



Gazemba Wekesa & Co Advocates v J&K Investment Kenya Limited; National Water Harvesting & Storage Authority Limited & another (Garnishee) (Miscellaneous Commercial Application E377 & E437 of 2023 (Consolidated)) [2025] KEHC 4188 (KLR) (Commercial and Tax) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS COMMERCIAL APPLICATION E377 & E437 OF 2023 (CONSOLIDATED)**

**A MABEYA, J
APRIL 3, 2025**

BETWEEN

GAZEMBA WEKESA & CO ADVOCATES APPLICANT

AND

J&K INVESTMENT KENYA LIMITED RESPONDENT

AND

THE NATIONAL WATER HARVESTING & STORAGE AUTHORITY LIMITED GARNISHEE

KENYA COMMERCIAL BANK GARNISHEE

RULING

1. This ruling determines two applications, the Motion on Notice dated 28/2/2024 by the Decree Holder and the Motion dated 28/5/2024 by the judgment debtor.

Motion dated 28/2/2024

2. The Motion dated 28/2/2024 was brought pursuant to section 3A of the *Civil Procedure Act*, Order 23 Rules 1, 2, 8 and 9 and Order 51 Rule 1 of the Civil Procedure Rules. In the Motion, the decree holder sought the following orders: -

...

- c. That the Garnishees be directed to appear before this Court on an appointed date and time to show cause why the Garnishee Order Nisi so issued should not be made absolute why



they should not pay the sum of Kshs. 39,008,395 to the Decree Holder's Advocates. That the Garnishee Order Nisi be made absolute

- d. That costs of this application be borne by the Judgement Debtor.
3. The application was based on the grounds set out on the body of the Motion as well as the supporting affidavit of Frank Ochieng' Walukwe sworn on the 28/2/2024.
4. The decree holder averred that on the 27/10/2023, judgment was entered in its favour against the judgment debtor. A decree was issued on the 7/12/2023, which decree remains unsatisfied wholly with the judgment debtor showing reluctance to settle the same despite execution against it.
5. That on the 22/2/2024, the decree holder learnt that an Arbitral Award was published in favour of the judgment debtor as against the 1st Garnishee to the tune of Kshs. 397,440,203.93. That award was recognized and adopted as a judgment of this Court vide a ruling delivered in Milimani HCCOMM MISC. APP NO. E366 OF 2023.
6. That the judgment debtor has money in accounts 1124XXXXXXX, 114280488 and 1114279889 (Moi Avenue Branch) held by the 1st Garnishee which are sufficient to satisfy the decree herein wholly or partially.
7. It was further averred that the decree-holder had every right to institute these proceedings to seek satisfaction of the decree against the judgment debtor. That no stay orders had been issued since the ruling was delivered on 27/10/2023 and that the judgment debtor has no valid reason as to why it should not satisfy the decree of the Court.
8. The 1st Garnishee opposed the application vide a replying affidavit sworn by John K. Muhia (P. Eng Tech) on the 14/3/2024 however the said application is not on record. He stated that the 1st Garnishee being a state corporation, it plays a vital role in the development of national public water works for water resources storage and floods. That the Order Nisi had seriously affected its operations.
9. That an order of status quo had been issued in HC Misc No. E 366 of 2023 J&K Investments Kenya Ltd vs. National Water Harvesting and Storage Authority Ltd. That the sum sought by the decree-holder was a paltry sum of Kshs.38,464,267.12 yet the Order Nisi was a blanket freezing of the subject accounts. That as a result, the operations of the 1st Garnishee were affected by that order.
10. The 2nd garnishee responded to the decree holder's application vide a replying affidavit sworn on the 4/4/2024 by one Gordon Winani.
11. Mr. Winani deposed that on 4/3/2024, Mulwa J issued a garnishee order nisi binding both the 1st and 2nd Garnishee stipulating that all monies deposited in accounts 1124XXXXXXX, 114280488 and 1114279889 (Moi Avenue Branch) be attached to satisfy the decree issued on 7/12/2023 together with interest and costs awarded to the applicant.
12. The 2nd Garnishee admitted that it had locked the aforementioned accounts following the Court's order of 4/3/2024 which accounts held a cumulative amount of Kshs. 39,008,395/- which sums were sufficient to cover the decretal amount in its entirety and that it would comply with the directions of the Court in disposal of the said amounts. The 2nd Garnishee also sought to have the costs of the application assessed at Kshs. 400,000/- covered.
13. I have considered the application, the affidavits sworn in support and in opposition of the same, the submissions filed on behalf of the parties as well as the authorities cited. Consequently, the issues for determination are: -



