Lantech Africa Limited v Geothermal Development Company; Central Bank of Kenya Limited & 3 others (Garnishee) (Miscellaneous Application E776 of 2020) [2023] KEHC 22286 (KLR) (Commercial and Tax) (20 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22286 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

MISCELLANEOUS APPLICATION E776 OF 2020

A MABEYA, J

SEPTEMBER 20, 2023

BETWEEN

LANTECH AFRICA LIMITED ..... APPLICANT

AND

GEOTHERMAL DEVELOPMENT COMPANY ..... RESPONDENT

AND

CENTRAL BANK OF KENYA LIMITED ..... GARNISHEE

COOPERATIVE BANK OF KENYA LIMITED ..... GARNISHEE

KCB BANK KENYA LIMITED ..... GARNISHEE

KENYA ELECTRICITY GENERATING COMPANY PLC ..... GARNISHEE

RULING

1. Before Court are two applications, a Motion dated 27/2/2023 which seeks to have the garnishees pay out the debt owed to the decree holder and the application dated 31/5/2023 which seeks a review of the ruling dated 26/5/2023.

Application Dated 31/5/2023

2. The application is brought under sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, Cap 21 of the laws of Kenya, Order 46 rules 1,2,3(2) and (5), Order 51 rule 1 of the *Civil Procedure Rules*. It seeks the review and setting aside the ruling of this court delivered on 26/5/2023 which allowed the notice of preliminary objection dated 28/3/2023.

3. In support of the application, the applicant relied on the grounds on the face of the application, the supporting affidavit sworn by the chief executive officer Aquinas Wasike on 31/5/2023 and its written submissions.

4. The applicant's case is that the impugned ruling allowed the second preliminary objection which was against the garnishment of the Account no xxxx held by the 2nd garnishee. That in allowing the preliminary objection, the Court erred in only considering the 4th garnishees case and not fully considering the 2nd garnishee which had already submitted the account for garnishment for the benefit of the applicant. That vide a replying affidavit dated 8/3/2023 by Rose Musula, the 2nd garnishee admitted that account number xxxx held US$104,731.43 and that the 2nd garnishee had not opposed the application.

5. That the 2nd garnishee had confirmed that the said account belonged to the judgment debtor and had no encumbrances at all. It was further contended that the Court had erred in relying on an undated Notice of assignment which did not reveal who the author or the sender was and as a result, the proceeds that had already been availed to the applicant were taken away. That in the premises, there were sufficient grounds for granting the review of the orders made on 26/5/2023.

6. The 2nd garnishee filed a replying affidavit by Rose Musula sworn on 9/6/2023. She admitted that the 2nd garnishee had not opposed the garnishee application in her replying affidavit of 8/3/2023. However, that the preliminary objections were determined upon consideration of all the responses.

7. The 2nd garnishee's case was that there was no mistake or error on the face of the record to give a basis for setting aside the subject ruling. That the bank had filed a supplementary affidavit stating that the respondent was indebted to the bank since, it had on 27/3/2028 extended a loan facility of Kshs. 3b to the respondent and an assignment was executed on 21/11/2018 by which the respondent assigned all its rights to the 2nd garnishee. That on this basis, the funds held in the account should be used to repay the bank arrears as opposed to offsetting the decretal sums.

8. In its response to the application, the 4th garnishee filed a replying affidavit by the acting legal manager George Ominde sworn on 9/6/2023. It was contended that, the 4th garnishee had been served with the assignment between the 2nd garnishee and the judgment debtor and had acknowledged the same stating that it would pay all the contract proceeds due to the account number xxxx situate at the 2nd garnishees bank.

9. That the 4th garnishee entered into a binding and acknowledgement and acceptance of the assignment and based on this, the application failed to meet the threshold for review. It was further averred that the notice of assignment and the acknowledgment and acceptance by the 4th Garnishee was prima facie evidence that the assignment agreement existed.

10. The respondent filed grounds of opposition dated 19/6/2023 stating that the application was incompetent since it did not meet the grounds for review in accordance to section 80 of the *Civil Procedure Act* and order 45 of the Civil Procedure rules 2010. It was stated that the impugned ruling lifted the Garnishee Order Nisi on the account number xxxx based on the existing assignment. According to the respondent, the funds held in that account are charged to a third party and therefore not subject to garnishee proceedings.

