



**Gadano General Trading Company Ltd v Government of South Sudan; Stanbic Bank Kenya Limited & another (Garnishee); Bank of South Sudan (Proposed Interested Party) (Arbitration Cause E070 of 2022) [2024] KEHC 1027 (KLR) (Commercial and Tax) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1027 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
ARBITRATION CAUSE E070 OF 2022**

**A MABEYA, J  
FEBRUARY 9, 2024**

**BETWEEN**

**GADANO GENERAL TRADING COMPANY LTD ..... DECREE HOLDER**

**AND**

**GOVERNMENT OF SOUTH SUDAN ..... RESPONDENT**

**AND**

**STANBIC BANK KENYA LIMITED ..... GARNISHEE**

**CITIBANK N.A ..... GARNISHEE**

**AND**

**BANK OF SOUTH SUDAN ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The application before Court is dated 4/9/2023. It is brought under sections 3, 3A, 34 and 63(e) of the *Civil Procedure Act*, Order 1 rules 9 and 10, Order 2 rule 15(1)(d), Order 22 rule 22, Order 23 rules 5,6 and 7, Order 51 rule 1 of the *Civil Procedure Rules*, Articles 48, 50(1) and 159 of the *Constitution*.
2. The application sought joinder of the interested party and leave to respond to the decree holder’s application dated 22/8/2023. The applicant further sought the striking out of the application dated 22/8/2023 and costs.
3. In support of the application the applicant relied on the grounds set out on the face of it and the supporting affidavit sworn by the Director of Currency department of the Bank of South Sudan Deng Aru Bol on 4/9/2023.



4. The applicants position was that the interested party was a Central Bank of South Sudan and was not a department of Government of South Sudan. That it had a separate asset base management identity therefore it was a banker of banks and trades in the world.
5. It was the applicant's contention that it did not hold funds on behalf of the Government of the Republic of Sudan and on the contrary, it held bank accounts on behalf of the Commercial Banks in South Sudan. That the applicant was not a party to the dispute between the decree holder and the respondent and that the money held by the 1<sup>st</sup> and 2<sup>nd</sup> garnishee are held on behalf of the bank of Southern Sudan and not on behalf of the government.
6. It was the applicant's averment that bank accounts which had been listed at paragraph 3 of the Garnishee order nisi dated 24/8/2023 belonged to the intended interested party and not the respondent
7. The application was opposed by the respondent vide a replying affidavit of Yahya Mohamed Osman sworn on 18/9/2023. He termed the application as defective for failing to be notarized as required by law. That a Central Bank such as the applicant holds funds in trust for the government and money held in commercial banks belonged to the government. The decree holder contended that in an application for interested party, the Court can add a party suo moto or the interested party can be proposed by the parties already participating in the proceedings. That the appellant would not be prejudiced as it had an opportunity to file an independent suit. That the application was brought to frustrate the garnishee proceedings.
8. The decree holder filed written submissions dated 6/10/2023. Counsel submitted that the Court was clothed with the discretion conferred upon it by order 23 rule 6 of the *civil procedure rules* to determine a third party claim and order execution for levying the amount from the third party. That the bank of Sudan could not claim to be a legal entity when it was responsible for printing money and maintaining monetary policy on behalf of the state. Counsel submitted that the proposed interested party failed to establish that the bank accounts the applicant sought to garnish were held in the name of the bank of South Sudan.
9. The applicant submitted that the interested party had met the threshold for joinder as it had a personal stake with respect to the bank accounts mentioned in the Garnishee order *Nisi* dated 24/8/2023. It was submitted that the applicant was not a party to the arbitral proceedings that were subject of the decree issued. That the accounts belonged to the applicant and not the respondent. That the joinder of the Bank of Sudan was necessary and crucial to the present proceedings.
10. I have considered the pleadings, the submissions as well as the authorities cited. There are two issues that arise. The first is whether the proposed interested party should be enjoined to the proceedings and whether the applicant should be granted leave to respond to the application dated 22/8/2023.
11. Order 1 Rule 10 of the *Civil Procedure Rules* provides for substitution and addition of parties. That Rule 10 (2) of the said Order provides: -

“(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit be added”



12. In *Francis Kariuki Muruatetu & Another v Republic & 5 others* Petition 15 as consolidated with 16 of 2013 [2016] eKLR, the Supreme Court of Kenya stated as follows with respect to applicable conditions for joinder,:

“One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

13. In this case, the decree holder moved the Court vide an application dated 22/8/2023. The Court gave its orders on 23/8/2023 and issued an order nisi in terms of prayers 2 and 3. It is against this background that the applicant moved the Court in the present application arguing that the Government of South Sudan was different from the Bank of South Sudan.

14. On whether the applicant has a stake in the proceedings, it was averred that the funds held by the interested party were accounts of commercial banks and the customers who bank with the Bank of South Sudan. I have considered the documents presented to Court touching on the dispute. The Court finds that the interested party has a legal right that could be prejudiced if the order for joinder is not issued.

15. Garnishee proceedings are instituted to facilitate satisfaction of judgment debts. The issue concerns a substantial amount of money and the interested party would be greatly prejudiced if it is not afforded an opportunity to be heard. In the premises, it is necessary to enjoin the applicant as an interested party.

16. Moving to the second issue, the Court is called upon to determine whether the applicant should be granted leave to respond to the application dated 22/8/2023. Having found that the applicant should be enjoined in the proceedings, the Court further finds that the applicant is at liberty to respond to the application dated 22/8/2023.

17. Accordingly, the Court finds merit in the application and the same is allowed in terms of prayer nos. 1 and 3. Costs in the cause.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