- a. Whether or not the 1st Garnishee is analogous to the government and therefore not subject to execution in the manner provided for under Order 23 rule 1 of the Civil Procedure Rules 2010.
 - b. Whether the Garnishee Order Nisi made on the 3/4/2024 by Mulwa J should be made absolute.
14. On the 1st issue, the 1st Garnishee advanced the fact that it is a government agency established under section 30 of the [Water Act](#) 2016. That in the premises, no execution can be levied against the property of a government agency in settlement of a decree in a civil case regardless of the status of the person or institution in whose name the property vests as contained in section 21 (3) and (4) of the [Government Proceedings Act](#) and Order 29 Rule 4 (1) of the Civil Procedure Rules.
 15. The 1st Garnishee is created under section 30 of the [Water Act](#) as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and doing all things that a corporation may lawfully do.
 16. Section 2 of the [State Corporations Act](#), No. 18 of 1986 defines a state corporation. On the other hand, section 21(4) of the [Government Proceedings Act](#) provides: -

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no persons shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such of any money or costs.”
 17. My reading of the above section is that for any party to benefit from the protection in execution proceedings accorded by section 21(4) of the Act, it must fall within the description of government, a government department or an officer of the government. There is sufficient jurisprudence affirming that state corporations, although controlled and managed by government are not government, a government department or an officer of the government as contemplated by the Act. They are independent legal persons and cannot invoke section 21(4) of the [Government Proceedings Act](#) as a bar to execution.
 18. In *Ikon Prints Media Company Limited V Kenya National Highways Authority & 2 Others*, [2015] eKLR, the Court observed as follows: -

“Foremost though, it is important to point out that it would not be tenable to invoke the [Government Proceedings Act](#) (Cap 40) as a bar to any execution herein. The 1st Respondent is a body corporate with perpetual succession and a common seal. It is a corporate entity capable of subsisting independently. It is dependent on Government funding but it is not government or servant of or agent of Government for the purposes of the Government Proceeding Act. The 1st Respondent is an independent judicial person capable of being sued and suing. Its litigation does not involve the Government. Any judgments decreed against the 1st Respondent are not judgments against the government but against an independent juridical body.”
 19. This position was also adopted in *Greenstar Systems Limited v Kenyatta International Convention Centre (KICC) & 2 Others*, [2020] eKLR, where the Court observed that: -

“The above authority which is of persuasive value upholds the view that a state corporation or parastatal is not automatically subject to the [Government Proceedings Act](#). Where



proceedings are instituted under this Act the Hon Attorney General will be a party. The Hon Attorney General is not a party in the present proceedings.”

20. The 1st Garnishee is a body corporate and not a Government department or agency. Its invocation of the [Government Proceedings Act](#) is but a last-ditch attempt to scuttle the execution proceedings against it. The 1st Garnishee is estopped from relying on the provisions of the [Government Proceedings Act](#) as a challenge to execution against it. (See also Anniversary Press (K) Limited v National Water Conservation & Pipeline Corporation, [2020] eKLR).
21. The rationale for this unanimous view by the Courts is to ensure that the right to access to justice under Article 48 of [the Constitution](#) is not infringed. (See the Court of Appeal in Joseph Nyanamba & 4 others v Kenya Railways Corporation [2015] eKLR and this court in African Commuter Services Ltd v The Kenya Civil Aviation Authority & 2 Others [2014] eKLR). It also serves to ensure that courts do not act in vain.
22. Having determined that the provisions of Order 23 rule 1 of the Civil Procedure Rules 2010 do apply to the 1st Garnishee, I now turn to the second issue as to whether the Garnishee Order Nisi made on the 4/3/2024 Mulwa J should be made absolute.
23. The law governing garnishee proceedings is Order 23 Rule 1(1) of the Civil Procedure Rules which provides: -

“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.”

