



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC. MISC. APPLICATION NO. 26 OF 2020

MAURICE ODUOR NYAKONEAPPLICANT/DECREE HOLDER

VERSUS

DIAMOND PROPERTY MERCHANTS LTD.....RESPONDENT

AND

CO-OPERATIVE BANK OF KENYA LTD.....1ST GARNISHEE

EQUITY BANK OF KENYA LTD.....2ND GARNISHEE

RULING

By a Notice of Motion application dated the 12th March, 2021, brought pursuant to Order 23 Rule 1, 2 & 4 of the Civil Procedure Rules and Sections 3A and 63(e) of the Civil Procedure Act, the Applicant seeks the following orders:

1. Spent.
2. That pending the hearing and determination of this application, this Honourable Court be pleased to make a Garnishee Order Nisi against both Cooperative Bank of Kenya Ltd and Equity Bank of Kenya Ltd, the 1st and 2nd Garnishee herein, ordering that all monies held by the 1st Garnishee in bank account numbers 01148154958200 and all the monies held by the 2nd Garnishee in bank account number 1340272891321 be attached to settle the total decretal amount of Kshs. 1, 766, 456/=.
3. That the Honourable Court be pleased to make an order directing the 1st and 2nd Garnishee to appear before this Court on an appointed date and time to show cause why the said 1st and 2nd Garnishee should not pay to the Applicant/Decree holder the total decretal sum herein or so much as may be sufficient to satisfy the sum of Kshs. 1,766,456/=.
4. That a Garnishee Order Absolute do issue to compel Cooperative Bank of Kenya Ltd and Equity Bank Kenya Ltd to release to the Applicant/ Decree holder a total sum of Kshs. 1,766, 456/= from funds held in the Respondent's Cooperative Bank of Kenya Ltd A/C number 01148154958200 and Equity Bank Kenya Ltd A/C No. 1340272891321 by making payments to the Applicant's Advocates bank account: A/C Name COL LAW ADVOCATES LLP CLIENT AC, Bank: NCBA, A/C Number: 3690110024, Branch: Kenyatta Avenue.
5. The costs of the garnishee proceedings be provided for.

The application is premised on the grounds on the face of it and the supporting affidavit of the applicant MAURICE ODUOR NYAKONE where he deposes that vide a Ruling of this dated the 22nd February, 2021, the arbitral award dated 12th June, 2020 including award on costs dated 24th August, 2020 were adopted by this Court and leave to enforce the said arbitral award as well as award on costs as Decree of the Court granted. He confirms a Decree was issued by this Honourable Court on 9th March, 2021 with the total decretal sum plus costs amounting to Kshs. 1,766, 456/=. He claims that Cooperative Bank of Kenya Ltd, the 1st Garnishee herein, is holding funds to the credit of the Respondent in Account Number 01148154958200 while Equity Bank Kenya Limited the 2nd Garnishee herein, holds funds to the credit of the Respondent in Account Number 1340272891321. Further, that the 1st and 2nd Garnishees hold active accounts for the Respondent and the Court has power to issue the garnishee order sought. He explains that the Respondent since the delivery of the arbitral award moved its offices to an unknown location with the sole intent of defeating the execution of a lawful court's judgement. He is apprehensive that the judgement debtor may withdraw and/or move the funds held to its credit by the 1st and 2nd Garnishee. He reiterates that he stands to lose immeasurably if the orders sought are not granted.

In response to the instant application, the 1st Garnishee filed a replying affidavit sworn by LINDA MANGO its Branch Manager for Westlands Branch where she confirms that the judgement debtor is a holder of current business account number 01148154958200 with them at its Westlands Branch. She states that the book balance as at 19th March, 2021 was Kshs. 205, 255.45/= which amount the 1st Garnishee holds on behalf of the Judgement Debtor and the same has been preserved. She contends that the liability of the 1st Garnishee on account of the Judgement Debtor's indebtedness to the Applicant should only be to the extent of the afore stated balance. She reiterates that the funds are insufficient to satisfy the decretal amount of Kshs. 1,766,456/=. She insists the 1st Garnishee's costs should be borne by the Applicant. She avers that the 1st Garnishee is not opposed to the release of the money on issuance of the Garnishee order save the said should be less the costs incidental to the proceedings.

