



**Bank of Africa Kenya Limited v Seven Seas Technologies Limited & another;
Co-operative Bank of Kenya Limited & another (Interested Parties); Principal
Secretary, Ministry of Health & another (Garnishee) (Civil Case E184 of 2019)
[2025] KEHC 9293 (KLR) (Commercial and Tax) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E184 OF 2019
F GIKONYO, J
JUNE 23, 2025**

BETWEEN

BANK OF AFRICA KENYA LIMITED JUDGMENT CREDITOR

AND

SEVEN SEAS TECHNOLOGIES LIMITED 1ST JUDGMENT DEBTOR

MICHAEL KING'ORI MACHARIA 2ND JUDGMENT DEBTOR

AND

CO-OPERATIVE BANK OF KENYA LIMITED INTERESTED PARTY

KENYA REVENUE AUTHORITY INTERESTED PARTY

AND

PRINCIPAL SECRETARY, MINISTRY OF HEALTH GARNISHEE

THE HONOURABLE ATTORNEY GENERAL GARNISHEE

RULING

1. The judgment creditor filed the notice of motion dated 15th May 2024, seeking the attachment of the decree dated 8th November 2022 and an order directing the 1st and 2nd interested parties to pay the sum of USD 5,647,128.75 and Kshs. 3,350,379.04 as at 13th May 2024 with interest at 9% and 13% respectively per annum until payment in full, to the judgment debtor's and its advocate's accounts.



2. The application is brought under Sections 1A, 1B, 3A, 38(c), 44 and 63[c] and [e] of the [Civil Procedure Act](#), Order 22 Rule 47 of the Civil Procedure Rules.
3. The application is supported by an affidavit sworn by its Head of Recoveries, Idar Kasenge, on 15th May 2024, initial and supplementary submissions dated 6th June 2024 and 22nd July 2024 respectively.
4. The grounds are as follows:-
 - a. The Judgement Debtors are indebted to the Judgment Creditor pursuant to the decree in HCCOMM E184 of 2019 Bank of Africa Kenya Limited v Seven Seas Technologies Limited & Ano, which remains unpaid to date.
 - b. On diverse occasions, the judgment debtors have sought indulgence to settle the decretal amount from the decree in HCCOMM E479 of 2020, Seven Seas Technologies Limited v The Attorney General and Principal Secretary, Ministry of Health.
 - c. In the interests of justice the application should be allowed as prayed as Order 22 Rule 47 of the Civil Procedure Rules allows for the attachment of a decree and application of its net proceeds in satisfaction of the unsatisfied decree herein.
 - d. The past execution application for the attachment of sale of the immovable property LR No. 4275/121 owned by the 1st judgment debtor was mutually stayed pending the enforcement of the arbitral award, which culminated in the decree in HCCOMM E479 of 2020, Seven Seas Technologies Limited v The Attorney General and Principal Secretary, Ministry of Health. In any event, the immovable property is charged to the Cooperative Bank of Kenya Ltd and there is unlikely to be any surplus from the sale of the charged property.
5. The judgment creditor highlighted that the parties consented to the opening of a joint escrow account and deposit the sum of 6 million dollars once payment is made by the Interested Parties. It relied on Section 44(1) of the [Civil Procedure Act](#) to the effect that all property belonging to a judgment debtor shall be liable to attachment.
6. The judgment creditor submitted that the money to be paid to the judgment debtors in satisfaction of the decree in HCCOMM E479 of 2020 is property liable to be attached. It also submitted that the judgment debtors have not demonstrated any prejudice to be suffered by the attachment process in any manner whatsoever
7. The judgment creditor relied on:-
 1. Nyakundi & Co Advocates v Council of Governors; Cooperative Bank of Kenya Limited (Garnishee) (Judicial Review Miscellaneous Application 40 of 2019) [2023] KEHC 1035 (KLR) (Judicial Review) (17 February 2023) (Judgment)
 2. Eco Bank Kenya Limited v Elsek & Elsek (KENYA) Limited & 3 others [2018] eKLR

Response

8. In response, the judgment debtors filed grounds of opposition dated 31st May 2024, a replying affidavit sworn by the 2nd judgment debtor on 31st May 2024 and written submissions dated 9th July 2024.
9. The grounds of opposition are as follows:-
 1. That the application is defective in so much as it seeks to stay a decree issued in another suit being HCCOMM E479 of 2020.



2. That the application is defective to the extent that it is made contrary to the provisions of Order 22, Rule 47(1)(b) of the Civil Procedure Rules 2010.
 3. That the Judgment-Debtors regularly updated the Judgment-Creditor on the progress of the payment of the decree issued in HCCOMM E479 of 2020.
 4. That application is greatly prejudicial to the Judgment-Debtors because the stay of the execution of the decree issued in HCCOMM E479 of 2020 will delay the settlement of that decree to the detriment of the parties and the other creditors of the Judgment-Debtors and the delays in payment of the decree will likely trigger other court proceedings by the other creditors of the Judgment-Debtors including possible liquidation proceedings to the detriment of all the creditors of the Judgment-Debtors including the Judgment- Creditor herein.
 5. That it is in the best interest of the parties herein and the other creditors of the Judgment-Debtors for the Judgment-Debtors to be allowed to execute their decree against the Interested Parties.
 6. That no payments have been made to the Judgment-Debtors by the Interested Parties.
10. The judgment debtors contended that the consent entered by the judgment creditor and judgment debtors was in lieu of the interim stay order which had been granted on 17th May 2024 and was only applicable pending the hearing and determination of the present application as stated in prayer no. 2 of the judgment creditor's application.
 11. The judgment debtors submitted that the Judgment-Creditor would still need a court order to be able to attach any payment that is made to the escrow account because:
 - a. The amount sought to be debited into the escrow account exceeds the sum in the decree dated 12th February 2020;
 - b. The parties would need to compute and agree on the interest payable post the decree dated 12th February 2020;
 - c. The application for attachment would need to have succeeded.
 12. The judgment debtors asserted that the judgment creditor is attempting to subvert the rights of other creditors and gain undue preference for payment to the detriment of all other creditors, and the judgement debtors.

Analysis and Determination

13. The judgment debtors asserted that the judgment creditor is attempting to subvert the rights of other creditors and gain undue preference for payment to the detriment of all other creditors, and the judgement debtors. They also fear far-reaching processes may be exited if the decree is attached such as liquidation.
14. The respondent also appears to be saying that parties need to agree on the payment out of the sums received under the decree to be attached.
15. Also, matters of Order 29 Rule 2 (2) of the Rules on garnishee proceedings against the government have arisen
16. But, of importance, a party must always come to court with clean hands. And, where a party appears to be amenable to amicable settlement the court should promote such settlement.



17. This is a fit case for parties to sit down and craft a working amicable settlement before the court could determine the application to attach the decree in question.
18. Accordingly, in the spirit of AJS, parties are requested to attempt a settlement of the matter which will not rout the other party or open them to distasteful action. The possibility that any party may lose court action should motivate parties to exercise their reserve power to control and resolve their disputes-an exercise of party autonomy.

Disposal

19. The determination of the application dated 15th May 2024 is deferred. Each party is to bear its costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 23RD DAY OF JUNE, 2025

F. GIKONYO M

JUDGE

In The presence of: -

Wawire for Allen for Plaintiff

Ms. Makena for Waiyaki for 1st and 2nd Judgment Debtor

CA Kinyua

