



Diamond Trust Bank (K) Limited v Oruru & another (Civil Appeal E015, E016, E017, E018 & E019 of 2022 (Consolidated)) [2025] KEHC 5566 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEHC 5566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E015, E016, E017, E018 & E019 OF 2022 (CONSOLIDATED)**

WA OKWANY, J

APRIL 24, 2025

BETWEEN

DIAMOND TRUST BANK (K) LIMITED APPELLANT

AND

YUNENSIAH NYAMOITA ORURU 1ST RESPONDENT

AFRICA MERCHANT ASSURANCE COMPANY LIMITED 2ND RESPONDENT

(Being an Appeal from the Ruling and Orders at the Chief Magistrate's Court in Nyamira, CMCC No. 73 of 2018 delivered by Hon. W. K. Chepseba, Chief Magistrate on 31st March 2022)

JUDGMENT

Background

1. The 1st Respondent herein sued one Geoffrey Nyarango Abuga (the Defendant) in the primary suit being Nyamira CMCC 32 of 2015 wherein he sought, inter alia, general damages for pain and suffering arising out of a road traffic accident that occurred on 7th January 2015 involving Motor Vehicle Registration No. KBW 372K. The said motor vehicle was insured by the 2nd Respondent herein. Judgment was entered in favour of the 1st Respondent in the primary suit but the Defendant did not settle the decretal sum thus precipitating the filing of a declaratory against the 2nd Respondent herein, in its capacity as the Defendant's insurer, in order to enforce the 2nd Respondent's statutory obligation to settle the decretal award in the primary suit. The declaratory suit was subsequently determined in favour of the 1st Respondent.
2. The 2nd Respondent did not settle the decretal sum and through an application dated 31st January 2022, the 1st Respondent instituted Garnishee Proceedings seeking to attach the credit/monies held by the Garnishee (the Appellant herein) the 2nd Respondent's bank where, it was alleged, the 2nd



Respondent held Fixed Deposit and Current Accounts. The trial court issued a Garnishee Order Nisi on 2nd February 2022.

3. The Appellant responded to the Garnishee application through the affidavit of its Legal Officer, Ms. Jennifer Thiga, who averred that the Garnishee had closed all the accounts belonging to the Judgment Debtor. The said deponent attached a letter dated 9th October 2021 notifying the 2nd Respondent of a recall of overdraft facility and notice of closure of accounts as annexure marked “JT-1”.
4. Upon considering the arguments of the 1st Respondent/Applicant and the Bank (Appellant herein), the trial court issued a Garnishee Order Absolute on 31st March 2022 thus triggering the filing of the present Appeal.

The Appeal

5. In its Memorandum of Appeal dated 6th April 2022, the Appellant appealed against the entire Ruling of the trial court in the Garnishee proceedings on the following grounds: -
 1. The Trial Magistrate erred in law and in fact in issuing a Garnishee Order Absolute against the Appellant who no longer holds an account for the 2nd Respondent.
 2. The Trial Magistrate erred in law and in fact in holding that the Appellant failed to prove that the account had been closed prior to filing of the Application before the Magistrate’s Court despite the Appellant furnishing evidence of closure of the account.
 3. The Trial Magistrate erred in law in failing to appreciate the principles governing Garnishee Applications.
6. The Appellant urged this Court to set aside the Ruling of the trial court and to dismiss the 1st Respondent’s Application dated 31st January 2022. The Appellant also sought the costs of the Appeal and the trial court.
7. It is at this juncture important to clarify that this appeal was consolidated with and is part of a series of the following related cases:-
 - a. Charles Momanyi Aroni Nyamira CMCC No. 72 of 2018 now High Court Civil Appeal No. E016 of 2022
 - b. George Nyachiro Nyamira CMCC No. 69 of 2018 now High Court Civil Appeal No. E017 of 2022
 - c. David Wilson Akunga Nyamira CMCC No. 70 of 2018 now High Court Civil Appeal No. E018 of 2022
 - d. Peter Achiki Ongwae Nyamira CMCC No. 71 of 2018 now High Court Civil Appeal No. E019 of 2022
8. Directions were taken for the consolidation of all the Appeals and for hearing by way of written submissions. The judgment made in this appeal will therefore apply to all the 5 related cases.

