



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 13 of 2005**

**MOHAWK LIMITED.....PLAINTIFF/DECREE HOLDER**

**VERSUS**

**DEVCON GROUP LIMITED.....DEFENDANT/JUDGMENT DEBTOR**

**A N D**

**EQUITY BANK LIMITED.....GARNISHEE**

**R U L I N G**

On the 11<sup>th</sup> October 2007, this court issued orders for attachment of deposits held by Garnishee Equity Bank Limited for and on behalf of the Judgment Debtor Devcon Group Limited to the extent of the sum of Kshs.4,355,850/50 together with costs and interest being the amount of the decree issued in favour of the Decree Holder Mohawk Limited as against the Judgment Debtor. The court also issued orders for the Garnishee to appear before this court on 23<sup>rd</sup> October 2007 to show cause as to why it should not pay to the Decree Holder the amount due to the Judgment Debtor so as to satisfy the decree.

Although duly served the Garnishee did not attend court nor make any effort to respond to the application. The Judgment Debtor has however filed a replying affidavit through David Nduhiu Muthoga a director of the Judgment Debtor's Company who maintains that there is a stay of execution issued by the High Court in Civil Appeal Number 88 of 2007 and that is why the decree has not been satisfied. The Judgment Debtor therefore maintains that the application is brought in bad faith.

I have considered the application. It is clear from the court record that there is a decree in favour of the Decree Holder which has remained unsatisfied to date. Although it has been alleged that there is a stay of execution pending appeal. The copy of the order shows that the order was issued in Nairobi Civil Appeal Number 88 of 2007, before Hon. Osiemo J. It is not shown on the face of the order in which file the appeal emanates from. Nevertheless, this being a High Court matter, it cannot go on appeal before another High Court. The order issued in High Court Civil Appeal Number 88 of 2007 cannot therefore be in respect of the decree in this suit.

Neither the Garnishee nor the Judgment Debtor having raised any justifiable cause to warrant this court not issuing the Garnishee Order. I therefore order that a Garnishee Order absolute do issue.

I award costs of this application to the Decree Holder and order that the same, shall be included in the Garnishee Order.

Orders accordingly.

***Dated, signed and delivered this 7<sup>th</sup> day of November 2007.***

**H. M. OKWENGU**

**JUGE**