



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 404 OF 1998

NATIONAL HOUSING CORPORATIONPLAINTIFF

VERSUS

NAIROBI CITY COUNCIL & ANOTHER.....DEFENDANT

RULING

On 20.9.2000 the plaintiff moved to this court under Order 22 rules 1, 1A, 3, 10 Civil Procedure Rules and section 3A Civil Procedure Act. Mr Maingi submitted and it was not disputed that the defendant council owes his client a balance of a judgment (decretal) sum herein of something in the region of sh 15 m. The exact sum is known to the parties. That the plaintiff, decree holder, be granted an order absolute for garnishee raised against Kenya Commercial Bank (KCB) (1st garnishee) (the application against the 2nd garnishee was said to have been withdrawn) so that the defendant's (credit) funds lying in its two accounts with KCB are attached and paid over to the decree holder. The accounts were named as Nos 229 – 970 – 023 and 229 – 970 – 000. The court was told that these two accounts hold about sh 5.7m which the plaintiff stands to benefit from if the sought garnishee orders are given against KCB.

Mr Munikah for the defendant judgment debtor although conceding that it owed the decretal sum to the plaintiff was nonetheless under the Local Government Act, the Act, S 263A not liable to attachment of any sort let alone by way sought here. He cited the case of *Municipal Council of Kisumu vs Neela Patel* C.A NAI 29/2001 (C.A)

Mr Chacha-Odera while concurring with Mr Munikah on this legal position nonetheless added that from the other transactions/agreements between KCB and the judgment debtor, the latter had given its bankers, KCB first right over any sums of money that appeared in the council's accounts held by the bank. That in doing so, the accounts in issue, if they may chance to be in credit at this particular time, the banker was to recoup itself from those credits because as at 21.11.2000, the debtor owed the bank well over sh 311.2m.

The cases of *Gimco Ltd vs Kenya Railways Corporation* HCCC 1532/ 2000 in whose ruling Onyango Otieno J agreed with Ringera J in *Yomason Contractors Ltd vs Nairobi City Council* HCCC 1443/2000, were cited to persuade this court that indeed in circumstances as these, where one owes another a debt, the entire state of accounts between them need be taken in regard. As fate would have it, the *Yomason* case concerned a garnishee order to be directed against (this) KCB for debt due from (this) Nairobi City Council!

The provision of the Act on which Mr Munikah relied to ward off the onslaught on his client to get to its accounts, reads as follows, when there is execution against local authority.

“263A Notwithstanding anything to the contrary in any law –
(a) where any judgment or order has been obtained against a local authority, no execution or

attachment or process in the nature thereof shall be named against the local authority or against the immovable property of the local authority or its vehicles or its operating equipment, machinery, fixtures or fittings, but the clerk of the local authority shall without any delay, cause to be paid out of the revenue of the local authority, such amounts as may, by judgment or order be awarded against the local authority to the person entitled thereto;
(b)

Mr Maingi considered the above legal provision in the light of the *Neela Patel* (above) and posited that his client was not barred from satisfying itself by getting to the debtor's account (in credit) held by KCB. That indeed that case left it as arguable if and whether bank accounts are a local authority's property shielded by law from being attached in execution.

From the *Concise Law Dictionary* (4th Edn) the court's attention was drawn to the following definitions:

"Execution 1. The process of carrying out a sentence of death imposed by a court. 2. The enforcement of the rights of a judgment creditor. The term is often used to mean the recovery of a debt only, especially by seizure of goods belonging to the debtor under a writ or a warrant of execution."

"Enforcement of judgment: The process by which the orders of a court may be enforced. Orders for payment of money may be enforced by a variety of methods including ... garnishee proceedings....."

"Garnishee Proceedings: A procedure by which a judgment creditor may obtain a court order against a third party who owes money to, or holds money on behalf of the judgment debtor. The order requires the third party to pay the money (or part of it) to the judgment creditor."

With all the foregoing, this court sees no way Mr Maingi's client will get round and get KCB, which in anyway claims that it holds no money in the defendant's accounts which qualifies as credit to be paid over. That in its way the defendant has given KCB first right over any funds coming into its accounts. With the law as it is, it is not even necessary to remark on whether the credits if they exist should go to the bank first or if before it takes it, the decree-holder should do so. The decree holder has just no access to attach by garnishee orders, the money (if) held by the bank in the defendant's accounts. The law prohibits all attachment of a local authority's property (read assets) in whatever form unless the town clerk has given his written permission first (S 263A(b)).

Now that permission is seemingly not given to the plaintiff here, what is open to it is to move by process of law (*mandamus*) to get the defendant's town clerk without delay to cause to be paid out of the revenue the amount owed here.

In sum the application is dismissed with costs to the judgment debtor and the garnishee (KCB).

Orders accordingly.

Dated and delivered at Nairobi this 15th day of March, 2002

J.W MWERA

JUDGE