The Appellant’s Submissions

9. The Appellant cited Order 23 Rule 1 of the Civil Procedure Rules and the case of Nyandoro & Company Advocates vs. National Water Conservation & Pipeline Corporation, Kenya Commercial Bank Group Ltd (Garnishee) (2021) eKLR for the process and definition of Garnishee proceedings and faulted that trial court for failing to appreciate the import of the Appellant’s letter dated 9th



October 2021 in which it terminated its banking relationship with the 2nd Respondent. According to the Appellant, it no longer held any account or monies belonging to the 2nd Respondent which could be attached to settle the decretal sum owing to the 1st Respondent.

10. Reference was also made to the case of First Bank vs. Nazia & Brothers (Nig) Ltd & Others (2018) LPELR 46197 (CA) in which the case of Citizens Int'l Bank Ltd vs. SCOA (Nig) Ltd (2006) 18 NWLR was quoted and a determination made that the onus placed on a garnishee would only be discharged if it successfully established that the account referred to in the Order Nisi does not exist or that the garnishee does not have any funds of the judgment debtor in his custody.
11. The Appellant urged this Court to set aside the trial court's Ruling on the basis that it no longer had any relationship with the 2nd Respondent since the same had been terminated 5 months prior to the filing of the Garnishee Applications.

The 1st Respondent's Submissions

12. The 1st Respondent submitted that the Appellant had, in other Garnishee proceedings, expressly admitted, under oath, that it held the 2nd Respondent's accounts as follows: -
 - a. Fixed Deposit Contract Ref. No. 071FDLC20xxxxxxx – Kshs. 40,000,000/=
 - b. Fixed Deposit Contract Ref. No. 071FDLC20xxxxxx- Kshs. 30,000,000/=
 - c. Current Account No. 800xxxxx – Kshs. 14,638,929/=
 - d. Current Account No. 365xxxxxx – USD 2,547.54/=
13. It was submitted that other courts had issued Garnishee Orders Absolute against the Appellant as late as 11th February 2022 and that the Appellant had settled other Garnishee Orders over the same bank accounts as late as 25th January 2022. Reference was made to the case of Behan & Okero Advocates vs. National Bank of Kenya (2007) eKLR where the Court of Appeal explained the rule against approbation and reprobation and the case of Priscilla Nyambura Njue t/a Nairobi Moscow Airways vs. Countryside Suppliers Limited & Another (2005) eKLR where the court found that the Garnishee acted in contempt of a court order and detrimentally to the decree holder when it paid the money to the judgment debtor.
14. It was submitted that the Appellant did not tender any evidence to controvert the status quo of the Judgment Debtor's bank accounts as presented by the Decree Holder/1st Respondent and that the Garnishee orders appealed against had long been fully discharged by the Appellant. Reference was made to several authorities including the Court of Appeal's decision in Odhiambo Owiti & Company Advocates vs. CFC Stanbic Bank Ltd (2015) eKLR where the effect of Garnishee orders was explained and Order 23 of the Civil Procedure Rules 2010 which provides for attachment of debts.
15. On the issue of the Appellant expending its own monies to discharge the Garnishee Orders, it was submitted that the copies of bank statements annexed as 'JT3' to the Appellant's supplementary affidavit demonstrated that the Appellant held an account under the 2nd Respondent's name that revealed several credit and debit entries going all the way to the year 2024 besides other disbursements done in settlement of the Garnishee Orders appealed against which contradicted the Appellant's claim that it had had closed the 2nd Respondent in October 2021.
16. It was submitted that the Appellant was all along aware that the bank accounts in question were at all times the subject of judicial garnishee proceedings and therefore beyond its dispositive powers and that



in any case, if the averments of closure were true, they would constitute contempt of court orders. The 1st Respondent urged the Court to dismiss the Appeal with costs.

