



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
MISC APPL 804 OF 2005
IN THE MATTER OF THE ADVOCATES ACT

AND

IN THE MATTER OF THE TAXATION BETWEEN ADVOCATES & CLIENT

BETWEEN

MORARA APIEMI & CO. ADVOCATES.....ADVOCATES

AND

DESHPAL SIAN SINGH.....1ST CLIENT

**MOHINDER KAUR SIAN (Suing on behalf of herself and as Executive of the Will
of the late BAHKSHISH SINGH WARYAN SINGH SIAN).....2ND CLIENT**

BAHKSHISH SINGH & BROTHERS LIMITED.....3RD CLIENT

RULING

By way of this Chamber Summons dated 10th April 2007 and expressed to be brought under Order XXII Rule 1 (1) and 10 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks

orders that the sum of Shs.2,321,775/= held by the Central Bank of Kenya in pursuant to the court's order of 2nd February 2005 in HCCC MISCELLANEOUS APPLICATION NO.1200 OF 2001 be attached to answer the decree herein together with the costs of this proceedings, that the Central Bank be ordered to show cause why Prayer (1) above should not be granted.

This application is brought under Order XXII of the Civil Procedure Rules which provides-

“XXII (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 owing from such third person (herein 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 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.”

The application is based on the grounds :-

- (1) That the Decree has been issued for a sum of Shs.1,079,793/= and still remain unsatisfied.
- (2) That Central Bank of Kenya in pursuant to the court’s order of 2nd February 2005 in HCCC MISC. APPLICATION NO. 1200 OF 2001 is holding a sum of Shs.2,321,775/= as security for the Decree Holder of this matter.
- (3) That the aforesaid amount was ordered to be retained by the Central Bank as security pending the taxation of the Client Advocate Bill of costs against the Judgment-Debtors by the Decree holder.
- (4) That the Decree holder has taxed the Bill of Costs, obtained the Certificate of Taxation and decree.

The application is also supported by an affidavit sworn by Philemon Morara on 10th April 2007 in which he avers that he represented the Judgment Debtors in HCCC MISC. APPLICATION NO. 1200 OF 2001 till 25th January 2005 when they instructed M/s Simani & Co. Advocates to take over from us; that the terms of our instructions were that we realize our legal fees from a sum of Shs.27,000,000/= held by the Garnishee by way of Treasury Bonds, that on hearing that the said amount held by the Garnishee would be released before our client. Advocate Bill of Costs would be finalized, we moved the court and obtained an order directing the Garnishee to retain a sum of Shs.2,321,775/= as security, that the Decree holder has taxed the Client Advocate Bill of Costs obtained Certificate of Taxation and Decree.

In such an application, the debt has either to be admitted or proved. There is no evidence that the Central Bank of Kenya is indebted to the Judgment debtors. The order issued on 2nd February 2005 in HCCC MISC. APPLICATION NO. 1200 OF 2001 only shows the Central Bank of Kenya on the 2nd Defendant in those proceedings, between the Central Bank of Kenya and the Judgment debtors in HCCC MISC. APPLICATION NO. 804 OF 2005 is not disclosed.

There must be a clear debt admitted or proved to enable the Applicant to initiate Garnishee Proceedings.

In the result this application fails and the same is dismissed.

Dated and delivered at Nairobi this 23rd day of May 2007.

J.L.A. OSIEMO

JUDGE