



Kiniu v Ndungu & Murigi both t/a Annrose Nursery & Primary School & another; Cooperative Bank of Kenya Ltd (Garnishee) (Environment and Land Case Civil Suit 179 of 2009) [2023] KEELC 16247 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16247 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 179 OF 2009
LN MBUGUA, J
MARCH 9, 2023**

BETWEEN

JOSEPH NDICHU KINIU PLAINTIFF

AND

**ANN WAIRIMU NDUNGU AND STANLEY NDUNGU MURIGI BOTH T/A
ANNROSE NURSERY & PRIMARY SCHOOL 1ST DEFENDANT**

EMBAKASI RANCHING COMPANY LTD 2ND DEFENDANT

AND

COOPERATIVE BANK OF KENYA LTD GARNISHEE

RULING

1. Judgement was entered in favour of the Plaintiff herein on June 23, 2022, where the plaintiff was granted ownership of Plot Nos A69 and A70 on LR 10904/2 and mapped out and demarcated as LR No Block 105 (Embakasi Ranching) /1927 and LR No Block 105 (Embakasi Ranching) /1928. He was also awarded mesne profits amounting to Ksh 7 million. Subsequently, he extracted the decree dated July 6, 2022.
2. The Plaintiff then filed a Notice of Motion Application dated October 21, 2022 for orders of garnishee to issue against the Garnishee herein in order to recover the decretal amount. The said application is supported by the Plaintiff's supporting affidavit sworn on October 21, 2022. He deposes that the Defendants have not proffered an appeal against the decree issued herein, yet they have failed to satisfy the same. He points out that the judgement debtor holds a bank account with the garnishee the same being Cooperative Bank Parliament Road Branch, Account No xxxx and he believes that the said account has enough funds to satisfy the decree issued herein.



3. The application is opposed by the 1st Defendants by way of the replying affidavit sworn by Anne Wairimu Ndu'ngu on January 16, 2023. She deposes that she is a stranger to this suit as judgement herein was erroneously and wrongfully entered against them. She contends that they do not own the parcels of land in issue which is V4510 & V4511 Nairobi/Block 105/1929 & Nairobi/Block 1928, rather, their parcels of land are known as Nairobi/Block 105/1916 & Nairobi /Block 1917.
4. The Garnishee filed a replying affidavit sworn on November 4, 2022 by Christine Maina who describes herself as its service manager. She admits that that the judgment debtor is the bonafide holder of account No xxxx and as of November 3, 2022, the account had Ksh 68,418.23, thus the Garnishee can only satisfy the decree to the extent of paying Ksh 68,418.23.
5. The Plaintiff swore a supplementary affidavit on February 1, 2023 deposing that the 1st Defendants are asking the court to sit on appeal of its own judgement by alleging that they are not occupying the suit properties. He points out that in Civil Application E348 filed by the Defendants in the court of appeal, they contend that they are occupying the suit properties.
6. He also deposes that the 1st Defendants are in contempt of this court's garnishee order nisi issued on October 25, 2022 since they withdrew Ksh 130,000/= from the bank account in issue despite the Garnishee herein being served with court orders vide a letter dated October 25, 2022 and served on the same day at 11.29 AM
7. The parties did not file submissions as per the court's directions given on February 2, 2023.
8. Garnishee proceedings are governed by Order 23 of the Civil Procedure Rules. Order 23, rule 1 (1) provides that;

' A court may, upon the ex parte application of a decree-holder, and either before or after an oral examination of the judgment-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (hereinafter called the 'garnishee') to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree- holder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.'

9. In Ecobank Kenya Ltd v True North Construction Company Ltd & Another [2018] eKLR, the court stated that;

' The object of Garnishee Proceedings is to enable a Decree Holder to reach a debt due to the Judgment Debtor from the Garnishee as may be sufficient to satisfy a Decree.'

10. There is a decree for Ksh 7 million issued herein. There is also a garnishee order nisi issued herein. The Plaintiff argued that the Garnishee paid the decree holder Ksh 130,000/= from the subject account after a garnishee order nisi was issued. It is therefore pertinent that the garnishee explains the extent of compliance with the garnishee nisi order. Specifically the garnishee should explain to this court the sums of money which were withdrawn by the judgment debtor from date of service of the court order to November 3, 2022.



11. While the 1st Defendants' argues that they are strangers to the suit by virtue of the suit properties being registered in the name of one Susan Wanjiru, this court has already determined all issues herein and the decree is valid unless appealed against. The decree in favour of the Decree Holder has not been settled. The Garnishee has admitted that the subject account is owned by the judgement debtor. It also confirmed that the judgment debtor holds Ksh 68, 418.23 in the said account. Though the funds are not sufficient to satisfy the Decree herein, they should be paid to the Plaintiff in part fulfillment of the decree herein.
12. In the circumstances, the application dated October 21, 2022 is allowed in the following terms:
 1. The Garnishee absolute order is hereby issued.
 2. The Garnishee is to appear in court through its appointed representative to shed light on what was withdrawn by the judgment debtor from date of the service of the Garnishee nisi order to November 3, 2023.
 3. The 1st defendant is condemned to pay the costs of this application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MARCH, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Masaki holding brief for Mr. Omari for Judgment Debtor

Court assistant: Vanilla