Analysis and Determination

17. The duty of the first appellate court as explained in the case of *PIL Kenya Ltd v Oppong* [2009] KLR 442 where the Court of Appeal held thus: -

“It is the duty of the Court of Appeal, as a first appellate court, to analyse and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in mind that the trial court had the advantage of hearing and seeing the witnesses and their demeanour and giving allowance for that.”

18. I have carefully considered the Record of Appeal and the parties rival submissions. I find that the main issue for determination is whether the Garnishee had an existing relationship with the judgment debtor so as to be obligated to discharge the Garnishee Orders Absolute and if not, whether they provided sufficient evidence to remove them from this obligation.

19. Order 23 of the Civil Procedure Rules 2010 stipulates as follows on garnishee proceedings: -

1. 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 salaries or allowances coming and is within the provisions of Order 22, rule 42 owing from such third persons (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 maybe sufficient to satisfy the decree together with the costs aforesaid.

20. The Appellant’s case was that it did not hold any funds or account on behalf of the Judgment Debtor as its accounts had been closed October 2021. As I have already stated in this judgment, the information regarding the closure of the 2nd Respondent’s accounts was relayed through a letter dated 9th October 2021 in which the Appellant addressed the 2nd Respondent, in part, as follows: -

“We have also noted that with concern that a majority of the garnishee orders nisi are being made absolute despite the bank indicating that it has a security interest over the garnished fixed deposits and your accounts do not have the funds to satisfy the garnishee orders. This has forced the bank to, on various occasions, settle the garnished amounts from its own funds to avert execution proceedings against it.

The Continued presence of auctioneers at the Bank’s branches also poses reputational risk for the Bank. The Bank cannot continue putting itself in a position where its assets are under threat of proclamation for judgment debts against yourselves. Your failure to satisfy judgments against yourselves and the resultant execution proceedings against you are also an event of default entitling the Bank to recall its credit facilities.

In the circumstances, the Bank regrets to inform you that following a review of your account(s) with us and after careful consideration, we are unable to continue to act as your bankers. In line with the general terms and conditions accepted by yourselves and pursuant



to which your accounts are held, we give you notice that the Bank will close all your accounts within 14 days from the date of this letter.”

21. The Appellant argued that considering the clear contents of their letter, the Garnishee Order Absolute required them to settle the decretal amount from its own funds and was therefore akin to carrying the 2nd Respondent’s burden.
22. It was not disputed that the Appellant informed the 2nd Respondent that it had recalled its credit facilities and discontinued its banking services. The Appellant also informed the 2nd Respondent that numerous Garnishee Absolute Orders had been served upon the Bank despite the fact that Bank/Appellant had already indicated that it had a security interest over the garnished fixed deposit accounts.
23. A perusal of the record reveals that the 1st Respondent herein had previously instituted Garnishee proceedings against African Banking Corporation Limited and Access Bank (Kenya) PLC vide Civil Case No. 73 of 2018. In the said earlier proceedings, the Garnishees were unable to settle the decretal sums from the amounts deposited in the accounts as they had already used the funds to settle other decretal amounts in other cases.
24. Having regard to the contents of Appellant’s letter dated 9th October 2021 and the outcome in earlier garnishee proceedings, it is clear that the 2nd Respondent was unable to settle judgment debts arising from several declaratory suits.
25. In the case of Nyandoro & Company Advocates vs. National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee) [2021] eKLR it was held thus:-

“I find it useful to start by referring to the definition of the word garnishee proceedings in the Black’s Law Dictionary which is: - “a statutory proceeding whereby a person’s property, or credit in possession or under control of, or owing by, another are applied to payment of former debt to third person by proper statutory process against debtor and garnishee.

