



Olak & 2 others (Suing as Personal Representatives and Administrators of the Estate of Nereah Atieno Olak - Deceased) v Ondeng & another (Sued through his father David Ondeng as Guardian Ad Litem); Standard Chartered Bank (K) Limited (Garnishee) (Environment & Land Case 873 of 2015) [2023] KEELC 17161 (KLR) (4 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17161 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 873 OF 2015
E ASATI, J
MAY 4, 2023
FORMERLY H.C. CIVIL CASE NO 72 'B' OF 2005**

BETWEEN

**DOUGLAS ONYANGO OLAK 1ST PLAINTIFF
EVANS OCHIENG OLAK 2ND PLAINTIFF
GEORGE OMONDI OLAK 3RD PLAINTIFF
SUING AS PERSONAL REPRESENTATIVES AND ADMINISTRATORS OF
THE ESTATE OF NEREAH ATIENO OLAK - DECEASED**

AND

**DAVID ONDENG 1ST RESPONDENT
BRANDON AWITI ONDENG 2ND RESPONDENT
SUED THROUGH HIS FATHER DAVID ONDENG AS GUARDIAN AD LITEM**

AND

STANDARD CHARTERED BANK (K) LIMITED GARNISHEE

RULING

1. This ruling is in respect of the notice of motion application dated March 11, 2023 brought pursuant to the provisions of order 23 rules 1, 2, 3, 4 and 10 of the *Civil Procedure Rules* 2010 and sections 1A, 1B, 3A and 63 of the *Civil Procedure Act* cap 21 Laws of Kenya. Prayers (a) and (b) of the application having been dispensed with at the initial stage ex parte, the substantive prayer for determination is prayer (c) which is a prayer that the garnishee *order nisi* issued herein be made garnishee order absolute and the



- garnishee be directed to transfer funds in the sum of Kshs 2,367,935/= held for the judgement debtor together with costs of the garnishee proceedings to the firm of D. O. E Anyul & Co Advocates.
2. The grounds upon which the application is brought are that the decretal sum together with costs are yet to be settled by the defendants. That the garnishee is a custodian of the defendant's/judgement-debtor's funds which is enough to settle the decree.
 3. The garnishee, the Standard Chartered Bank (K) Limited, responded to the application *vide* the replying affidavit sworn by Hannington Odhiambo on the April 4, 2023 stating that the bank account No 01501923763300 quoted in the application does not exist and is not being held by the garnishee. That the garnishee holds two (2) different bank accounts for the defendant/judgement debtor namely; account number 0xxxxx0 in which the account balance as at 22.03. 2023 was Kshs 794, 723 and account number 0xxxxx0 with a bank balance of Kshs 330,880 as at the same date. The garnishee stated further that it was ready and willing to comply with orders issued by the court subject to deduction of Kshs 20,000/= being its costs of the garnishee proceedings.
 4. The defendants/judgement -debtor's response to the application was by way of grounds of opposition dated March 24, 2023. The defendants/judgement debtor's case was that the application is spent. That garnishee orders are modes of execution and cannot be issued after a span of 1 year has elapsed from the date of the decree in accordance with the provisions of order 22 rule 18 (1) (a) of the [Civil Procedure Rules](#). That the applicant ought to have served the judgement debtor with a notice to show cause. That the decree nisi was premature as there is no proof of any attempts made at execution or any demands made on the judgement debtor and he failed to respond. That no communication or process has been served upon the respondent or his advocate since November 2021 that hence the application is premature. That there is an appeal namely civil appeal No E258/2022 filed in the Court of Appeal Kisumu with an application for stay of execution pending before the Court of Appeal.
 5. The application was urged orally on April 26, 2023. Counsel for the applicant prayed that the *order nisi* be made absolute to the extent of the amounts admitted by the garnishee namely Kshs 1,125,523 (Kenya shillings one million one hundred twenty-five thousand five hundred twenty-three only). He submitted that garnishee proceedings are not subject to the provisions of order 22 rule 18 (1) (a) [Civil Procedure Rules](#). That the proceedings do not involve the judgement debtor.
 6. The garnishee submitted that it does not oppose the application. That the amount it holds on behalf of the judgement debtor is Kshs 1,125,523.07 and is willing to release the amount less Kshs 20,000/= being its costs for the garnishee proceedings.
 7. Counsel for the judgement debtor opposed the application and submitted that garnishee proceedings are execution proceedings and the applicants have not demonstrated what efforts they made to recover the decretal sum before resorting to the garnishee proceedings. That the judgement debtor ought to have been served with notice to show cause pursuant to the provisions of order 22 rule 18 (a) [Civil Procedure Rules](#). That there is an appeal and an application for stay of execution pending in the Court of Appeal.
 8. I have carefully considered the application, the responses thereto and the oral submissions made. The application was brought pursuant to the provisions of order 23 of the [Civil Procedure Rules](#) under which garnishee proceedings are proceedings between the decree holder and the garnishee wherein the garnishee is required to prove whether or not it is indebted to the judgement debtor. The role of the judgement debtor is to attend for information only should it be that he/she has already settled the decree. The obligation on the part of the applicant is to serve the judgement debtor with the application.



9. In the present case, it is not in dispute that the decree has not been settled. The garnishee does not deny indebtedness to the judgement debtor or resist release of the amounts held to the decree holder. There is no order of stay of execution in place.
10. In the circumstances I find that the application complies with the provisions of order 23 Civil Procedure Rules. The application is merited. I allow the application and make the following orders
 - a. Garnishee *order nisi* issued herein is hereby made absolute.
 - b. The garnishee to pay Kshs 1,125,523.70 less Kshs 20,000/= to D.O.E Anyul & Co Advocates on behalf of the applicants within seven (7) days hereof in default, execution to issue against the garnishee
 - c. Costs of the garnishee proceedings are awarded to the decree holders/applicants.
- 11 It is so ordered.

Ruling, dated and signed at Kisumu, read virtually this 4th day of May 2023 through Microsoft Teams Online Application.

E. ASATI,

JUDGE.

In the presence of:

Maureen- Court Assistant.

Anyul Advocate for the Applicant/Decree Holder

G.S. Okoth Advocate for the Respondent/Judgement Debtor.

No appearance for the Garnishee.

