



JTG Enterprises Limited v China Gezhouba Group Company Limited & 3 others (Civil Case E649 of 2021) [2023] KEHC 22003 (KLR) (Commercial and Tax) (5 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E649 OF 2021
A MABEYA, J
SEPTEMBER 5, 2023**

BETWEEN

JTG ENTERPRISES LIMITED PLAINTIFF

AND

CHINA GEZHOUBA GROUP COMPANY LIMITED 1ST DEFENDANT

**PRINCIPAL SECRETARY, MINISTRY OF WATER, SANITATION AND
IRRIGATION 2ND DEFENDANT**

SMEC INTERNATIONAL PTY 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This is a ruling on the plaintiff’s application dated August 29, 2023 brought under Order 23 Rules 1,2,8 & 9 of the *Civil Procedure Rules*. It seeks that an order absolute be made for payment of Kshs 84,054,610/68 plus interest by the Garnishee to partially satisfy the decree of this court as set out in the decree dated August 22, 2023.
2. The same was supported by the affidavit of Joseph Thuo Gichuhi sworn on August 29, 2023. The grounds were that a judgment was entered against the defendant for Kshs 682,763,067/= on August 9, 2023. That a stay was ordered on the same save for Kshs 84,054,610.68/= with interest thereon. That the said sum has not been paid. That the defendant holds an account with the garnishee being A/C No 0100xxxxxx647 (US\$) and 0100xxxxxx658 (Kshs).
3. The Garnishee filed a replying affidavit sworn by Samuel Kahuha sworn on August 31, 2023. He admitted that the defendant holds the two accounts and the same was holding US\$ 366438/03 and



Kshs 1,190,930/02 respectively. That the said sum cannot satisfy the decree. He produced a bank statement to that effect.

4. The defendant opposed the application vide a replying affidavit of Tang Yazhou sworn on August 31, 2023. He contended that the monies sought by the decree holder are not yet due. That the monies are being held by the client and can only become payable after the works are completed on the project. That the defendant had appealed against that order vide NBI CA No E 418 of 2023. That the same will be heard inter parties on September 5, 2023. That the public interest outweighs the decree holder's private interest. That the application be held in abeyance until the Court of Appeal hears its said application.
5. The parties have filed their respective submissions which the court has noted. It should be noted that a garnishee proceeding is a proceeding between the decree holder and the garnishee. Once it is shown that there exists a decree that has been unsatisfied it is upon the garnishee to show whether or not there is aide but due to the judgment debtor. Once that is established the matter is cause accompli.
6. However, a judgment debtor is allowed to tell the court if the decree has been settled or not. In the present case, what the judgment debtor raised is that it has appealed against the Order of the court that the admitted sum be paid. That may be the case but there is no stay on that order. In the circumstances, whether the monies are payable or not is an issue for the Court of Appeal. This Court is *fuctus officio*.
7. The decree holder insisted that the garnishee wrongfully paid US\$ 180,000 on August 31, 2023 after the order of decree nisi. It is not clear whether the same was paid before or after the order was paid. In this regard, I will disregard the decree holder's insistence that the said amount be charged upon the garnishee.
8. Accordingly, I allow the application let the garnishee pay the decree holder forthwith the sums held in its accounts for the judgment debtor, to wit, 0100xxxxxx658 and 0100xxxxxx647, in the sum of US\$ 366,438/03 and Kshs 1,190,930/02.

It is so ordered.

DATED and **DELIVERED** at Nairobi this 5th day of **September**, 2023.

A. MABEYA, FCI Arb

JUDGE

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