The Nigerian Supreme Court in CBN v Auto Import Export offered an explanatory yet concise definition of garnishee proceedings in the following words:

“Garnishee proceedings are special specie of process by which a judgment creditor may attach (or garnishee) debts due in satisfaction of the judgment debt. The debt owed by the third party to the judgment debtor, on being attached, shall ultimately be paid by him to the judgment creditor on the order of court. Thus, garnishee proceedings involve the attachment of debt due from a third party to the judgment debtor, and the use of the amount of that debt in liquidating the judgment debt. In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand, is referred to as the garnishor.

6. Garnishee proceedings serve to facilitate the satisfaction of judgment debts. Garnishees, in this regard, often have no objections to garnishee orders being made final, so long as there is a discernible debt due and owing to the judgment debtor; once such indebtedness is established, it is inconsequential to the garnishee who the debt is paid to. However, garnishee orders are premised on indebtedness – without such indebtedness to the judgment debtor, it would be plainly unjust to order a party to pay a sum to the judgment creditor.....
13. A litigant is entitled to reap the fruits of his successful litigation. As a result, where a Judgment-Debtor fails to comply with the terms of a judgment, the Judgment-Creditor is entitled to enforce such judgment by adopting a suitable



procedure provided under the law. By the process of garnishee, the court has power to order the garnishee to pay directly the sums it owes the Judgment-Debtor to the garnishor or so much of it as may be sufficient to satisfy the amount of the judgment and the cost of the garnishee proceedings. In this regard, the provisions of Order 23 Rule 4 provide with sufficient clarity what this court should do where the Garnishee admits the debt as in this case.”

26. I note that while it was not disputed that there was a discernible debt owing to the 1st Respondent in respect to a judgment debt that should have been paid by the Garnishee, the Appellant had in its letter dated 9th October 2021 indicated that it had severed its banking relationship with the 2nd Respondent. The Appellant contended that it therefore had no obligation to be enjoined in the case as a Garnishee. In *Mengich t/a Mengich & Co Advocates & another vs. Joseph Mabwai & 10 others* [2018] eKLR it was held thus:-

“Second, being a garnishee application, the only proper party to be garnisheed is the Bank. The rest of the Respondents are improperly enjoined in the application since they are not holding any money capable of being garnisheed nor has it been alleged they hold any funds either individually or jointly. There is nothing to show that they are indebted to a judgment debtor as the law requires.”

27. In the present case, I note that no material was presented to show that the Appellant held any funds in the 2nd Respondent’s accounts. Indeed, the letter dated 9th October 2021 reveals that the Appellant recalled the 2nd Respondent’s Overdraft Facility and liquidated the fixed deposit account Numbers 071FDLC20xxxxxx and 071FDLC20xxxxxx by depositing the funds in the Overdraft Account No. 036xxxxxxx . In the said letter, the Appellant also directed the 2nd Respondent to clear the outstanding debit balance on the overdraft account within 14 days from the date of the said letter. To my mind, this means that the Appellant no longer held any funds in respect of the 2nd Respondent. My take is that if indeed the Appellant had such funds, it would have utilised the same to settle the outstanding debts.

28. I have also considered the 1st Respondent’s argument that having paid the decretal sums in question, the Appellant was under the doctrine of approbation and reprobation estopped from denying their obligation. To bolster his argument, the 1st Respondent attached several copies of cheques issued to the 1st Respondent’s advocate, Ben Gichana and Company Advocates. According to the 1st Respondent, the cheques were issued in settlement of other judgement debts in respect to claims that are similar to the present case. It is however instructive to note that the court was not informed of the circumstances under which the said cheques were issued or if they related to claims involving the 2nd Respondent.

29. It is therefore my finding that the trial court erred in failing to appreciate the effect and import of the Appellant’s letter (annexure marked ‘JT-1’) in which it expressly terminated the bank/customer relationship and further provided the reasons for such termination. It is my further finding that following the said termination the Appellant was not under any obligation to settle the decretal sum owed by the 2nd Respondent.

30. In conclusion, I find merit in the Appeal and hereby allow it by dismissing the 1st Respondent’s application dated 31st January 2022. I make no orders as to costs.

31. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 24TH APRIL 2025.



W. A. OKWANY
JUDGE

