



Rajabali v Alfa Oiltech, LLC; Geothermal Development Company Limited (Garnishee) (Civil Case 459 of 2016) [2023] KEHC 1699 (KLR) (Commercial and Tax) (10 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 459 OF 2016
A MABEYA, J
MARCH 10, 2023**

BETWEEN

ARIF RAJABALI PLAINTIFF

AND

ALFA OILTECH, LLC DEFENDANT

AND

GEOHERMAL DEVELOPMENT COMPANY LIMITED GARNISHEE

RULING

1. This is an application dated October 18, 2021. It was brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, and order 51 rule 1 of the *Civil Procedure Rules*. It sought that the garnishee be discharged from this suit.
2. The grounds for the application were set out on the face of the motion and on the supporting affidavit sworn by Beatrice Kosgei on October 18, 2021. It was contended that this court awarded the plaintiff special damages of USD 933,126.00, costs of the suit and interest following the dispute between the plaintiff and defendant.
3. That the garnishee proceedings were then instituted against the garnishee seeking to have it avail the money held and payable to the defendant in partial satisfaction of the decree.
4. That on March 28, 2019, the court directed the garnishee to advise the African Development Bank (ADB) to remit the sum of USD 544,273.73 being the balance contract sum due to the defendant. That vide a letter dated May 16, 2019, the garnishee advised the Ministry of Energy and Petroleum of the pending dispute and court order and submitted the final payment invoice for USD 544,273.73 for



- processing and payment. That the garnishee also wrote another letter dated July 21, 2017 through the Ministry of Energy seeking submission of the court order to the National Treasury and AFDB.
5. It was further deposed that the Principal Secretary, Ministry of Energy responded *vide* letter dated August 18, 2017 and advised the garnishee to process the documents indicating the beneficiary to be the plaintiff and obtain their bank details and original court order for payment. That the plaintiff's advocate communicated directly to ADB *vide* letter dated May 29, 2019 and advised it of its obligation to remit the funds to the plaintiff as per the court order.
 6. That AFDB's responded through its general counsel *vide* letter dated September 28, 2017 that it had no contractual relationship with the garnishee and was not holding any amounts on its behalf and thus could not comply with the courts order.
 7. That the garnishee held no funds on behalf of ADB, the Ministry of Energy and Petroleum, and the National Treasury. That having fulfilled its obligations under the court order and there was no other recourse as AFDB had declined to release the funds. That the garnishee ought to have been discharged from the proceedings.
 8. In response, the plaintiff filed the replying affidavit sworn by Arif Rajabali on February 24, 2022. It was contended that the garnishee had admitted *vide* its supplementary affidavit dated March 27, 2017 that USD 544,273.72 was due to the defendant in respect of a contract of supply of drilling materials for geothermal wells to the garnishee. That in that affidavit, the garnishee had stated that the funds were held by its donors being AFDB, and on March 28, 2017 the court ordered the garnishee to expressly advise AFDB to remit payment to the plaintiff instead of the defendant.
 9. That based on the documentation produced by the garnishee in the instant application, the garnishee commenced the process of facilitating payments to the plaintiff, but failed to provide the documentation and the plaintiff's account details as requested by the Principal Secretary, Ministry of Energy and Petroleum *vide* the letter dated August 18, 2017. That the garnishee never requested for the plaintiff's account details for processing of payment.
 10. That AFDB's contention that there was no contractual relationship with the garnishee was shocking as the garnishee had repeatedly confirmed to court that there were payments due to the defendant, and it was not denied that the garnishee received goods from the defendant and failed to pay. That the garnishee had not fulfilled its obligation as per the court order and was not deserving of the orders sought.
 11. The application was canvassed by way of submissions. The garnishee's were dated May 7, 2022 and the plaintiff's May 26, 2022.
 12. This court has considered the record and the submissions. The simple task for this court is to determine whether the garnishee ought to be discharged from these proceedings.
 13. This court has gone through the entire record. When this matter came up for mention on March 28, 2017, Counsel for the garnishee informed the court that the garnishee had filed an affidavit confirming that it had funds payable to the defendant but the funds were held by AFDB in trust for the garnishee. Ochieng J (as he then was) therefore ordered the garnishee to expressly advise AFDB to remit the payment to the decree-holder/plaintiff instead of the judgment debtor/defendant, and ordered that the funds to be released ought should not exceed the sums payable under the decree in this case.
 14. The garnishee's case is that *vide* letter dated May 16, 2019 it advised the Ministry of Energy and Petroleum of the pending dispute and court order and submitted the final payment invoice for USD 544,273.73 for processing and payment. That the garnishee also wrote another letter dated July 21,



2017 through the Ministry of Energy seeking submission of the court order to the National Treasury and AFDB.

15. However, the court order was clear that the garnishee was to expressly advise the AFDB to remit payments to the decree holder instead of the judgment debtor.
16. It is not clear why the garnishee failed to directly advise AFDB to release the funds to the plaintiff, despite admitting in paragraph 7 of the supporting affidavit and in its submissions that its role was limited to advising AFDB to make such payments as and when they needed to be made. Moreover, when the Principal Secretary Ministry of Energy responded to the garnishee *vide* letter dated August 18, 2017 and requested the garnishee to process the necessary documentation and obtain the plaintiff's bank details and original court order for payment, the garnishee failed to respond and act. Again, it is not clear why the garnishee initiated the payment process and failed to see it through.
17. The garnishee has repeatedly admitted that it had entered into a contract with the defendant for supply of drilling materials for geothermal wells and that a sum of USD 544,272.72 remained unpaid and owing to the defendant.
18. The defendant has not challenged the court order of March 28, 2017. The garnishee also admitted that the project was funded by AFDB through a loan protocol agreement between the National Treasury on behalf of the garnishee, and AFDB had agreed to pay for the supplies and held the funds for the outstanding amount. The same admissions were repeated in the garnishee's application.
19. The garnishee cannot claim that since the plaintiff's advocate communicated directly to ADB *vide* letter dated May 29, 2019, the garnishee had complied with the orders. It comes as no surprise that the bank declined the plaintiff's advocate request to release the money. The proper communication ought to have gone through the garnishee or the National Treasury, as those were the parties engaged in a contract with AFDB.
20. Should the garnishee be discharged from these proceedings, how else will the plaintiff receive the payments from the garnishee pursuant to this court's orders? The garnishee is right at the center of it. It owes money to the defendant and admits that the money is held by AFDB. The plaintiff is a third party to AFDB and cannot itself request release of the defendant's balances to itself directly. Only the garnishee can do so. Let the garnishee complete what it had started in line with the court order of March 28, 2017.
21. The submission that the garnishee ought to be discharged from the proceedings on grounds of compliance thus fails. Granting the orders sought at this stage would be premature and would adversely prejudice the plaintiff/decree holder.
22. Consequently, the application is found to be unmerited and the same is dismissed with costs to the plaintiff/decree holder.

It is so ordered.

DATED and DELIVERED this 10th day of March, 2023.

A. MABEYA, FCI Arb

JUDGE

