



Co-operative Bank of Kenya Limited v Kipteng & another (Civil Appeal E006 of 2022) [2024] KEHC 856 (KLR) (5 February 2024) (Ruling)

Neutral citation: [2024] KEHC 856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CIVIL APPEAL E006 OF 2022
F GIKONYO, J
FEBRUARY 5, 2024**

BETWEEN

CO-OPERATIVE BANK OF KENYA LIMITED APPELLANT

AND

NAANYU ANGELINE KIPTENG 1ST RESPONDENT

GOOD HOPE SACCO LTD 2ND RESPONDENT

(Being an appeal from the ruling of Hon. M.I.G. Moranga (SPM) delivered on 08.07.2022 and subsequent garnishee order absolute issued on 13. 07.2022 in Kilgoris SPM ELRC Case No. 2 of 2019)

RULING

Preliminary objection on jurisdiction

1. A preliminary objection dated 13.03.2023 was filed by the 1st respondent essentially challenging the jurisdiction of the court to adjudicate upon this appeal.
2. For completeness of record, the objection was styled as follows: -
 - i. That this honourable court lacks the requisite jurisdiction to entertain the said appeal as it offends Article 162(2) of *the Constitution* of Kenya 2010.
 - ii. That the appeal already lodged on 9th December 2022 is improperly before this court.
 - iii. That the appeal is incompetent, misconceived, misplaced, misdirected, and otherwise an abuse of the court process of the law and this honourable court.
 - iv. That the appeal is fatally defective and is filed in the wrong forum.



- v. That the orders and/ or prayers sought cannot be issued since the appeal is improperly on record and is a nullity.
- vi. That the appeal is informed by circumstances and facts that arose subsequent to orders issued on garnishee proceedings where the appellant failed to appeal within time and also has failed to seek leave of the court to lodge the instant appeal out of time.
- vii. That the instant appeal is legally untenable and unsustainable.
- viii. That the costs of this preliminary objection be borne by the appellant.

Directions of the court

3. The preliminary objection be canvassed by way of written submissions. The 1st respondent/applicant has filed. She also filed supplementary submissions without leave of the court.
4. The appellant also filed submissions.

1st Respondent/applicant's Submissions

5. The 1st respondent/applicant urged this court to down its tools in the instant matter as it emanates from the employment dispute (employee-employer relationship) in Kilgoris ELRC Cause No. E002 of 2019 and therefore this court has no jurisdiction over the issues raised by the appellant in the memorandum of appeal. The 1st respondent/applicant relied on the cases of *Owners Of Motor Vessel Lilian 's' v Caltex Oil Kenya Limited*, Article 162(2) of *the constitution*, section 12 of the ELRC Act., and *Good Hope Sacco Limited vs. Yiale & 4 Others* (Civil Suit E002 of 2022) [2023] KEHC 20233(KLR) (17 July 2023) (Ruling)
6. Further, the 1st respondent/applicant submitted that this court has no power to transfer the present matter to any other court of competent jurisdiction as itself. The 1st respondent/ applicant argued that the matter thus filed is defective as to be a nullity. The 1st respondent/ applicant relied on the cases of the environment and land court at Thika Misc. Application No. 42 of 2019 in the case of *Boniface Waweru Mbiyu Vs Mary Njeri & Another*
7. The 1st respondent/applicant urged this court to strike out the instant memorandum of appeal with costs as the said appellant is represented by an advocate who knows the law and where to file matters.
8. The 1st respondent/applicant submitted that the firm of M/S Nchoko & Co. Advocates are not properly on record and therefore any submissions filed by them are a violation of Order 9 Rule 7 of the *Civil Procedure Rules*.
9. The 1st respondent/applicant urged this court to issue an order to release the decretal sum that the garnishee deposited in the subordinate court on 16.03.2023 on behalf of the judgment debtor as security as the said funds were withdrawn by the bank through the judgment debtor's account number 01248062336000 as there is no appeal against the said decree. The respondent's appeal is ELRCA No. E013 of 2022 filed at Nakuru was concluded on 08.12.2022 and nothing is pending. Further that the stay orders issued on 21.11.2023 by Hon. C. Waswa (SPM) be lifted as the case has taken too long and the applicant took a loan in the shylocks with a higher interest rate which has prejudiced her in defending frivolous and vexatious suits, appeals and reviews applications being filed by the garnishee together with the judgment debtor in Narok high court, ELRC Nakuru, subordinate court at Kilgoris and the instant appeal.



Appellant's submissions

10. The major arguments by the appellant is that; i) the court has jurisdiction to hear an appeal against a garnishee order which is not an employment issue but civil issue; and ii) should the court find otherwise, it be gracious enough to transfer the appeal to the ELRC.

Analysis And Determination

11. A court must have the requisite authority to adjudicate a dispute. (Nakuru Civil Appeal No. 119 of 2017 Public Service Commission & 2 Others vs. Eric Cheruiyot & 16 Others consolidated with Civil Appeal No. 139 of 2017 County Government of Embu & Another vs. Eric Cheruiyot & 15 Others (unreported)
12. The preliminary objection is essentially on jurisdiction of the court to hear and determine this appeal. Is it a true preliminary objection?
13. A true preliminary objection raises a pure point or points of law arising from pleadings or any other relevant documents or matter on record, capable of disposing of the dispute. A preliminary objection, nonetheless, ought not be engulfed in factual or evidentiary pulp. (*Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors Ltd*, (1969) E.A. 696, *Omondi -vs- National Bank of Kenya Ltd & Others* {2001} KLR 579; [2001] 1 EA 177,).
14. The vitals of the objection are that this court does not have jurisdiction to adjudicate upon this appeal for it emanated from a decision in an ELRC case. Arguments that garnishee order is not an employment issue as a basis for coming to this court is problematic. Garnishee proceedings aid the execution of a decree of the court, and are made in the suit in which execution is sought, thus, supplemental proceedings. Any challenge, therefore, on a garnishee order is to be made through the relevant appeal or review process relative to the case where the order was made- in this case, ELRC appellate and review jurisdictions. The High court cannot be the executing or appellate court for ELRC decisions in execution of its orders whatsoever.
15. The order appealed from was made by ELRC subordinate court in an ELRC case. The challenge thereto ought to be made through ELRC appellate and review processes. The reason given does not justify transfer of the appeal to ELRC.
16. On that basis, the memorandum of appeal dated 07.12.2022 is hereby struck out with costs to the 1st respondent/applicant.
17. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH THE TEAM APPLICATION,
THIS 5TH DAY OF FEBRUARY 2024**

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HON. F. GIKONYO M.

JUDGE

In the presence of:

C/A – Mr. Leken

Applicant - M/s Njeru present

1st Respondent – Present



2nd Respondent - Absent

