



Dewdrop Enterprises Limited v Renocon & another (Civil Appeal E054 of 2023) [2024] KEHC 12639 (KLR) (Civ) (17 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12639 (KLR)

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

CIVIL

CIVIL APPEAL E054 OF 2023

AN ONGERI, J

OCTOBER 17, 2024

BETWEEN

DEWDROP ENTERPRISES LIMITED APPELLANT

AND

RENOCON 1ST RESPONDENT

VICTORIA BANK LIMITED 2ND RESPONDENT

*(Being an appeal from the judgment of Hon. H. M. Nyaga (CM)
in Milimani CMCC No. 10203 of 2003 delivered on 24/1/2023)*

JUDGMENT

1. The applicant filed a garnishee application dated 5/1/2022 seeking to execute a decree dated 18/9/2021 against the respondent.
2. The application was dismissed on 24/1/2023 for reasons that the orders sought were untenable for reasons that the secured conditions were given priority over the respondent judgment/debtor.
3. The appellant appealed against the ruling on the following grounds;
 - i. The Learned Magistrate erred in law and in fact in failing to recognize that the judgment-debtor did not dispute the facts as set out in (a) the Supporting Affidavit dated 5/1/22 and (b) the Supplementary Affidavit dated 19/9/22 and in particular that the garnishee is determined to fraudulently convert the decree-holder's dues, that exceed the sum of Kshs 45,252, 13 1.46, to the use and benefit of the garnishee and the judgment-debtor.
 - ii. The Learned Magistrate erred in law and in fact in disregarding Summons to Witness dated 15/8/22.



- iii. The learned magistrate erred in law and in fact in failing to acknowledge that the court lacked the mandate to review its orders dated 30/9/21 and summons to witness dated 15/8/22 where the court decided that the judgment-debtor is Rajendra Kumar Jashbhai Patel t/a Renocon.
 - iv. The Learned Magistrate erred in law and in fact in failing to appreciate that (a) the judgment-debtor is a sole proprietorship and distinct from the corporation Renocon Limited and (b) the said corporation was not a party to the suit.
 - v. The Learned Magistrate erred in law and in fact in failing to find that the garnishee had not rebutted the facts contained in (a) the Supporting Affidavit dated 5/1/22 and (b) the Supplementary Affidavit dated 19/9/22 and in particular that the garnishee is determined to fraudulently convert the decree-holder's dues, that exceed the sum of Kshs 45,252,131.46, to the use and benefit of the garnishee and the judgment-debtor.
 - vi. The Learned Magistrate erred in law and in fact in disregarding the decree-holder's Supplementary Affidavit dated 19/9/22 as well as the decree-holder's Supplementary Submissions dated 19/9/22 that were both filed pursuant to leave of the court granted on 14/9/22.
 - vii. The Learned Magistrate erred in law and in fact in failing to find that (a) with effect from 13/12/19 the decree-holder had overriding interest in money/property held by and/or receivable by the garnishee on account of the judgment-debtor, (b) circa 23/3/21 the garnishee had illegally and without consent of the decree-holder claimed a lien over the judgment-debtor's deposits of Kshs 17,533,082.47 and (c) the Acceptance Form dated 23/3/21 has not been sealed by the alleged borrower Renocon Limited.
 - viii. The Learned Magistrate erred in law and in fact in failing to protect and promote the rule of law as well as the decree-holder's constitutional right to fair administrative action, fair hearing, access to information and right to property.
 - ix. The Learned Magistrate erred in law and in fact in dismissing the Application dated 5/1/22.
 - x. The Learned Magistrate erred in law and in fact in failing to sign the Ruling before pronouncement on 24/1/23.
4. The parties filed written submissions as follows; The appellant submitted that the Honorable magistrate ought to have signed the ruling before Hon W K Micheni CM pronounced the same on 24/1/23 and in support cited Geoffrey M. Asanyo & 3 others v Attorney General [2018] eKLR where the Supreme Court determined what a judgment of a court is and held that for the same to be valid it must be dated, signed and delivered in open court.
 5. The appellant submitted that the record of appeal shows that on 14/9/22 the Hon. Magistrate granted the decree holder 14 days to file a further affidavit and further submissions. The ruling however did not make any reference to the supplementary affidavit dated 19/9/22 and the supplementary submissions dated 19/9/22 which contained additional undisputed evidence of the garnishee's indebtedness on account of cash deposits by the judgement-debtor.
 6. In orders No. 2,3 and 5 issued on 30/9/21 the lower court determined that the judgement debtor is Rajendra Kumar Jashbhai Patel t/a Renocon. The appellant argued that these orders are valid and have never been set aside by way of appeal or review. The lower court reaffirmed this finding in the summons to witness where the court distinguished the judgement-debtor from Renocon Limited.



