



Zhensheng v Weihai Construction Group Co Ltd; Standard Chartered Bank Limited & 2 others (Garnishee) (Civil Case E251 of 2025) [2025] KEHC 8494 (KLR) (Commercial and Tax) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E251 OF 2025**

F GIKONYO, J

JUNE 5, 2025

BETWEEN

LIU ZHENSHENG PLAINTIFF

AND

WEIHAI CONSTRUCTION GROUP CO LTD DEFENDANT

AND

STANDARD CHARTERED BANK LIMITED GARNISHEE

KCB BANK KENYA LIMITED GARNISHEE

EQUITY BANK KENYA LIMITED GARNISHEE

RULING

1. This ruling disposes the defendant's application for the lifting of the orders for attachment before judgment.

Background

2. The plaintiff filed the notice of motion dated 2nd May 2025, under Order 39 Rule 1 of the [Civil Procedure Act](#), seeking:-
 1. an order nisi for the attachment of the defendant's bank accounts pending the hearing and determination of this suit.
 2. the defendant be ordered to appear before this court to show cause why its bank accounts should not be attached pending hearing and determination of this suit.



3. The application was supported by the affidavit sworn by the plaintiff on 2nd May 2025. The grounds advanced are that the plaintiff's claim against the defendant is for Kshs. 82,450,000/- and Chinese Yuan 1,050,000.00. The plaintiff has learned that the defendant, a Chinese company, with a branch in Kenya, is in the process of winding up its business operations in Kenya and relocating to China. He is apprehensive that if this happens, his claim will be rendered nugatory as the defendant would have absconded or left the jurisdiction with a view of avoiding the process of the court and/ or delaying the execution of the decree.

Certificate of Urgency

4. On hearing of the certificate of urgency on 15th May 2025, the court issued the following ex parte orders:-

- “1. That, it being for attachment before judgment, it is certified to be urgent.
2. That, on prima facie basis premised on the averments in the supporting affidavit ... an order for attachment before judgment of funds in the bank accounts of the respondent as security for any judgment that may be obtained against the respondent, is justified.
3. That, accordingly, I order attachment of funds in accounts number XXXXXXXXXXXXX at Standard Chartered Bank, Chiromo Branch, XXXXXXXXXXXXX at KCB, and XXXXXXXXXXXXX at Equity Bank, Equity Centre, to serve as security for judgment that may be obtained against the respondent.
4. That, the respondent to show cause why the funds in those accounts should not be so attached...”

5. The defendant filed the notice of motion dated 23rd May 2025, seeking that pending the inter partes hearing of its application, the court lifts the orders of attachment granted on 15th May 2025 only to the extent of unfreezing the defendant's Bank Account Number XXXXXXXXXXXXX held at Equity Bank, Equity Centre to enable it to continue with its daily operations.

Mention on 20th May 2025

6. Mr. Omiti for the defendant submitted that the orders of attachment are far-reaching. He asserted that the defendant is not winding up. He also asserted that the defendant requires access to its account to carry on its work.
7. Mr. Ondieki for the 1st garnishee, Standard Chartered Bank indicated that the account holds only Kshs. 443,783/-.
8. Ms. Langat for Mr. Omiti for the defendant stated that total money in the accounts is Kshs. 2,843,738/- broken down into the KCB account holds Kshs. 1,400,000/- in the KCB account and Kshs. 1,000,000/- in the Equity account. She submitted that the defendant is building a road project by (Kenya Rural Roads Authority) KERRA to upgrade Soy-Serekea to Kilimani-Turbo Junction, which is 60 KM long. They have done 20KM up to Ziwa Sirikwa. 40KM is remaining for completion. Payments are made on certain milestones. The first one was completed. The defendant is waiting for disbursements of Kshs. 212 million to pay contractors so that they could proceed with the projects.



9. Ms. Langat urged the court to lift the orders in the public interest and fairness and to fast-track track hearing inter partes as the defendant is not moving out of the country.
10. Ms. Mati for Mr. Owaga for the plaintiff pointed out that the plaintiff's claim is for Kshs. 82,450,000/- and Chinese Yuan 1,050,000/- outstanding since 2019. She also highlighted that there was no commitment by the defendant to pay the money owed.
11. Ms. Mati stated that the plaintiff has not filed a formal reply, hence, it is difficult to verify submissions from the bar. She confirmed that they served the defendant. However, she indicated that the defendant has closed its office and is operating from a residential space which is not known to them. She thus urged the court to maintain the orders of attachment and fast track the matter.

Analysis and Determination

Attachment before judgment

12. The issue is whether the orders of attachment of the defendant's Equity Bank Account issued on 15th May 2025 should be lifted pending the inter partes hearing of the plaintiff's application dated 2nd May 2025.
13. The conditions for the grant of orders of attachment before judgment are provided for under Order 39 Rule 1 of the Civil Procedure Rules as follows:-

“[Order 39, rule 1.] Where defendant may be called upon to furnish security for appearance.

