



**Joseph N. Ngigi t/a Ngaywa Ngigi & Kibet Advocates v Xplico Insurance
Co. Ltd; M- Oriental Bank Limited (Garnishee) (Miscellaneous Civil
Application E016 of 2020) [2024] KEHC 8565 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E016 OF 2020
DO CHEPKWONY, J
JULY 15, 2024**

BETWEEN

JOSEPH N. NGIGI T/A NGAYWA NGIGI & KIBET ADVOCATES .. APPLICANT

AND

XPLICO INSURANCE CO. LTD RESPONDENT

AND

M- ORIENTAL BANK LIMITED GARNISHEE

RULING

1. For determination before this court is the Notice of Motion application dated 19th November, 2021 which seeks the following orders:-
 - a. Spent.
 - b. That Garnishee Orders Nisi do issue against the Garnishee to attach any monies held by them in favour of the Respondent's Account Numbers 1007xxxxxxxx held at Garnishee bank in satisfaction of the decretal amount of Kshs. 134,793/= in this matter.
 - c. That the Garnishee do appear before the court to show cause why they should not pay to the decree holder Kshs. 134,793/= plus costs from the amount held by the Respondent at their Account Numbers 1007xxxxxxxx held at Garnishee bank and or any other account held by the aforesaid.
 - d. That the Garnishee orders nisi be made absolute.
 - e. That the costs be provided for.



2. The application is based on the grounds as set out in its face and the Supporting Affidavit of Joseph N. Ngigi sworn on even date as follows:-
 - a. That Judgment exists against the Respondent/Judgment Debtor.
 - b. That the Respondent has failed to settle the resultant decree.
 - c. That the Judgment-Debtor having ignored /refused to settle the decree herein there is need to attach its account held by the Garnishee.
 - d. That unless Garnishee Orders Nisi are issued forthwith, the Respondent shall withdraw any money held in its accounts aforesaid to defeat the ends of justice.
3. The application is opposed through the Replying Affidavit sworn by Viola Odipo, the Legal Manager of the Respondent on 9th December, 2021. According to the Respondent's Legal Manager the application is premature and aimed at circumventing two court orders issued by the High Court in Nairobi freezing the accounts the Applicant seeks garnishee orders and therefore the application is an abuse of the court process. She contends that on or about 4th November, 2021, the Respondent was served with a Court Order in Nairobi HCCOMM. No.E901 of 2021, Sahi Rejeshwar Harbans Bai – v- Xplico Insurance Company Ltd which was to preserve funds held in the subject account herein at the Garnishee Bank herein pending the hearing and determination of the main suit.
4. The Respondent has also stated that on 10th November, 2021, it was served with a Court Order in Nairobi HC Insolvency Petition No.E030 of 2020 being Kihanga & Company Advocates –v Xplico Insurance Company Limited freezing the funds held in the subject account pending the hearing and determination of the Insolvency Cause. The Respondent holds that the court cannot issue an order in a vacuum since the Garnishee Absolute Order would be a conflicting order as there is already two suits pending before a Superior Court over the same subject matter, thus this Court need not grant the Garnishee Absolute Order sought as this will render the Superior Court's orders nugatory.
5. The Garnishee also filed a Replying Affidavit which was sworn by Irene Twala on 6th December, 2021. She has stated that the subject account is held in its Westlands Branch. She holds that the Garnishee was served with a Court Order on 5th November, 2021 in Nairobi HCCOMM. No.E901 of 2021, Nairobi Insolvency Petition No.E030 of 2020, Kihanga Company Advocates –v- Xplico Insurance Co. Limited, Agency Notice on 11th November, 2021 by Kenya Revenue Authority requiring the Garnishee to remit the sum of Kshs. 43,187,619/=. She has also stated that there are several Garnishee Orders from different courts freezing the same account, but the Garnishee complied with the order of the court issued on 11th November, 2021 and confirms that it shall comply with the orders and directions of the court at all times.
6. The Applicant filed a Supplementary Affidavit sworn on 17th January, 2022 wherein he has stated that the Garnishee has acknowledged that it holds the subject account number but has not disclosed the amount of funds in the said account. According to the Applicant, the Court Orders that have been presented to court by the Respondent and the Garnishee have not disclosed the values of the alleged suits and yet such information would have assisted the court in making its determination in the instant matter. He contends that the non-disclosure of such material facts demonstrates bad faith which amounts to abuse of court process. The Applicant holds that it would be in the interest of justice that the Garnishee Order Nisi issued on 1st December, 2021 be made absolute.



Analysis and Determination

7. The court has read through and considered the application, the Replying Affidavits filed by the Respondent and the Garnishee alongside the submissions filed by the Applicant in respect of the application dated 19th November, 2021 and find the issues for determination being:-
 - a. Whether the Garnishee Order Nisi should issue against the Garnishee to attach any monies held by them in favour of the Respondent's Account No.1007xxxxxxx held at the Garnishee Bank in satisfaction of the decretal amount of Kshs.134,793.00.
 - b. Whether the Garnishee should appear before the court to show cause why they should not pay to the Decree-Holder Kshs.134,743.00 plus costs from the amount held by the Respondent at their Account No.100xxxxxxx held at the Garnishee Bank.
8. The law on Garnishee proceedings is enshrined under the provisions of Order 23 Rule 1(1) of the Civil Procedure Rules which states as follows:-

“A court may, upon the ex parte application of a decree-holder, and either before or after an oral examination of the judgment-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (hereinafter called the “garnishee”) to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree- holder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid”.
9. In essence, under Order 23 Rule 1, the main purpose of a Garnishee Order is to enable a Decree-Holder to access and realise a debt which is owed by the Judgment-Debtor from the Garnishee so that it can satisfy the decree. In this case, it is not in dispute that there is a debt that exists which the Respondent owes the Applicant. The Garnishee has also confirmed that the Respondent holds a bank account with it and which has funds that can be used to offset the decretal sum.
10. Be that as it may, it will be noted that in separate Replying Affidavits, the Respondent and the Garnishee have stated that in respect of the subject Bank Account being No.1007xxxxxxx, there exist several Court Orders issued in the cases of Nairobi HCCOMM. No.E901 of 2021, Sahi Rajeshwar harbans Bai –v- Xplico Insurance Company Ltd and Nairobi HC Insolvency Petition No.E030 of 2020 being Kihana & Company Advocates –v- Xplico Insurance Company Limited.
11. The court has appreciated and takes judicial notice that there is also insolvency proceedings against the Respondent, Xplico Insurance which is pending so that issuing any adverse orders in this case would amount to an academic exercise since the court cannot issue orders which will be in vain.
12. For that reason, the court finds that the Notice of Motion application dated 19th November, 2021 lacks merit and the same is hereby dismissed with no orders as to costs.
13. These same orders shall apply to the other matters being Misc. Civil Application Nos.E012, E013, E014, E015, E017, E020, E032, E033 and E035 all of 2020

It is so ordered.



**RULING DATED, SIGNED AND DELIVERED AT KIAMBU VIA ELECTRONIC MAIL THIS
15TH DAY OF JULY , 2024.**

D. O. CHEPKWONY

JUDGE