7. In paragraph 2 of his Amended Defence dated 26/3/10 the judgment-debtor admitted paragraph 2 of the Amended Plaint dated 10/3/10 in which the decree-holder claimed that the judgment-debtor is a sole proprietorship which is binding.
8. Further the decree-holder stated in its supplementary affidavit that the judgement-debtor is distinct from Renocon Limited and submitted that thus the magistrate erred in refusing to consider the pleadings and the lower court's earlier valid decision when he failed to find that the judgement-debtor is a sole proprietorship distinct from the corporation Renocon Limited and the said corporation was not a party to the suit.
9. The appellant further submitted that the garnishee and judgement debtor were duly served with the application dated 5/1/22, 18/1/22 and 20/1/22. The judgement-debtor and garnishee neither opposed the application dated 5/1/22 nor swore any replying affidavit. The garnishee however filed a sham replying affidavit purportedly in response to a nonexistent application dated 5/1/21 in which Renocon Limited is allegedly the judgement debtor in the lower court suit.
10. The garnishee's advocates in the present Appeal are enjoined by the [Law Society of Kenya Act](#) to correct misrepresentation of facts in their documents filed in the lower court. Despite being served with the Record of Appeal the garnishee's Senior Legal Officer has not filed any application herein seeking to correct false statements in his Replying Affidavit. It was thus the appellant's argument that the facts contained in the Supporting Affidavit and the Supplementary Affidavit ought to be taken as true and as such the Learned Magistrate erred in failing to find that the garnishee is determined to steal the decree-holder's dues in excess of Kshs 45,252,131.46.
11. The appellant submitted that on 15/8/22 the lower court issued summons requiring the garnishee's manager to give evidence on the judgement-debtors means of satisfying the decree. The Hon. Magistrate therefore erred in disregarding the summons to witness when he dismissed the garnishee's proceedings summarily. The appellants right to fair hearing was contravened as one of its key witnesses was unreasonably discharged from giving evidence effectively in the garnishee's proceedings.
12. The 2nd respondent on the other hand submitted that the judgement under scrutiny bears a date and the duly affixed signature of Hon. W. K Michen(CM). While the judgment was initially prepared by Hon. M Nyaga it was formally pronounced in open court on 24/1/2023 by the Hon. W. K Micheni. It was the respondent's argument that the act of pronouncing the judgement in open court, accompanied by the affixing of the Chief Magistrates signature satisfies the procedural requirements for a valid judgement.
13. The 2nd respondent submitted that contrary to the applicant's submissions the supplementary affidavit and supplementary submissions on 19/9/2022 do not appear on the e-filing portal. The system reflects that the last document filed in the trial court was July 2022.
14. The respondent submitted that based on the evidence that was placed before the trial court, the appellant did not establish a proper case for the making of the garnishee order for attachment of the funds held by the 2nd respondent in the subject accounts. Although the appellant was able to identify some funds in the subject accounts, it failed to prove that the said funds are held on general business account or that the funds are available for attachment to satisfy the decree.
15. The 2nd respondent indicated that any funds held by the bank herein is a secured facility which does not constitute a debt and therefore the same is not recoverable for the purposes of garnishee proceedings.
16. In the instant case, the 2nd Respondent submitted that the Garnishee bank has proffered cogent evidence to the effect that the funds held by the 1st respondent (Judgement Debtor) are for purposes



of securing the credit facility dated 23/3/2021 and all-asset debenture dated 9/4/2018. To this end the court rightfully dismissed the decree holder/appellants application dated 5/1/2022.

