



**Futurerock Limited v National Oil Corporation of Kenya; Equity Bank (Kenya) Limited & 5 others (Garnishee) (Commercial Miscellaneous Application 532 of 2018) [2024] KEHC 10588 (KLR) (Commercial and Tax) (10 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10588 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION 532 OF 2018**

**A MABEYA, J  
SEPTEMBER 10, 2024**

**BETWEEN**

**FUTUREROCK LIMITED ..... APPLICANT**

**AND**

**NATIONAL OIL CORPORATION OF KENYA ..... RESPONDENT**

**AND**

**EQUITY BANK (KENYA) LIMITED ..... GARNISHEE**

**STANDARD CHARTERED BANK KENYA LTD ..... GARNISHEE**

**CO-OPERATIVE BANK OF KENYA LIMITED ..... GARNISHEE**

**NCBA BANK KENYA PLC ..... GARNISHEE**

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

**NATIONAL BANK KENYA LIMITED ..... GARNISHEE**

**RULING**

1. Vide a Motion on Notice dated 31/7/2024, the decree-holder applied under Order 23 Rules 1(1) and (2) of the Civil Procedure Rules to garnishee several accounts belonging to the six (6) garnishees. The same was meant to satisfy a sum of Kshs. 18,844,480/60 alleged to be outstanding on the decree issued by this Court.
2. The application was supported by the affidavit of Paul Maina Gathara sworn on 31/7/2024 wherein he detailed the history of the claim. The claim arose out of an Arbitral Award that was recognized by this Court and a decree for Kshs. 62,560,708 issued on 10/11/2022. Out of the decretal sum, a total sum



of Kshs. 43,286,554/20 had been paid. There was outstanding a sum of Kshs. 18,844,480/60. It was believed that the garnishees held funds in the various accounts specified that was capable of satisfying the said amount.

3. On 19/8/2024, this Court issued a garnishee nisi against the cited accounts. The same was served upon all the garnishees and the respondent who filed various responses.
4. The respondent opposed the Motion vide a replying affidavit sworn on 26/8/2024. In it, it was deposed that the accounts of Stanbic Bank, the 5<sup>th</sup> garnishee, should be spared as there was an earlier order excluding the said accounts to enable the respondent continue operating. That the financial position of the respondent was not good and a financial statement to that effect was produced.
5. The 1<sup>st</sup> garnishee (Equity Bank) contended that it had been discharged from the proceedings vide an order of 19/3/2024. For that reason, it failed to disclose any bank statement on the accounts garnished.
6. The 2<sup>nd</sup> garnishee (Standard Chartered Bank) filed an affidavit sworn on 21/8/2024 by which it disclosed holding a sum of Kshs. 383,522/75 and US\$1,214.31 only. Learned Counsel for the 2<sup>nd</sup> garnishee sought costs of Kshs. 50,000 for this application.
7. The 3<sup>rd</sup> garnishee (Co-operative Bank) disclosed that it held a total sum of Kshs. 645,205/80. Counsel for the 3<sup>rd</sup> garnishee applied for costs of Kshs. 100,000 for these proceedings.
8. The 4<sup>th</sup> garnishee did not file any response while the 5<sup>th</sup> garnishee admitted a sum of only Kshs. 93,993.
9. On its part, the 6<sup>th</sup> respondent admitted to holding a sum of only Kshs. 350. Its advocate asked for Kshs. 30,000 as costs.
10. Mr. Maina, Learned Counsel for the decree-holder submitted that the 4<sup>th</sup> garnishee should have the order nisi made absolute against it as it was properly served. That the 5<sup>th</sup> garnishee (Stanbic) had transferred funds to some fixed deposit accounts and should be made to disclose the same.
11. I have considered the parties contestations. Garnishee proceedings are proceedings whereby a 3<sup>rd</sup> party who is believed to owe a judgment-debtor is compelled to pay over that debt to satisfy the decree standing against the judgment-debtor. The law requires such 3<sup>rd</sup> Party, the garnishee, to appear in court to either admit or dispute the debt. It is in such appearance that the garnishee has the opportunity to either dispute that he owes the judgment-debtor or clarify the extent of his indebtedness.
12. If the garnishee does not dispute owing or fails to appear as directed, the court is entitled to make the order nisi absolute and order or direct execution against the garnishee for the amount claimed. This is the effect of Order 23 Rule 4 which provides that:-

“ 4. If the Garnishee does not dispute the debt due or claimed to be due from his to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against, the person and goods of the Garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the Garnishee proceedings....”

