which a judgment creditor may attach (or garnishee) debts due in satisfaction of the judgment debt. The debt owed by the third party to the judgment debtor, on being attached, shall ultimately be paid by him to the judgment creditor on the order of court. Thus, garnishee proceedings involve the attachment of debt due from a third party to the judgment debtor, and the use of the amount of that debt in liquidating the judgment debt. In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand, is referred to as the garnisher.”



8. garnishee proceedings are governed by order 23 rule 1 of the [Civil Procedure Rules](#) which provides as follows;

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.
2. At least seven days before the day of hearing the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment-debtor.
3. Effect of garnishee order service of an order that debts due to a judgment-debtor liable under a decree shall be attached, or notice thereof to the garnishee in such manner, as the court may direct, shall bind such debts in his hands.”

9. In the case of [Mengich t/a Mengich & Co Advocates & another v Joseph Mabwai & 10 others](#) [2018] eKLR the Court in explaining the rationale of garnishee proceedings had this to say;

“Generally, garnishee proceedings is done in two different stages.

- (2) The first stage is for the garnishee order nisi, while the second stage is for the garnishee order absolute. At the first stage, the judgment creditor makes an application ex parte to the court that the judgment debt in the hands of the third party, the garnishee, be paid directly to the judgment creditor unless there is explanation from the garnishee why the order nisi should not be made absolute. If the judgment creditor satisfies the court on the existence of the garnishee who is holding money due to the judgment debtor, such third party (garnishee) will be called upon to show cause why the judgment debtor’s money in its hands should not be paid over to the judgment creditor, and if the court is satisfied that the judgment creditor is entitled to attach the debt, the Court will make a garnishee order nisi attaching the debt.

10. The essence of the order nisi is to direct the garnishee to appear in Court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order nisi must be served on the garnishee and judgment debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the garnishee fails to attend Court or show good cause why the order nisi attaching the debt should not be made absolute, the Court may subject to certain limitations make the garnishee order absolute. The garnishee, where necessary also have an option of disputing liability to pay the debt. The applicants ignored these procedures.

11. The primary object of a garnishee order is to make the debt due by the debtor of the Judgment Debtor available to the decree holder in execution without driving him to the suit. The court may, in the case



of debt (other than a debt secured by a mortgage or charge), upon the application of the attaching creditor, issue a notice to garnishee liable to pay such debt, calling upon him either to pay into court the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.”

12. I agree with the position of Lord Denning MR in considering the procedure for attachment of debts in the case of *Choice Investments Ltd v Jeromnimon (Midland Bank Ltd, garnishee)* [1981] 1 All ER 225 at page 227 where he said:

“The word ‘garnishee’ is derived from the Norman-French. It denotes one who is required to ‘garnish’, that is, to furnish, a creditor with the money to pay off a debt. A simple instance will suffice. A creditor is owed £100 by a debtor. The debtor does not pay. The creditor gets judgment against him for the £100. Still the debtor does not pay. The creditor then discovers that the debtor is a customer of a bank and has £150 at his bank. The creditor can get a ‘garnishee’ order against the bank by which the bank is required to pay into Court or direct to the creditor, out of its customer’s £150, the £100 which he owes to the creditor.

There are two steps in the process. The first is a garnishee order *nisi*. *Nisi* is Norman-French. It means ‘unless’. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors”

13. garnishee proceedings serve to facilitate the satisfaction of judgment debts. garnishees, in this regard, often have no objections to garnishee orders being made final, so long as there is a discernible debt due and owing to the judgment debtor; once such indebtedness is established, it is inconsequential to the garnishee who the debt is paid to. However, garnishee orders are premised on indebtedness – without such indebtedness to the judgment debtor, it would be plainly unjust to order a party to pay a sum to the judgment creditor.
14. As soon as the garnishee order nisi is served on the bank, it operates as an injunction. It prevents the bank from paying the money to its customer until the garnishee order is made absolute, or is discharged, as the case may be. It binds the debt in the hands of the garnishee, that is, creates a charge in favour of the judgment-creditor (see *Joachimson v Swiss Bank Corpn* [1921] 3 KB 110 at 131, [1921] All ER Rep 92 at 102, per Atkin LJ). The money at the bank is then said to be ‘attached,’ but the ‘attachment’ is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay.
15. A garnishee order nisi binds the debt in the hands of the garnishee. The rule operates as soon as the garnishee order nisi is served on the garnishee. By the same order or the subsequent order, the court may order the garnishee to appear before the court to show cause why he or she shall not pay to the decree holder the debt due from him or her to the judgment debtor or so much of the debt as may be sufficient to satisfy the decree with costs. The garnishee order nisi is also served on the judgment-debtor. Where the garnishee does not dispute the debt due or claimed to be due from him or her to the judgment-debtor or if he or she does not appear upon the day of hearing named in the garnishee order nisi, the court may order execution against the goods of the garnishee together with the costs of the garnishee proceedings. Where the garnishee disputes his or her liability, the court, instead of making an order that execution be levied, may order that the issue or question necessary for determining his or her indebtedness should be tried and determined. The garnishee may suggest or advance the argument



that the debt sought to be attached belongs to a third party. Subsequent to that, the court may order the third-party to appear and be heard.

16. In this case the decree is dated the July 13, 2022. There is no evidence that the same has been set aside, appealed and or vacated. There is therefore no stay of execution against said decree.
17. As stated above, order 23 is a self-contained rule and prescribes its own procedures. There is no provision under order 23 requiring a notice to show cause to issue. The only requirement under order 23 rule 1 is the existence of an unsatisfied decree, the amount and another person is indebted to the judgment-debtor. There is no argument before me suggesting that the procedures laid down in order 23 have been not been followed. The fundamental consideration is that the decree has been obtained by a party who is the applicant in this application and they should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with. The decree must be allowed to be executed, and unless an extraordinary case is made out, no stay or setting aside should be granted.
18. The court notes that the unsatisfied decree has not been disputed by the judgment debtor.
19. A litigant is entitled to reap the fruits of his successful litigation. As a result, where a judgment-debtor fails to comply with the terms of a judgment, the judgment-creditor is entitled to enforce such judgment by adopting a suitable procedure provided under the law.
20. For the above reasons the court finds that the application is merited. Accordingly, I hereby grant prayer 2.
21. The matter shall therefore be mentioned before the court on the October 12, 2022 for purposes of addressing prayer no 3 above.
22. The costs shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2022.

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MOGENI J

JUDGE

In the Virtual Presence of:

Ms Mwangi for Applicant/Decree Holder/ Ex-Parte

None appearance for the Respondent/Judgment Debtor

Vincent Owuor: Court Assistant

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MOGENI J

JUDGE

