



Brand Strategy & Design Limited & another v Pride Inn Hotels & Conferencing (Civil Appeal E379 of 2021) [2024] KEHC 12302 (KLR) (Civ) (15 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E379 OF 2021

JM OMIDO, J

OCTOBER 15, 2024

BETWEEN

BRAND STRATEGY & DESIGN LIMITED 1ST APPELLANT

EVA MURAYA 2ND APPELLANT

AND

PRIDE INN HOTELS & CONFERENCING RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. D.O. Mbeja, Principal Magistrate delivered on 18th June, 2021 in Nairobi CMCC No. 4215 of 2019)

RULING

1. The starting point in determining the Notice of Motion application dated 4th September, 2024, through which the Decree Holder seeks that the garnishee order nisi issued on 5th September, 2024 be made absolute is by looking at the provisions of Order 23 Rule 1(1) of the *Civil Procedure Rules*. Let us read the said provision:

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.

2. From the above rule, the object of Garnishee Proceedings is to enable a Decree Holder to reach a debt due to the Judgment Debtor from the Garnishee as may be sufficient to satisfy a Decree or part thereof.
3. Crucial thereof must be that the Garnishee is indebted to the Judgment Debtor. (See [*Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co; Co-operative Bank of Kenya \(Garnishee\)*](#) (Miscellaneous Civil Application 73 of 2018) [2020] KEHC 8931 (KLR) (28 January, 2020) (Ruling).
4. The procedure that is taken at the inter partes hearing of the Motion seeking to confirm a garnishee order nisi that is issued ex parte, as absolute is that 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 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 or part thereof, together with the costs of the garnishee proceedings.
5. Subsequent thereto, the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require. (See [*Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Co. Limited; Diamond Trust Bank \(Garnishee\)*](#) (Miscellaneous Civil Application 405 of 2017) [2020] KEHC 6442 (7 May 2020) (Ruling).
6. It is noteworthy, as held in [*Ngaywa Ngigi \(supra\)*](#) that the Judgment Debtor has no role and/or locus to oppose or apply to seek to dismiss the application that seeks for a garnishee order absolute as the Judgment Debtor is not a party to the Garnishee proceedings, by the very nature of the proceedings. Put in another way, garnishee proceedings are taken strictly between the Decree Holder and the Garnishee.
7. The Garnishee herein was to the satisfaction of the court served with the Notice of Motion dated 4th September, 2024 together with the garnishee order nisi that was issued on 5th September, 2024 and subsequently extended on 3rd October, 2024.
8. There is no dispute that the decree herein remains unsatisfied to the tune of Ksh.1,297,500/-. The Decree Holder has through the Motion made claims that the Garnishee is indebted to the Judgment Debtor to an extent that is sufficient to satisfy the decree. With those claims made in the form of garnishee proceedings, the burden shifted to the Garnishee to prove otherwise and to discharge that burden, it became incumbent upon the Garnishee to present controverting evidence. It is instructive from the record that the Garnishee has neither responded to the application nor attended court, with the result that the burden remains undischarged.
9. It is therefore apparent that the Garnishee does not dispute the debt due or claimed to be due from him to the Judgment Debtor. In the result, following my analysis, the Decree Holder's application dated 4th September, 2024 has merit, as it is not in any way challenged. The same is consequently allowed in terms of prayer 6 and 7 thereof, as follows:
 - a. The garnishee nisi is hereby made absolute for the amount of Ksh.1,297,500/- and the Garnishee is hereby ordered to release and/or remit to the Decree Holder the said amount forthwith.
 - b. The decree holder is awarded costs of the application, which I hereby assess at Ksh.8,000/- as against the Judgment Debtor to be recovered together with the decretal sum from the money held by the Garnishee as a debt due to the Judgment Debtor.



- c. For avoidance of doubt, the total amount to be released and/or remitted by the Garnishee to the Decree Holder is Ksh.1,305,500/-.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 15TH DAY OF OCTOBER, 2024

JOE M. OMIDO

JUDGE

For The Appellant/decree Holder: Mr. Miano & Mr. Letare

For The Respondent/garnishee: No appearance.

For The Judgement Debtor: Mr. Otwal.

Court Assistant: Ms. Njoroge.

