



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS**

Civil Case 573 of 2004

PRISCILLA NYAMBURA NJUE

**T/A NAIROBI MOSCOW AIRWAYS.....DECREE HOLDER/
APPLICANT**

VERSUS

COUNTRYSIDE SUPPLIERS LTD.DEFENDANT/JUDGEMENT DEBTOR

KENYATTA NATIONAL HOSPITAL GARNISHEE

RULING

The Plaintiff herein by her application of the 13.9.2005 seeks an order that the Garnishee pay to her a sum of Kshs.1,796,030.00 which she alleges is owed by the Garnishee to the Defendant/Judgement Debtor herein.

On the 13.9.2005 an order nisi was made by Mr. Justice Azangalala.

The matter came before me today to make the order nisi absolute.

The Applicant relied on the affidavit of Nganga Munene sworn on the 13.9.2005 in which he depones that the Judgement Debtor has supplied other goods and services to the garnishee. This is a bald statement without stating how this knowledge was acquired. However, in a further affidavit of the 17.10.2005 the Plaintiff deponed that she had obtained from the Garnishee an invoice No.S/No.CSC 026/05 and annexed a copy. This invoice sent by the Judgement Debtor to the Garnishee is in respect of goods sold and delivered to the Garnishee in the sum of Kshs.4,585,361.00.

The Garnishee opposed the application and relied on the affidavit of Nzuki Mwinzi of the 26.9.2005 in which he denied the allegations made by Nganga Munene. He depones that there is no debt due from the Garnishee to the Defendant liable for attachment.

In a further affidavit sworn on the 13.10.2005 one J. N. Mugo the Finance Manager of the Garnishee deponed that he had never met Mr. Nganga Munene as he had deponed in his affidavit of the 27.9.2005 and on which he stated in paragraph 5:

“THAT on 9th and 10th August 2005, I personally spoke to Mr. Mugo the Financial Director of the Garnishee and he confirmed to me, inter alia;

(i) That the judgement-debtor had supplied additional goods to the Garnishee

including hospital beds over and above the previous decree sum of Kshs.21 million.

(ii) That under the terms of the contract payment would be effected on 19th September 2005.”

This conflict cannot be resolved by affidavit evidence.

There is, however, no reply by the Garnishee to the affidavit of the Plaintiff of 17.10.2005 referred to above and as such there is no denial by the Garnishee that it received the goods set out on the said invoice and owes a sum of Kshs.4,585,361.00 in respect of them. In the absence of such a reply I must accept the invoice as being correct.

Order 22 rule 4 of the Civil Procedure Rules states:-

“If the garnishee disputes his liability, the court, instead of making an order that execution be levied, may order that any issue or question necessary for determining his indebtedness be tried and determined in the manner in which an issue or question in a suit is tried or determined.”

An inquiry would have been necessary had the said invoice been put in issue by the Garnishee.

Somewhat surprisingly the Judgement Debtor also opposed this application. I say surprisingly as in the replying affidavit sworn by John Mututho on the 27.9.2005 he denied supplying the Garnishee any goods or services as stated in paragraph 5 of the affidavit of Munene Nganga set out above. In his affidavit he denies having refused to pay the Plaintiff and asks to be allowed to liquidate the debt to the Plaintiff by instalments. I do not see what interest he has in supporting the Garnishee in its denial of the debt, unless of course he is anxious to avoid the Applicant recovering the money claimed which would reduce the amount due to him. He has also sworn and filed two supplementary affidavits on the 26.10.2005.

In the first he depones that he has read the contents of the further affidavit of John Mugo of the 13.10.2005 and states that Nganga Munene and Mr. Mugo are hiding something from this court and accuses them of dishonesty and telling blatant lies.

In the second supporting affidavit, he depones that the said invoice is not evidence of payment. He further says he never collected a cheque from the garnishee as alleged in paragraph 4 of the decree holder's further affidavit. This I think should refer to paragraph 5 in which the Applicant stated:-

“THAT on Friday 14th October 2005, the Garnishee issued cheque No.000519 drawn on National Bank of Kenya Kenyatta National Hospital Branch dated 3rd October for Shs.4,585,361/- which cheque was collected by the judgement debtor.”

In any event if the garnishee had given a cheque to the judgement debtor it would have been in breach of the order of Mr. Justice Azangalala referred to above.

He does not, however, deny that he sent the said invoice or sold and delivered the goods referred to therein.

He denies, however, that the Garnishee owes him any money subsequent to a sum of Kshs.4 million attached previously by the Plaintiff from the Garnishee.

On the evidence before me the invoice shows that goods were sold and delivered to the Garnishee in the sum of Kshs.4,585,361.00 and that the Judgement Debtor never collected the same. Indeed had he done so, he with the garnishee would have been in contempt of Mr. Justice Azangalala's orders. The only conclusion therefore, is that the Judgement Debtor is owed the sum of Kshs.4,585,361.00 by the Garnishee and this money is still in the hands of the Garnishee.

On this basis I make the order absolute asked for with costs to the Applicant.

Dated and delivered at Nairobi this 26th day of October, 2005.

P. J. RANSLEY

JUDGE