



**Sasah Contractors Ltd v Jaramogi Oginga Odinga University of
Science and Technology; Equity Bank Ltd (Garnishee) (Civil Suit
E002 of 2023) [2025] KEHC 1275 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1275 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL SUIT E002 OF 2023
DK KEMEL, J
FEBRUARY 24, 2025**

BETWEEN

SASAH CONTRACTORS LTD PLAINTIFF

AND

**JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE AND
TECHNOLOGY DEFENDANT**

AND

EQUITY BANK LTD GARNISHEE

RULING

1. The Defendant/Applicant herein has filed the present application dated 18/2/2025 pursuant to Section 1S, 1B and 95 of the [Civil Procedure Act](#) seeking principally for an order that this Court extends the order for stay of execution and time for compliance of the order of this court issued on 23/1/2025 for the opening of an interest earning bank account in the joint names of Counsels for the substantive parties herein (ie Plaintiff and Defendant) be and is hereby extended for a further fourteen (14) days and that this court issues such further orders as shall be just and expedient in the circumstances of this suit.
2. The application is supported by the grounds set out on the face thereof as well as the supporting affidavit of Kimwele Muneeni sworn on even date.
3. The Applicant's gravamen is *inter alia*; that pursuant to the orders of 23/1/2025, the Defendant/Applicant engaged its parent ministry for authority to open the new account in that the Defendant being a public institution is not allowed to open bank accounts without authority to do so; that the Defendant wrote a letter to the parent ministry seeking for authority to apply funds held in its accounts with the Garnishee for the purpose of complying with the court orders; that owing to the



administrative processes, the authority came a bit late; that Defendants counsel duly forwarded the bank account documents for endorsement; that the Plaintiff's counsel has not returned back the said documents for further action; that the stay period of 30 days are about to lapse without the parties' compliance with the orders of this court; that if the orders of stay are not extended, the Defendant's appeal at the Court of Appeal will be rendered nugatory and an academic exercise; that the Plaintiff will not suffer any prejudice if the orders are granted; that the application has been made before the lapse of the stay period and hence there has been no inordinate delay; that it is in the interest of justice if the orders are issued.

4. The application was strenuously opposed by the Plaintiff who swore an affidavit dated 20/2/2025 wherein he averred inter alia; that the orders issued on 23/1/2025 were clear and that the responsibility to open the account was left with the Advocates for both Plaintiff and Defendant; that it is inconceivable for the Defendant to purport to seek authority from third parties who are not parties to this suit and that if the Defendant wished to do so then, it should have sought for review of the orders; that the Defendant deliberately failed to comply with the orders and went about engaging persons who have no role in the order; that the Defendant has engaged other persons and institutions who have unilaterally chosen the bank to be used in the process without consulting the Plaintiff's Advocates; that there has been considerable delay in this matter and that the Plaintiff has been prejudiced for being kept away from the fruits of the judgment; that the fears of execution by the Defendant are unfounded since the order on execution is against the Garnishee and thus any execution to be issued will only affect the property of Garnishee and not the Defendant; that the application is an abuse of the process of the court and should be dismissed with costs.
5. The application was canvassed by way of oral submissions. Both counsels for the Defendant's and Plaintiff's submissions are a reiteration of the averments in their rival affidavits.
6. I have considered the application, rival affidavits and oral submissions of the parties. It is not in dispute that pursuant to the orders of this court dated 23/1/2025, learned counsels for the Plaintiff and Defendant were to open a joint interest earning account in a reputable bank and thereafter sign a consent so as to move the funds from the Garnisheed account to the new Joint account in name of Advocates for Plaintiff and Defendant. It is not in dispute that the Defendant, instead of proceeding to comply with the orders of 23/1/2025, has purported to engage third parties who are not involved in this matter at all for what it calls "authority" to deal with the funds currently with the Garnishee without reverting back to court for review of the orders if need be. It is not in dispute that the orders specifically directed the Advocates for the Plaintiff and Defendant to choose a reputable bank into which the funds would be moved and that the introduction of a third party by the Defendant is a new issue. It is not in dispute that the Defendant has unilaterally chosen the type of bank to be opened without the input of the Plaintiff. I find the issue for determination is whether the Defendant's application dated 18/2/2025 has merit.
7. As has been noted from the rival oral submissions and correspondences, Defendant appeared to have gone off tangent and engaged its energies with its parent ministry and other third parties instead of complying with the orders of this court. The engagement with third parties by the Defendant appears to be contrary to the orders of this court issued on 23/1/2025. Whereas the Defendant is at liberty to engage and brief its parent ministry on the progress of the case here in court, it does not give liberty to those parties or institutions to interfere with the orders of this court as they are not principal parties to this suit. Whatever communication took place between the Defendant and its parent ministry must be purely internal and should not be for this court's attention unless the Defendant seeks for a review of the orders earlier on made. In fact, the participation of third parties in this matter borders on contempt of the court orders. I must point out that the funds now in the custody of the Garnishee