1. Where at any stage of a suit, other than a suit of the nature referred to in paragraphs (a) to (d) of section 12 of the Act, the court is satisfied by affidavit or otherwise—
 - (a) that the defendant with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him—
 - (i) has absconded or left the local limits of the jurisdiction of the court; or
 - (ii) is about to abscond or leave the local limits of the jurisdiction of the court; or
 - (iii) has disposed of or removed from the local limits of the jurisdiction of the court his property or any part thereof; or
 - (b) that the defendant is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum



specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court.”

[Order 39, rule 2.] Security.

2.

- (1) Where the defendant fails to show such cause the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to rule 1.”

14. The defendant produced the following:-

1. A pro forma invoice/ quotation dated 15th May 2025 from China Foreign Construction (K) Limited for cement worth Kshs. 2,666,950/-
 2. A pro forma invoice/ quotation dated 15th May 2025 from China Foreign Construction (K) Limited for 8600 KG bitumen K1-60 worth Kshs. 877,200/- and 4004 KG Bitumen 80/100 worth Kshs. 420,420/-.
 3. An invoice from Karimu Telkom Ltd dated 12th May 2025 for diesel worth Kshs. 900,000/-.
 4. Copies of its Equity Bank Account Number XXXXXXXXXXXXXXX statements confirming payments of day to day operations from 16th April 2025 to 30th April 2025, 1st to 6th May 2025 and 7th to 16th May 2025.
 5. An undated letter from China Foreign Construction (K) Ltd regarding outstanding payment for cement delivered to Soy-Serekea-Kilimani-Turbo-Nangili-Moi's Bridge Road Project.
 6. A letter dated 21st May 2025 from Seureca Veolia regarding the significant slowdown in construction of the constructions of the Kapenguria-Makutano Sewerage Project. The letter was to the effect that the project was only 82% complete despite 86% of the allocated time having lapsed; that the project was 14% behind schedule and that immediate action was required to accelerate progress with the contract completion date of June 30, 2025, only a month away.
 7. a letter dated 15th May 2025 from KeRRA reminding it to carry out road maintenance on the deteriorated sections of the Soy-Serekea-Kilimani-Turbo, Junct (B14) Nangil-Ziwa Machine-Ziwa Sirikw & Ziwa Sirikwa- Kerotet- Maji Mazuri- Moi's Bridge Road.
15. From the above, there is prima facie evidence that the funds from the defendant's bank accounts are used for its day-to-day operations. Orders of attachment before judgment are not to be given lightly due to their draconian nature. The plaintiff must meet the conditions given in Order 39 Rule 1 of the Civil Procedure Rules. Fred Black Insurance Brokers Limited v Jetways Airlines Limited [2021] eKLR, Freight Forwarders Kenya Limited v Aya Investment Uganda Limited [2013] eKLR and Kanyoko t/a Amigos Bar & Resturant v Nderu & 2 others [1988] KECA 85 (KLR)



16. The orders given on 15th May 2025 were issued based on the prima facie case established by the plaintiff of the conditions. In the circumstances of this case, it is necessary that the defendant is shown to be acting in good faith or with no mischief to dispose of its property or to remove it from the court's jurisdiction or to leave the jurisdiction of the court so as to obstruct or delay any decree that may be passed against him.
17. During the mention, the defendant's counsel asserted that the defendant is not winding up. He also asserted that the defendant requires access to its account to carry on its construction work.
18. On the other hand, the plaintiff's counsel retorted that her client's apprehension is real as the defendant has closed its office and is operating from a residential space, which is not known to them.
19. There was no response by the defendant to this allegation, yet it is critical in these kinds of proceedings.
 - a. Curiously, counsel for the defendant indicated that the balance in the Equity account was Kshs. 1,000,000/-. However, the bank account statements show a balance of Kshs. 11,577,361.04 as of 15th May 2025.
20. The elaborate works stated in court are not compatible with the money available in the accounts. The defendant also stated that they are waiting for a hefty payment from KeRRA. These claims were not sufficiently supported. The defendant has not provided bank statements for its Standard Chartered Bank and KCB Bank Kenya accounts to show their balances. This is one case where security may be required.
21. In conclusion, I find that the defendant has not made out a case for the lifting of the orders of attachment before judgment.
22. Let the hearing of the plaintiff's application dated 2nd May 2025 be fast-tracked.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 5TH DAY OF JUNE, 2025

F. GIKONYO M

JUDGE

In the presence of: -

MS Mati for Plaintiff

Ms Lagat for Omiti for Defendant

Ondieki for Standard Bank

CA Kinyua