In response to the application, the 2nd Garnishee filed a replying affidavit sworn by JOHN K MUNYUA, its Operations Manager where he confirms that the Respondent is a holder of a current business account No. 1340272891321 at its Ridgeways Branch. He deposes that the book balance as at 19th March, 2021 was Kshs. 21.65 which the 2nd Garnishee holds on behalf the Judgement debtor. He reiterates that the funds are insufficient to satisfy the decretal amount of Kshs. 1,766,456/=. He states that the 2nd Garnishee has no reservation to release the said balance to the Decree holder subject to the directions of the court. He requests that the 2nd Garnishee be discharged from these proceedings with the costs of its advocates to be borne by the Applicant.

The application was canvassed by way of written submissions.

Analysis and Determination

Upon consideration of the Notice of Motion application dated the 12th March, 2021 including the respective affidavits and the annexures thereon as well as the rivalling submissions, the following are the issues for determination:

- Whether a Garnishee Order Absolute should issue in this instance
- Who should bear the costs of the garnishee proceedings

The applicant in his submissions reiterated his averments and contended that the Garnishee Order Absolute is merited. Further, that as for the 1st Garnishee, the Order Absolute should be restricted to Kshs. 205, 255/=. He submits that as for the 2nd Garnishee, the Order Nisii issued on 24th March, 2021 should be discharged. He further submitted that the Garnishee are entitled to costs to the extent of the proceedings only, which should be pegged to the Advocates Remuneration (Amendment) Order 2014 particularly Schedule VI paragraph 14 (a) in view of the fact that the proceedings were not opposed. Further, the costs should be assessed at Kshs. 4200/=. To buttress his averments, he relied on the case of **Board of Trustees, National Water Conservation & Pipeline Corporation (NWCPAC) Staff Superannuation Scheme V Mombasa Water Supply & Sanitation Co. Ltd (2017) eKLR**.

The 1st Garnishee in its submissions reiterated the averments in the replying affidavit and insists it is not in a position to settle the decretal amount. Further, its liability on account of the judgement debtor's indebtedness to the Applicant should be strictly to the extent of the aforementioned balance. It further submits that the Advocate's handling fee and incidental should be borne by the Applicant.

The 2nd Garnishee in its submissions reiterated its averments as per the replying affidavit and sought to be discharged from these proceedings save for its costs to be borne by the Applicant.

The Applicant sought for a Garnishee Order Absolute to issue in this instance. It is trite that Garnishee Proceedings are available to a Decree Holder to enable it reach a debt due to the Judgment Debtor from the Garnishee as may be sufficient to satisfy a Decree. In the current scenario, this court had issued a Decree with the Decretal sum of Kshs. 1, 766, 456 accruing to the Applicant which is yet to be satisfied. I will proceed to highlight certain legal provisions governing garnishee proceedings as contained in **Order 23 Rule 1(1) of the Civil Procedure Rules**: -

“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.”

In this instance, the 1st Garnishee admitted having certain monies in its account on behalf of the judgement debtor. Since this is not disputed, I will issue a Garnishee Order Absolute restricted to Kshs. 205, 255/= as against the 1st Garnishee which should be paid to the Applicant's advocates' Bank Account: A/C Name COL LAW ADVOCATES LLP CLIENT AC, Bank: NCBA, A/C Number: 3690110024, Branch: Kenyatta Avenue. As for the 2nd Garnishee, I note there are no funds in the judgement debtor's account, in the circumstance I will proceed to discharge it from these proceedings including the Garnishee Order Nisii issued on 24th March, 2021.

As for the issue of costs, I hold that the same should be borne by the Applicant but will proceed to associate myself with the case **Board of Trustees, National Water Conservation & Pipeline Corporation (NWCPAC) Staff Superannuation Scheme V Mombasa Water Supply & Sanitation Co. Ltd (2017) eKLR** and direct that the same be pegged to the Advocates Remuneration (Amendment) Order 2014 particularly Schedule VI paragraph 14 (a) in view of the fact none of the Garnishees opposed the proceedings against them.

It is against the foregoing that I find the application dated the 12th March, 2021 merited and will allow it save for the issue of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 14TH DAY OF OCTOBER, 2021

CHRISTINE OCHIENG

JUDGE