



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 252 OF 2015

EQUILAB TECHNOLOGIES LIMITED.....PETITIONER

=VERSUS =

THE HON ATTORNEY GENERAL.....1ST RESPONDENT

NAIROBI CITY COUNTY.....2ND RESPONDENT

MINISTRY OF STATE FOR INTERIOR

& COORDINATION OF NATIONAL GOVERNMENT.....3RD RESPONDENT

THE NATIONAL LAND COMMISSION.....4TH RESPONDENT

THE CHIEF LAND REGISTRAR.....5TH RESPONDENT

RULING

1. Two applications fall for determination in this ruling. They both stem from the Judgment rendered in this suit by Lady Justice Gacheru on 26/2/2016. Through the Judgment, the court awarded the petitioner/decree-holder Kshs 5,000,000 as exemplary damages. The court further awarded the petitioner costs of the suit. A decree was subsequently issued by the court. Similarly, costs were taxed on 27/7/2017 at Kshs 1,064,392. In addition, the decree-holder filed **Judicial Review Application No 45 of 2017; Equilab Technologies Limited v The County Secretary of Nairobi City County and 2 others** in which this court issued orders directing the County Secretary of the Nairobi City County Government to satisfy the decree together with costs.

2. Owing to failure by the judgment-debtor to satisfy the Judgment in the principal suit, the decree-holder brought proceedings through a notice of motion dated 23/11/2020 seeking to attach monies held by the judgment-debtor in **Bank Account Number [...] Co-operative Bank of Kenya**. The judgment debtor did not attend court on the hearing day, leading to grant of *ex-parte* orders on 8/12/2020.

3. Subsequent to that, Co-operative Bank of Kenya brought a notice of motion dated 18/12/2020 seeking the following verbatim orders:

1) This Honourable court do set aside the garnishee order made on 8th December 2020.

2) There be a stay of execution of the garnishee order made on 8th December 2020 pending hearing and determination of this application, pleased to order the plaintiff's suit be dismissed with cost for want of prosecution (sic)

3) Leave be granted to the 2nd garnishee to apply [sic]

4) The applicant be awarded the costs of the application.

4. The said application is one of the two applications which are the subject of this ruling. The second application is the judgment-debtor's notice of motion dated 29/1/2021 in which the judgment-debtor prays that the *ex-parte* order of 8/12/2020 be set aside and the decree-holder's application dated 23/11/2020 be set down for hearing *denovo*. It was contended by the judgment debtor that their advocates failed to appear in court virtually on 8/12/2020 due to failure of the link to the virtual platform, hence the matter proceeded without the benefit of the judgment debtor's submissions on the application.

5. Because the judgment-debtor's application seeks the setting aside of the *ex-parte* orders on the ground that they were not heard when the *ex-parte* orders were issued because the link to the virtual court platform failed, I will dispose it before dealing with the Bank's application.

6. I have considered the judgment-debtor's application dated 29/1/2021. The key question falling for determination in the said application is whether the applicant has satisfied the criteria upon which our courts exercise the discretionary jurisdiction to set aside *ex-parte* orders.

7. One of the principal grounds set out on the face of the application is that the judgment-debtor's advocate's failure to attend court on 8/12/2020 was occasioned by the failure of the link to the virtual court. Secondly, at paragraph 19 of the supporting affidavit sworn by Mr Halkano D Waqo, the judgment-debtor contended that they will be urging the court to mark this matter as settled because payments have so far been made in favour of the ex-parte applicant "well in excess of what is lawfully due".

8. I have considered the above explanation and contention. I am satisfied there is a proper basis for exercise of the discretion to set aside the *ex-parte* orders and hear all the parties on the application. I will set aside the ex-parte orders dated 8/12/2020 and grant the judgment-debtor the opportunity to demonstrate to the court why the orders sought in the application dated 23/11/2020 should not issue.

9. Secondly, in light of the above finding, I will order joinder and participation of the Co-operative Bank of Kenya in the proceedings relating to the decree-holder's application dated 23/11/2020 which I direct to be fast-tracked. In the interim period, the Co-operative Bank of Kenya will preserve the monies held in Account Number 01141709410000 pending the *interpartes* hearing of the application dated 23/11/2020.

Disposal Orders

10. In light of the foregoing, I make the following orders in disposal of the judgment-debtor's application dated 29/1/2021 and Co-operative Bank of Kenya's application dated 18/12/2020

a) The ex-parte orders made on 8/12/2020 in relation to the decree-holder's application dated 23/11/2020 are hereby set aside.

b) The said application shall be heard interpartes on a date to be set at the time of reading this ruling.

c) Co-operative Bank of Kenya is hereby joined to participate in the decree-holders application dated 23/11/2020.

d) Pending interpartes hearing and determination of the application dated 23/11/2020, Co-operative Bank of Kenya shall preserve monies held in Account Number [...].

e) Costs shall await disposal of the application dated 23/11/2020

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF MAY 2021.

B M EBOSO

JUDGE

In the Presence of: -

Mr Wawire holding brief for Mr Allen Gichuhi for the Petitioner

Mr Mboya for the 2nd Respondent

Mr. Muiruri for the Bank

Court Assistant: June Nafula