13. In *Ngaywa Ngigi & Kibet Advocates –vs- Invesco Assurance Co. Ltd; Diamond Trust Bank (Garnishee)*[2020] eKLR, it was held:-

“I agree with the contention of counsel for the Applicant that in terms of Order 23 Rule 4 of the Civil Procedure Rules, if the garnishee does not dispute the debt due or claimed to be due



from him to the judgment-debtor, or if he does not appear upon the day of hearing named in the order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree together with the costs of the Garnishee proceedings, and the order absolute shall be in Form No. 17 or 18 of the Appendix A, as the case may be. It is the position of the law that in garnishee proceedings the garnishee banks are only required to appear before the court to acknowledge or dispute the debts. In the present case, the garnishee bank did not appear or file a response and in the absence of evidence to the contrary, I find that they acknowledged that the respondent held accounts with them and it was not necessary for court to question them and cross-examine them as they did not have any objections in relation to the attachment”.

14. The foregoing is the correct proposition of the law. That in the event a garnishee who is served with an order nisi, fails to dispute the debt or appear in court and explain the extent of his indebtedness, an order absolute will be made against him and execution ordered accordingly. The basis for this is that; a decree-holder alleges that he believes that the garnishee owes or holds funds for the judgment-debtor which is sufficient to satisfy the unsatisfied decree. Under sections 107, 108 and 112 of the [Evidence Act](#), the evidentiary burden of proof shifts to the garnishee to deny or confirm that fact. Failure to deny the same results in the pendulum of the burden of proof to the garnishee and the liability to settle the claim thereby arises.
15. I am aware of some decisions to the effect that the garnishee’s property is not to be attached as it is not the garnishee that is to answer the decree. To my mind, that is misreading the law. A decree is ordinarily directed at the judgment-debtor who is the primary obligor to settle the same. After failing, the law allows the decree-holder to trace the judgment-debtor’s funds to the hands of the garnishee.
16. This tracing of the judgment-debtor’s funds to the hands of a garnishee is in 2 stages. The first stage is by issuance of the garnishee order nisi. Here the court makes the order *ex parte* freezing the judgment-debtor’s properties or funds alleged to be in the hands of the garnishee. That order ordinarily directs the garnishee to hold on to those properties and or funds for purposes of satisfying the decree.
17. The second stage, where now the liability of the garnishee arises is, the garnishee is required by law either to dispute the debt allegedly owed to the judgment-debtor or to appear in court to explain the extent of his liability. Failure to do either amounts to an admission on the assertions in the order nisi. That is when the court will make the order absolute as against the garnishee.
18. It should be recalled the Order 23 Rule 4 states that:-

“...then the court may order execution against the person or goods of the Garnishee to levy the amount due from him; ...”

In this regard, I find and hold that once a garnishee is served with a garnishee order nisi and fails to dispute the debt or appear to explain the extent of his liability, the order absolute will be made against him. Under Appendix A Form No. 17 or 18, the order is to be executed against the garnishee or his property. The reason for this is that by virtue of Section 112 of the [Evidence Act](#), it is the garnishee who is in the know of the extent of his indebtedness to the judgment-debtor who, of course is adamant of not settling the decree.

19. In the present case, 6 garnishees were involved. Four of them disputed the debt but gave the extent of their indebtedness as follows:-
- 20.



- (a) Standard Chartered - Kshs. 383,522/75 - US\$ 1,214.31
  - (b) Cooperative Bank - Kshs. 645,205/80
  - (c) Stanbic Bank - Kshs. 93,993
  - (d) National Bank - Kshs. 350
  - (e) Equity Bank - Kshs. 689,237/30
21. I order that the said garnishees do release to the decree-holder the amounts held less Kshs. 30,000 each for costs. As for National Bank, the costs are to be levied against the respondent.
22. As regards Equity Bank and NCBA, they were duly served with the decree nisi but did not dispute the debt. The orders previously made for discharge was in respect of different garnishee proceedings and not the present one. Accordingly, the two banks are liable to settle the balance of the decretal sum.
23. As regards the contention by the respondent on its financial position, this Court had given the respondent time to put its financial position to order. This was between March 2024 and July 2024 as it had pleaded in an earlier application. That was sufficient time to make the required arrangements and settle the decree. Decrees must be settled. Public entities must learn that once they engage in private contracts they must play by the rules.
24. Accordingly, I allow the application and make the garnishee order nisi absolute as follows:-
- (a) Standard Chartered - Kshs. 383,522/75  
- US\$ 1,214/31
  - (b) Cooperative Bank - Kshs. 645,205/80
  - (c) Stanbic Bank - Kshs. 93,993/=
  - (d) National Bank - Kshs. 350/=
  - (e) Equity Bank - Kshs. 689,237/30
  - (f) The sums in (a) (b) (c) and (e) above to be less Kshs. 30,000/= costs. The costs of National Bank be borne by the respondent.
  - (g) The balance of the sum claimed in the Motion dated 31/7/2024 to be paid by NCBA.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**A. MABEYA, FCI Arb, EBS**

**JUDGE**

