



**Ibrahim & another v Monarch Insurance Company Limited; National Bank of Kenya & another (Garnishee) (Civil Case E388 of 2012) [2024] KEHC 7107 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7107 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E388 OF 2012  
HM NYAGA, J  
JUNE 12, 2024**

**BETWEEN**

**HASSAN M IBRAHIM ..... 1<sup>ST</sup> PLAINTIFF**

**ABDIRAHAMAN NURROW ISSAK ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MONARCH INSURANCE COMPANY LIMITED ..... DEFENDANT**

**AND**

**NATIONAL BANK OF KENYA ..... GARNISHEE**

**KENYA COMMERCIAL BANK ..... GARNISHEE**

**RULING**

1. The Plaintiffs had obtained garnishee order nisi against the Defendant herein. They had also proceeded to proclaim property said to belong to the Defendant. All these proceedings were in execution of a decree of this court.
2. While the Plaintiff's application dated 28<sup>th</sup> July, 2023 was pending, the Defendant filed an application dated 1<sup>st</sup> August, 2023 seeking amongst other prayers stay and setting aside of the garnishee execution proceedings pending determination of the intended appeal in the Court of Appeal.
3. Also, the objector filed a Notice of Objection and an Application dated 13<sup>th</sup> July, 2023. The three (3) Applications were argued simultaneously and a Ruling date was set for 24<sup>th</sup> April, 2024.
4. Before this court could deliver its Ruling, it was made aware of the Ruling of the Court of Appeal in Civil Application on 2<sup>nd</sup> February, 2024 and orders issued on 12<sup>th</sup> February, 2024 No. E205 of 2023 in which the said court issued orders that;
  - a. The Application dated 5<sup>th</sup> July 2023 is hereby allowed.



- b. The order given by High Court (Hon. Justice Mumbua T. Matheka) on 12<sup>th</sup> October, 2022 and issued on 30<sup>th</sup> November, 2022 is hereby stayed pending the hearing and determination of the intended appeal by the Applicant.
  - c. Costs shall abide by the outcome of the intended appeal.
5. After service of the said order on this court, this court duly obliged and ordered a stay of the said orders.
  6. Ordinarily, the order of the Court of Appeal would have meant that any further proceedings regarding the matter in question would have been stayed. However, after the said order the Defendant moved this court with an Application dated 8<sup>th</sup> February, 2024 in which it sought the following orders;-
    - a. Spent.
    - b. The Honourable Court be pleased to arrest delivery of its Ruling scheduled for 24<sup>th</sup> April, 2024.
    - c. Costs of the Application be provided for.
  7. After the orders of the Court of Appeal, the Objector also moved the Court vide its Application dated 16<sup>th</sup> February 2024 in which it sought the following orders inter alia;-
    - a. That the sum of Kshs. 6,000,000/= deposited in a joint account number 2049380103 at the Absa Bank of Kenya PLC, Nakuru West Branch held between the law firm of Gordon Ogola, Kipkoech & Company Advocates and Joseph Mwangi Rituga pursuant to order of the Court of 21<sup>st</sup> August, 2023 be released to the advocate for the Objector/Applicant.
  8. Following the filing of the said Application, the Objector then proceeded to withdraw its earlier Application.
  9. It is these two (2) Applications that are the subject of this Ruling. Parties were directed to file Submissions on the same. I will summarise them as hereunder.

### **Defendant's/Applicant's Submissions**

10. The Applicant submitted that the Court of Appeal Order issued on 2<sup>nd</sup> October, 2024 staying the execution of the Order of this Court issued by Mumbua T. Matheka on 12<sup>th</sup> October, 2012 extended to the garnishes order nisi issued on 28<sup>th</sup> July, 2024. According to the Applicant, the said garnishee order ought to be lifted for it to be deemed to having benefited from the said Court of Appeal Order.
11. The Applicant posited that any action contrary to the above would mean that the Court of Appeal acted in vain in issuing the order of stay of execution. The Applicant thus urged this court to lift the aforesaid garnishee order to enable it proceed with its operations.
12. The Applicant urged this court to allow its Application. In support of its submissions, the Applicant relied on Section 3A of the Civil Procedure Act and the following cases;
  1. Waste & Environment Management Association of Kenya (WEMAK) vs Nairobi City County [2016] eKLR cited in the case of Nicholas Mahibu vs Ndima Tea Factory Ltd & Another [2009] eKLR.
  2. Dal Forwardings (T) Limited vs Sakas International (T) Limited (Misc. Civil Application 277 of 2023) [2023] TZHC 18867 (12<sup>TH</sup> July, 2023).



