



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL SUIT NO. 15 OF 2006

BARCLAYS BANK OF KENYA LIMITED.....DECREE-HOLDER

VERSUS

CHRISTANT MUTISYA MAINGI.....1ST JUDGEMENT- DEBTOR

JOHNSON NGOTHO KIOGE.....2ND JUDGMENT-DEBTOR

RULING

The Plaintiff/Decree holder filed the ex-parte Chamber Summons dated 18th February, 2008 expressed to be brought under **Order XXII rule 1, 1A, 7 & 10** of Civil Procedure Rules and Section 3A of the Civil Procedure Act. It seeks the following prayers:

1.THAT this honourable court be pleased to issue an order nisi against the credit in deposit account number 0013943001 at Transnational Bank Limited – City Hall Branch Nairobi or any other of the Defendants’ Bank accounts in any banking institutions(s) within the jurisdiction of this Honourable Court be attached and utilized to satisfy the sum of Kshs.8,818,592.95 being the decretal sum herein.

2.THAT the garnishee herein (Transnational Bank Limited) be and is hereby ordered to appear before court on a date to be fixed by the Court and show cause why it should not pay to the Plaintiff/decree holder the credit deposit in account number 0013943001 at Transnational Bank Limited, City Halls Way Branch in settlement of the decree of this court herein given on 26th July, 2006.

3.THAT the Credit deposit in account number 0013943001 at the Transnational Bank Limited be utilized to settle the decree herein and the costs of the decree holder.

4.THAT the costs of this application be borne by the Applicant/Decree-holder and be recovered and retained out of the money under the Garnishee order.

The basis of this application is found on the face of the Chamber Summons in the following terms:

- a) The Plaintiff/Decree holder has a decree for the sum of Kshs.8,818,592.95 exclusive of costs, which has not been satisfied.
- b) The Garnishee holds a deposit on behalf of the judgment debtors jointly in a bank account at its branch at City Hall Way, Nairobi.
- c) The Applicant/Decree Holder has a Mareva injunction in its favour over the said Bank accounts.
- d) It is equitable and just in the circumstances to attach the credit deposits in satisfaction of the decree.

There is an affidavit in support of this application sworn by KENNEDY OCHIENG Advocate dated 12th March, 2008. It annexes copies of the decree issued by this Court against both Defendants and in favour of the Plaintiff.

When the Applicant's Advocate first came to court on the 24th April, 2008, the Defendants and Garnishee bank were served but none appeared before the Court whether through Counsel or representation of any kind. On that date, my learned sister Mwilu, J issued several orders and directed that the Garnishee Bank be served to appear before Court on 12th May, 2008 to show cause as provided under prayer 2 of the Chamber Summons application.

On 13th May, 2008, the Applicant's Advocate appeared before me having duly served the Garnishee Bank with this Courts order requiring it to show cause why the deposit it holds in Account

No. 0013943001 should not be utilized to settle the decree in this case.

The Garnishee Bank did not appear to show cause as required. That means ttat the Applicant's application dated 18th February, 2008 is not challenged.

I am satisfied that the Applicant has a decree against the Defendants in this case which has not been satisfied. There is no good cause shown why the amounts in the Garnishee Bank's, City Hall Way branch, Account No.0013943001 should not be utilized to satisfy both the decree herein, the costs and interests of the suit together with the costs of this application.

I therefore order that the amounts in the said account be attached and utilized to satisfy this Courts decree, annexed as "SG-3" to the supporting affidavit of KENNEDY OCHIENG, together with the interest and costs of the suit and the costs of this application.

Dated at Nairobi this 16th day of May, 2008.

LESIT, J.

JUDGE

Read, signed and delivered in the presence of:

Ochieng for Plaintiff/Applicant

LESIT, J

JUDGE