



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

Civil Appeal 52 of 2005

**KENYA COMMERCIAL BANK LTDAPPELLA
NT**

-VERSUS-

AVINDER SINGH KONDOLE1ST RESPONDENT

**RAMOGI INSTITUTE OF ADVANCED TECHNOLOGY2ND
RESPONDENT**

JUDGMENT

Coram J. W. Mwera, Judge,

Odunga for Appellant,

Ragot for 1st Respondent,

Raymond CC.

The present appeal was prompted by the learned trial magistrates' ruling delivered on 7.4.2005 in KSM CMCC 654/1996. The main order following that ruling reads:

“1. That the garnishee be (sic) ordered to produce certified copies of the judgment debtor's statements of account held by it to the credit of the judgment debtor for the period between 3.11.2004 and 24.11.2004 within 7 days.”

The 4 - point appeal was argued globally by Mr. Odunga to the effect that after a consent order of 18.11.2004, the lower court ceased to have any further jurisdiction in the matter and so, it was in error for it to hand down the order reproduced above. Before stating briefly all that led to this, as gleaned from the arguments of counsel (Mr. Odunga for the appellant bank and Mr. Ragot for the 1st respondent), first the said consent order:

“ By consent, the garnishee to remit to the decree holder the money it is holding to the credit of the judgment debtor within 10 days provided that the sum to be remitted is not to exceed the sum stated in the decree nisi. The said sum to be remitted within 10 days.”

The court heard that garnishee proceedings under Order 22, rules 1, 10, Civil Procedure Rules and Section 3A, Civil Procedure Act, were instituted in the lower court by the chamber summons dated 1.11.2004. Therein the total aggregate sum sought from the hands of the garnishee (Kenya Commercial Bank holding the judgment debtor's A/C no. 230671318) was Kshs. 597,166/70. That a garnishee order **nisi** issued and the hearing to make it absolute was due on 18.11.2004. On that day, the consent order reproduced above was recorded.

To Mr. Ragot, the consent order had no condition, save that the garnishee would pay out to the judgment creditor all the money in the debtors' account, but not to exceed Kshs. 597,166/70. That the garnishee (bank) did not even deny or seek to qualify whether it held monies to that extent. That indeed, it began by paying out to the decree holder Kshs. 18,000/=, but then declined to pay more. It did not demonstrate that that is all it had held e.g by availing statements of account. That either, the bank was required under such proceedings to pay the full sum demanded or show that it held and paid out only what was due to the judgment debtor. And that when the garnishee failed to pay any further or avail statements of accounts of A/C. no. 230671 318 (of the judgment debtor), the 1st respondent was entitled to approach the court below to get its (consent) orders of 18.11.2004, complied with/executed to the end. So it filed the application to that effect and got the orders.

Mr. Odunga on his part held the view that the lower court became **functus officio** in this cause after the consent order and it had no more jurisdiction to entertain it and issue the order of 18.11.2004.

Having heard counsel, gone over the record of appeal and appreciated the provisions of law governing garnishee proceedings, this court is of the mind that the 1st respondent was entitled to file, argue and the learned trial magistrate was in order to grant the orders based on the application dated 6.1.2004. The parties recorded an unconditional consent order that the garnishee would in 10 days pay over to the 1st respondent all the money held in the judgment debtor's account, but not more than the sum of Kshs 597,166/70. It was then not revealed that the account had only Kshs 18,000/=, and even after that was paid out, the court heard and that was not disputed, that the bank either failed, refused or neglected to render statements of accounts to the payee clarifying the whole state of finances. The learned trial magistrate still had supervisory authority and jurisdiction to ensure that the consent order of 18.11.2004 was complied with. It had a duty in this regard like all courts do. The lower court had to see that its orders by consent or otherwise were executed. Here the garnishee had unconditionally agreed to pay over all the money it held in the debtor's account. It did not intimate that the account of the debtor held money less than the aggregate sum sought at the **order nisi** time. After paying Kshs. 18,000/=, the balance was justifiably still expected by the decree - holder. If there had been any reason not to pay it out, it was incumbent on the garnishee to come to court and explain it. It did not, and Mr. Odunga told the court that the bank did not explain the circumstances to him either. That it had closed the judgment debtor's account in question all by itself.

In sum, the court agrees with the ruling of 7.4.2005, as merited, warranted and given with full and proper jurisdiction. It was all in the court's exercise of its supervisory authority to ensure that orders are complied with to the end. If it does not, who will?

Thus, this appeal is dismissed with costs.

Judgment delivered on 25/5/2006.

J. W. MWERA

JUDGE

JM/hao