3. *UAP Insurance Tanzania Company Ltd vs Akiba Commercial Bank PLC* (Misc. Application No. 47 of 2022) TZHCCoM D 79(14<sup>th</sup> April, 2022).
4. *Serengeti Breweries Limited vs Sikem Real Estate Developers Limited* Misc. Application No. 162 of 2022 HCCD (Unreported) cited in Dal Forwardings (T) Limited.

### **Plaintiffs' /Respondents' Submissions**

11. The Respondent submitted that this court is functus officio and the issue of stay is better addressed by the Court of Appeal that issued the same. They posited that the Court of Appeal Ruling referred to by the Applicant only stayed execution from the point at which it had reached and does not in any way affect the executed bit.
12. The Respondents argued that arresting the ruling and leaving the garnishee proceedings hanging leaves a lot of gaps in the law which will create a bad precedent as this court is bound by law to pronounce itself on any matter before it, and that court's determination in this matter will not prejudice the Applicant as the same will not bar the intended appeal.
13. The Respondent submitted that this Application is intended to delay the court process and deny them the fruits of the Judgement. They thus submitted that the application is incompetent and should be struck out with costs. To buttress their submissions, the Respondents placed reliance on the case of *Geoffrey M. Asanyo & 3 others vs Attorney General* [2020] eKLR where the Supreme Court addressed the issue of *Functus Officio*.
10. For the Objector, I did not see any submissions at the time of writing this ruling.
11. It is my view, that in short, the court is being asked to interpret the effect of the orders of the Court of Appeal that stayed the execution proceedings herein.
12. Needless to state, the order of the Court of Appeal, in staying the orders of this court given on 12<sup>th</sup> October, 2022 meant that both the Defendant and the Objector are affected by the same.
13. The question to be answered then is what is this court to do, in view of the order of the Court of Appeal.
14. In my view, the arguments by the Defendant and the Objector, though attractive, do not hold any water. If this court is to proceed to start granting the orders, it will be then be seen to be litigating over an issue that is already before the Court of Appeal. It will imprudent to start going into the mind of the Court of Appeal to try and decipher what it meant when it issued orders of stay. I find that the two (2) Tanzania authorities cited to be persuasive but with tremendous respect, I beg to differ.
15. I agree with the Plaintiff's that once an order of stay is issued, then this court is obliged to do just that; stay the process. In other words, it cannot move forward or backwards in regard to the matter. It stops where it had reached and downs its tools.
16. In my view an interpretation of the orders as fronted by the Defendant and Objector will be to place this court in an elevated status that of trying to decipher what the Court of Appeal stated.
17. An analogy ought to be drawn to a situation where this court, in exercise of its Appellate jurisdiction, orders a stay of orders of a subordinate court. In such circumstances, would the subordinate court be in order to revisit the issue of stay and give further directions and order a release of any attached goods? I don't think so. In that case, it would fall upon this court to issue further orders therein. The subordinate court ought to stop in its tracks and await further directions from the Appellant Court.
18. Similarly, this court cannot move a step forward or backwards in respect to the orders in question.



19. I am of the considered view that what the Applicants ought to do so is to move the Court of Appeal, which is now seized of the Appeal, for further orders.
20. Therefore, I find that this court became *functus officio* the minute the Court of Appeal issued the orders in question.
21. It is well settled law that a court which is *functus officio* cannot purport to act in any way. Its actions are all in vain.
22. For the foregoing reasons I find that the two (2) applications by the Defendant and Objector are wanting in terms of jurisdiction and I dismiss both, with costs to the Respondents.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 12<sup>TH</sup> DAY OF JUNE, 2024.**

**H. M. NYAGA,**

**JUDGE.**

**In the presence of;**

Court Assistant Jeniffer

Mr. Kipkoech for Plaintiff

Ms Odiero for Dr. Nyaundi for Defendant

Mr. Ojou for Garnishee 1