have already been garnished with the Garnishee Nisi made absolute and hence the Defendant currently has no control over the same as they have been ordered garnisheed in favour of the Plaintiff. It is clear beyond per adventure that eh Defendant wasted valuable time in engaging with third parties instead of complying with the orders dated 23/1/2025 to the letter and hence the delay has been contributed by itself. It was inconceivable for the Defendant to purport to get permission from third parties regarding the transfer of the garnished funds to a joint account yet the funds are now out of reach of the Defendant as the funds are now the property of the court and which have been ordered released by the Garnishee to the Plaintiff. The funds having been garnisheed, the same ceased from being the property of the Defendant and that the release or otherwise must be authorized by the court. Under those circumstances, it is thus quite ironical that the Defendant still believes that the funds are still its funds and can decide how the same is to be managed. It was further erroneous on the part of the Defendant to seek to decide the choice of bank yet the same should be by consent of both learned counsels. I find the Defendant's conduct in acting unilaterally went against the clear orders of this court. The attempt now by the Defendant to seek refuge under the named third parties for the delay and further blame the Plaintiff therefor is not convincing. The Defendant appears to have gone on a frolic of its own and should not lay the issue of delay at the doorstep of the Plaintiff. The letter dated 19/2/2025 by the Plaintiff clearly laid bare the circumstances leading to the delay.

8. It is noted that the Defendant now seeks for fourteen (14) days within which to comply with the order of this court. Even though the same has been vociferously opposed, by the Plaintiff, I am inclined to grant the request sought. The Defendant has shown that it regrets the delay. I will give it one chance to enable it do the right thing. The Defendant has also proposed that the Plaintiff be allowed to choose the bank of its choice so that the order can be complied. I find that the parties should be given a further opportunity to comply with the orders dated 23/1/2025.
9. In view of the foregoing observation, the Defendant's application dated 18/2/2025 is allowed in the following terms:
 - a. An order of stay of execution as well as time for compliance of the orders issued on 23/1/2025 for the opening of an interest earning account in the joint names of the Advocates for the Plaintiff and Defendant be and is hereby extended for a further fourteen (14) days from the date hereof.
 - b. In the event of failure to agree on the choice of bank into which the funds will be deposited, the Plaintiff's Advocate be at liberty to furnish the choice of such a bank and which exercise should be done within three (3) days from the date hereof.
 - c. The Deputy Registrar of this Court to forthwith extract the orders of 23/1/2025 and supply the same to the parties by close of business today.
 - d. The costs of the application be borne by the Defendant.

Orders accordingly.

DATED AND DELIVERED THIS 24TH DAY OF FEBRUARY, 2025.

D. KEMEI

JUDGE

In the presence of:

Otieno.....for Plaintiff

Onsongo.....for Defendant



Bwire.....for Garnishee

Ogendo.....Court Assistant