17. The 2nd respondent argued that the appellant relies on a typographical error in the 2nd Respondent's Replying Affidavit. The contention is that the 2nd Respondent mistakenly typed "5th January 2021" instead of the correct date, "5th January 2022". The 2nd respondent submitted that the typographical error in the date should not overshadow the fact that a response was, in fact, filed in a timely manner, addressing the contentions raised in the Appellant's Application.
18. Finally, the 2nd respondent submitted that the matter in question was previously addressed before the Trial Court on 28/6/2022. On that occasion, the Appellant's Advocate sought the arrest of the Appellant's Managers/Directors, alleging non-compliance with Court Orders to produce certain documents for cross-examination purposes. Oral submissions were made, during which it was established that all the requisite documents had already been filed on behalf of the 2nd Respondent. Ms. Kalaine, representing the Judgment Debtor, confirmed this fact.
19. Subsequently, the Appellant's Advocate acknowledged the same and agreed to file further documents in response. The 2nd Respondent contended that revisiting this issue at this juncture amounts to an abuse of the Court's processes. The matter has already been adjudicated upon, and the Appellant, having acquiesced to the procedures at the Trial Court, should not be permitted to resurrect the same issue without just cause.
20. The issues for determination in this appeal are as follows
 - i. Whether the ruling dated 24/1/2023 is invalid for failure by the trial court to sign it.
 - ii. Whether this appeal is competent
 - iii. Whether this appeal should be allowed.
21. On the issue as to whether the ruling dated 24/1/2023 is invalid, I find that it is not in dispute that the same was not signed by the trial court.
22. The respondent maintained that Magistrate who drafted the ruling had been promoted to the High court as Judge at the time of delivery of the ruling.
23. The Supreme Court in *Geoffrey M. Asanyo and 3 others v Attorney General* [2019] eKLR held as follows:

“It is also trite that for a Judgment of the Court to be valid, it must be dated signed and delivered in open court. The High Court, Makhandia, J, (as he then was) aptly stated in *South Nyanza Sugar Co Ltd v Elijah Ntabo Omoro* Civil Appeal No 60 of 2005; [2011] eKLR that, “it is a mandatory requirement that for a judgment of the court to be valid, it must be dated, signed and delivered in open court... Thus a judgment that is neither dated nor delivered in open court is a nullity.”
24. Further Order 21 Rule 3 of the *Civil Procedure Rules* provide;

Judgment to be signed [Order 21, rule 3]

 1. A judgment pronounced by the judge who wrote it shall be dated and signed by him in open court at the time of pronouncing it.
 2. A judgment pronounced by a judge other than the judge by whom it was written shall be dated and countersigned by him in open court at the time of pronouncing it.



3. A judgment once signed shall not afterwards be altered or added to save as provided by section 99 of the Act or on review.
25. I find that the ruling is invalid since it was not signed by the trial court and the same is set aside.
26. The trial court ought to have signed the ruling even though it was pronounced by a different magistrate other than the one by whom it was written.
27. The law requires that the ruling or judgment shall be dated and countersigned by the one pronouncing it at the time of pronouncing it.
28. I find no need to make a finding on the rest of the issues in the appeal since the ruling of the trial court is invalid.
29. The appeal is allowed with costs to the appellant and the orders of the trial court are set aside.
30. The garnishee applicant to be heard afresh and determined by any other court since the ruling dated 24/1/2023 is invalid.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 17TH DAY OF OCTOBER, 2024.

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A. N. ONGERI

JUDGE

In the presence of:

.....for the Appellant

.....for the 1st Respondent

.....for the 2nd Respondent

