



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 826 OF 1998

KENYA SHELL LTD.....PLAINTIFF

VERSUS

AIR EAST AFRICA LTD.....DEFENDANT

RULING

This is an application for Plaintiff/Decree holder for attachment of debts owing from Kenya Airport Authority (Garmishee) to the defendant/judgment debtor. There is a decree given on 21.7.99 for payment of shs 9,742, 687/70 plus interest by defendant to plaintiff. A Garmishee order Nisi was given on 14.6.2001. The Kenya Airports Authority (Garmshee) was required to attend court on 25.6.2001 to show cause why the order Nisi should not be made absolute.

The orders was served late and the Garmishee was now required to attend court on 2.7.2001 to show cause. The Garmishee did not attend court on 2.7.2001.

There is an affidavit of service showing that Kenya Ports Authority was served with Garmishee order on 19.6.2001. The Garmishee was also served to attend court on 2.7.2001. As the Garmishee failed to attend court on 2.7.2001, plaintiffs counsel applied that the order Nisi be made absolute.

That application was opposed orally by the judgment debtor.It is more than 7 days from 19.6.2001 when the Garmishee was served and 2.7.2001 when the application was fixed for hearing. So the objection by judgment debtor that the 7 days had not expired has no merit.

The judgment debtor also contended that the properties of the Garmishee cannot be attached by virtue of s. 35 of the Kenya Airport Authority Act Cap 395.

Section 35(a) prohibits execution or attachment or process in the nature of execution or attachment in satisfaction of a judgment or order against Kenya Airport Authority of its immoveable properties.

Plaintiff contends that the debt belongs to Judgment debtor and not to the Garmishee and that section 35 has no authority. The effect of a Garmishee order is to bind the debts of the debtor judgment in the hands of the Garnishee (order XXII rule 2 Civil Procedure Rules). The debts being attached belong to Air East (J.D)

The Garmishee did not attend court or dispute the debt. The Garmishee did not also dispute its liability to pay the debt. Section 35 does not prohibit any court from entering judgment against Kenya Ports Authority or from ordering Kenya ports Authority from paying any debts. It merely prohibits execution. Indeed section 35(a) enjoins Kenya Ports Authority to pay such debt. The court can order the Garnichee to pay but cannot order execution against the goods of the Garmshee. I am satisfied that s. 35 of Kenya Ports Authority has no application to Garnishee proceedings.

As the Garneshee has failed to appear, and has not disputed the debt, I order the attachments of J.D's debts in the hands of Garmshee and make the order Nisi absolute with costs payable by J.D to Decree holder

E. M. Githinji

Judge

5.7.2001

Mr. Munyi holding brief for Kiragu present

Mr. Kihara for Judgment debtor present

Mr. Kihara

I apply for leave to appeal

I also apply for stay on terms that the money be held by Garmshee The order of stay should operate for 15 days pending the filing of a formal application.

Mr. Munyi

I oppose application for stay of execution. No prejudice will be suffered by J.D if money is paid to Decree holder

E. M. Githinji

Judge

Order: 1. Leave to appeal granted

2. The payment of attachment debt by Garmshee to the Decree holder is stayed for 14 days

E. M. Githinji

Judge