24. Order 23 Rule 4 of the Civil Procedure Rules provides: -

“If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with costs of the garnishee proceedings; and the order absolute shall be in Form 17 or 18 of Appendix A, as the case may require.”

25. In Mengich t/a Mengich & Co. Advocates & Another vs Joseph Mabwai & 10 Others [2018] eKLR, the court laid out the procedure in garnishee proceedings as follows: -

“Garnishee proceedings is done in two different stages. The first stage is for the garnishee order nisi, while the second stage is for the garnishee order absolute. At the first stage, the judgment creditor makes an application ex parte to the court that the judgment debt in the hands of the third party, the garnishee, be paid directly to the judgment creditor unless there is an explanation from the garnishee why the order nisi should not be made absolute. If the



judgment creditor satisfies the court on the existence of the garnishee who is holding money due to the judgment debtor, such third party (garnishee) will be called upon to show cause why the judgment debtor's money in its hands should not be paid over to the judgment creditor, and if the court is satisfied that the judgment creditor is entitled to attach the debt, the court will make a garnishee order nisi attaching the debt.

The essence of the order nisi is to direct the garnishee to appear in court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order nisi must be served on the garnishee and judgment debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the garnishee fails to attend court or show good cause why the order nisi attaching the debt should not be made absolute, the court may subject to certain limitations make the garnishee order absolute. The garnishee, where necessary also have an option of disputing liability to pay the debt.

The primary object of a garnishee order is to make the debt due by the judgment debtor available to the decree holder in execution without driving him to the suit.”

26. Order 23 Rule 4 is explicit where the debt is not disputed. Both Garnishees have admitted the claim. In its affidavit sworn by Gordon Winani on 4/4/2024, the 2nd Garnishee confirmed the credit balances in accounts 1124XXXXXX, 114280488 and 1114279889 (Moi Avenue Branch) to be in excess the amount being garnished. It confirmed its willingness to comply with this court's orders.
27. There is no order setting aside the decree issued on the 7/12/2023. However, the Court was informed that there were two other proceedings that relate or whose final determination may impact these proceedings in one way or the other. These are; Milimani HC Misc. Appln No. E366 of 2023 J&K Investments Kenya Limited vs. National Water Harvesting and Storage Authority Limited and HC Misc Civ Case No. E146 of 2023 Water Resources Authority vs. J&K Investment Kenya Ltd.
28. For the foregoing reasons, I decline to make the Garnishee Order Nisi made on 4/3/2024 absolute because of those pending proceedings. However, I order that the said Garnishee Nisi shall remain in force and the 2nd Garnishee shall continue to hold an amount not exceeding Kshs. 38,464,267/12 in account numbers 1124XXXXXX, 114280488 and 1114279889 (Moi Avenue Branch) pending the conclusion of those proceedings.

Application dated 28/5/2024

29. The Motion dated 28/5/2024 has been overtaken by events and is marked as such with no order as costs.
30. Accordingly, the orders that commend themselves to the Court are as follows: -
 - a. The Garnishee Order Nisi made on 4/3/2024 is to remain in force until the conclusion of Milimani HC Misc. Appln No. E366 of 2023 J&K Investments Kenya Limited vs. National Water Harvesting and Storage Authority Limited and HC Misc Civ Case No. E146 of 2023 Water Resources Authority vs. J&K Investment Kenya Ltd.
 - b. The 2nd Garnishee shall continue to hold an amount not exceeding Kshs. 38,464,267/12 in account numbers 1124XXXXXX, 114280488 and 1114279889 (Moi Avenue Branch) pending the conclusion of those proceedings.
 - c. The decree-holder shall have the costs of the application dated 28/2/2024.



d. The application dated 28/5/2024 is marked as overtaken by events with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU VIRTUALLY THIS 3RD DAY OF APRIL, 2025.

A. MABEYA, FCI Arb

JUDGE

