



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 275 of 2007

J.K. KIBICHO & COMPANY ADVOCATES.....DECREE
HOLDER/APPLICANT

VERSUS

INOI FARMERS CO-OPERATIVE SOCIETY LIMITED..JUDGEMENT
DEBTOR/RESPONDENT

AND

CO-OPERATIVE BANK OF KENYA LIMITED KERUGOYA BRANCH.....
GARNISHEE

R U L I N G

1. By its application dated May 16, 2008 and filed in court on the same day, the applicant prays for the following **ORDERS**:-

- 1. THAT the sum of Kshs.273,747/= being the monies held by the Co-operative Bank of Kenya, Kerugoya Branch, (hereinafter called the Garnishee) in account number 342556 being the Respondent's monies be attached to answer the Decree together with costs of these proceedings.***
- 2. THAT the Garnishee do appear before this Honourable Court to show cause why it should not pay the Applicant herein the monies held by it on the account of the Respondent or so much thereof as may be sufficient to satisfy the debt herein together with the costs aforesaid.***
- 3. THAT an order Nisi in terms of the draft order annexed hereto and marked "A" be issued against the Garnishee aforesaid in the first instance.***

on the grounds that

- 1. The Respondent has failed, refused and/or neglected to pay the Applicant's firm monies due and owing in respect of fees.***
- 2. The Garnishee is holding the Respondent's funds and is likely to release the same anytime now.***

3. ***The Garnishee is holding the Respondent's funds in account number 342556.***

4. ***The Applicant is in dire need of funds and the same are just and owing.***

2. The application, which is brought under Order 22 Rules 1 and 10 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act is also supported by the sworn affidavit of **Mwangi Kibicho**, advocate made on May 16, 2008. Mr. Kibicho says that his firm of advocates by the style and name of J.K. Kibicho & Co. Advocates has the conduct of this suit on behalf of the Decree Holder/Applicant and that being a practicing advocate in the said firm he is competent to swear the affidavit. He further says that the respondent instructed his firm to prosecute Tribunal Case No. 4 of 2004 in which summary judgment was duly entered for the respondent. He depones further that the advocates consequently filed a Bill of Costs which was subsequently taxed at Kshs.273,747/= on November 15, 2007 as per the Certificate of Taxation annexed and marked "MW1".

3. The deponent also says that according to information in the possession of the applicant, the Co-operative Bank, Kerugoya Branch (the Garnishee herein) holds funds belonging to the respondent which funds the deponent says the Garnishee holds in trust for the Respondent who holds account number 342556 at the Garnishee's Kerugoya Branch.

4. Both the respondent and the garnishee who were duly served did not appear at the hearing of the application interpartes. For this reason, Mr. Mwangi Kibicho advocate urged the court to grant the prayers sought.

5. Before deciding whether or not the orders sought should be granted, I must go back to the provisions of the law under which this application is brought. Order 22 of the Civil Procedure Rules provides for orders for the attachment of debts by garnishees. Before an order against the garnishee is issued

"--- 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."

6. Rule 1(2) provides for service of the order nisi upon the garnishee and on the judgment debtor at least seven days before hearing interpartes. On the other hand, section 3A of the Civil Procedure Act preserves this court's unlimited inherent power to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the court.

7. What then is the position in this matter? From the pleadings and the submissions made to me by counsel for the applicant, I have made the following findings:

a. That an order nisi has been duly served on both the garnishee and the respondent.

b. That the garnishee has not appeared in court, though duly served, to show cause why he should not pay the decree-holder the debt due to him from the judgment-debtor.

c. That it is not disputed that the applicant herein, acting on the instructions of the respondent appeared for the respondent in Tribunal Case No. 4 of 2004.

d. That judgment in the Tribunal case was entered in favour of the respondent.

e. That the Advocate – Client Bill of Costs was taxed and allowed at Kshs.273,747/= on November 15, 2007.

f. That the said taxed costs have not been paid nor has the Certificate of Taxation been set aside or altered in any way.

8. On the basis of the above, I am satisfied that the applicant's application has merit. Accordingly, I

allow the same and make the following orders:-

(a) That the sum of Kshs.273,474/= being the monies held by the Co-operative Bank of Kenya, Kerugoya Branch (hereinafter called the Garnishee) in account number 342556 being the Respondent's monies be attached to answer the Decree together with costs of these proceedings.

(b) That the costs of this application shall be retained out of the money recovered by the applicant under this garnishee order, and in priority to the amount due under the decree.

It is so ordered.

Dated and delivered at Nairobi this 11th day of July 2008.

R.N. SITATI

JUDGE

Delivered by:

In the presence of::