



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO**

Misc. Civ. App. 92 of 2007

RATEMO OIRA & CO. ADVOCATES ADVOCATE/APPLICANT

VERSUS

BLUE SHIELD INSURANCE CO. LTDCLIENT/RESPONDENT

RULING

I: Procedure

1. These are Garnishee proceedings. On the 28th November, 2007 this is over one year ago, the advocate/applicant filed a Taxation of costs application. It was heard on 27th March, 2008 this year before the deputy registrar.
2. A total of Ksh. 300,824/= was given as the taxed costs.
3. On the 28th November, 2008, a year later, the applicant advocate filed, under certificate of urgency an application for Garnishee proceedings. He sought orders for a Garnishee order Nisi to issue for a sum of Kshs. 1,968,000/=.
4. This application had not been set down for hearing before the High Court nor dates taken for its hearing in this particular file.
5. The 4th Garnishee filed an application dated 9th December, 2008 together with a notice of appointment, whilst the decree debtor filed an application for Notice of Motion 9th December, 2008 seeking to strike out the application of 26th November, 2008 and to abide another court case.
6. It is as a result of these application under certificate of urgency by the 4th Garnishee and the decree debtor that parties appeared to court before me on 11th December, 2008 as directed by the deputy registrar.
7. When they did appear as there were several other cases related to this matter being HCCC MISC. APP. NO. 124/07, 127/07, 131/07, 30/08, 35/08, 79/08, 86/08, 92/07, the respondents were of the view that the application by the applicant Decree/holder advocate dated 28th November, 2008 be heard first before their application.
8. The applicant Decree/holder was reluctant to do so.
9. The reasons of his reluctance was explained by the respondents that the said applicant decree holder

advocate had not in fact served them with the application of Garnishee proceedings all they requested is for the advocate to prove such service. The advocate showed the court a bundle of documents which he described as his affidavit of service. This being proof of service of the order Nisi upon the respondents. Because the respondents were in court, he did not see the need to file the affidavit of service.

10. The respondent stated that the affidavit of service was to prove that under order XXII r I(1),(2) the advocate decree holder had indeed served the order Nisi and done so at least seven(7) days prior.

II: Findings

11. From the perusal of this file the Decree holder advocate obtained his taxed costs of Kshs. 300,824/=. I do not see any further proceedings though the deputy registrar stated that he would give a ruling on 8th May, 2008 on his magisterial powers. There is none on the file. There is though on the file a Garnishee order Nisi dated 28th November, 2008 which reads that

“This order be served for hearing inter-partes on 11th day of December, 2008 at 9.00a.m”.

12. As I stated earlier I am unable to know where the proceedings were recorded. If per chance the order was correct. (*which is subject to further investigations*) all the decree/advocate judgment debtor required to do was to serve the Garnishees, at least seven days before the date of hearing and or the judgment debtor (*unless otherwise directed*).

13. The advocates herein state that though they are in court on other files, they only ask if the advocate for the decree/holder would prove to court by way of an affidavit of service that such service was one in which it was so effected seven days before to-days hearing.

14. The advocate has declined to do so.

III: Held by Court.

15. I hold as no affidavit of service has been filed by the applicant, the issue is not the presence of the parties/ advocates in court but the issue is whether the order Nisi was served seven clear days before the date of hearing?

Order XXXII 1(2) CPR is in mandatory terms.

16. It is therefore not enough to say that the advocates are all present in court and a need for an affidavit of service is not required? The advocate decree/holder had the affidavits, so he claims, in his possession but declined to file them.

17. I hereby hold that seven clear days has not been effected by the decree holder.

18. I hereby order that no service has been effected within the seven clear days as stipulated. I further hold that I see no decree passed against the judgment debtor of 17th July, 2008 in this particular file unless the matter may have been consolidated. I see no orders on the files of this.

19. I hereby order that the proceedings of to-day cannot proceed due to the non service upon the Garnishee according to law. (*Order IX r 3b CPR*).

The costs for today will be to all the respondents paid by the decree holder advocate.

DATED this 11th day of December, 2008 at KERICHO

M.A. ANG'AWA

JUDGE

Advocates

T.R. Oira advocate instructed by M/S Ratemo Oira & Co. advocates for the Applicant/Decree Holder

D.N. Mbigi advocate instructed by M/S Mbigi Njuguna & Co. advocates for the Respondent/Judgment debtor (lead counsel)

T.J. Kinyanjui advocate instructed by M/S Kinyanjui Njuguna & Co. advocate for the Respondent/Judgment debtor

J.K. Tele advocate instructed by M/S Kipkorir Tele & Co. advocate for the

Respondent/Judgment debtor

G.M. Maengwe advocate from M/S G.M. Maengwe & Co. Advocates instructed to hold brief for M/S Morara Ngisa & Co. for the 1st Garnishee

O.M. Otieno advocate instructed by M/S O.M. Otieno & Co. advocates instructed to hold brief for M/S Miller & Co. advocates for 4th Garnishe.