11. The application was canvassed by way of written submissions which I have considered.

12. The applicant in its submissions dated 24/6/2023 buttressed the facts stated in the application stating that the 2nd garnishee had sworn that it did not oppose the garnishee application. It was submitted that

the Court had the powers to review or set aside the ruling dated 26/5/2023 as there was an error on the Court failing to put into consideration the 2nd garnishee's averments.

13. The 4th garnishee submitted that the applicant had not met the threshold for review as set out in section 80 of the *Civil Procedure Act* as the applicant had not proved the existence of the error. It was submitted that it was not enough to cite that a ruling was erroneous or that the Court did not put into account the request for documents.

14. The 2nd garnishee filed its submissions dated 23/6/2023. Counsel submitted that the bank issued a demand notice after the respondent defaulted in paying the loan on 15/5/2023. That the loan advanced to the respondent was secured by an assignment and the Court ought to consider it in coming up with its decision. It was further submitted that initially, the bank did not have a problem with the funds being utilized to pay the decretal amount. However, the circumstances changed that warranted the bank to exercise its right to lien or set off.

15. I have carefully considered the rival arguments made by the opposing parties, the authorities submitted and the arguments and pleadings made before the court. The issue for consideration is whether the applicant has met the threshold for review of the court's ruling delivered on 26/5/2023.

16. A brief background to the case is that the applicant filed a garnishee application dated 27/2/2023. The respondent raised a preliminary objection on 29/3/2023 to the effect that the judgment debtor had an assignment agreement dated 21/11/2018 where it assigned its assets to the 2nd garnishee. The effect of this was that the funds in the judgment debtor's subject account could not be subject of a garnishee order. In the ruling delivered on 26/5/2023, the Court allowed the preliminary objection which the present application seeks to review.

17. The *Civil Procedure Act* under section 80 and the Order 45 *Civil Procedure Rules 2010* give the legal framework for review of court decisions. There will be review from the discovery of new and important matter or evidence which was not within a party's knowledge or could not be produced at the time when the decree was passed, or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. The application must be made without unreasonable delay.

18. This application is premised on the ground that the Court made an error on the face of the record by failing to consider the 2nd garnishees' replying affidavit dated 8/3/2023 while making its determination. In its ruling the Court relied on the assignment produced by the 4th garnishee and held that it was prima facie evidence of the existence of the assignment.

19. In considering what constitutes an error apparent on the face of record, the court of appeal in the case of *Muyodi vs. Industrial and Commercial Development Corporation & Another* (2006) 1 EA 243, stated as follows: -

> " In Nyamogo & Nyamogo vs Kogo (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted

by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal."

20. I have considered the record, from the replying affidavit dated 8/3/2023 sworn by Rose Mbula, the 2nd Garnishee admitted that the application was not opposed and that it was ready to comply with the orders of the Court.

21. It is trite that a preliminary objection being a point of law is argued under the assumption that all the facts presented were true and where there is a dispute in matters fact the same should be canvassed in the main trial. I note that in this case, there may have been an issue of whether or not the assignment was in existence.

22. In my view, the fact that the Court did not mention the affidavit by Rose Mbula, that per se does not mean that the contents thereof were not considered. The Court may have deemed them to be immaterial for the determination of the matter before the Court. This, in my view cannot be said to be an error on the face of the record. It may be an error of law which can only be corrected by the Court of Appeal by way of appeal.

23. In the premises, I find that the applicant has not satisfied the Court that there was an error apparent on the face of the record. Consequently, the application for review is without merit and is dismissed with costs.

Application dated 27/2/2023

24. The application was brought under sections 1A,1B, 3A and 38(C) of the *Civil Procedure Act* Chapter 21 Laws of Kenya, order 23 rules 1,2,3,9 and 10 Order 51 rile 1 of the *Civil Procedure rules 2010* section 34 and 45 of the *Central Bank of Kenya Act*.

25. It seeks to have the debts owing from the garnishees attached to answer to the decree of the Court given on 16/12/2020 for the sum of USD 379,317.90 together with interest and a further sum of 18,206,548.72 together with interest giving a total sum of USD 26,687,017.47 held in specified accounts, to wit,

    a. Central bank of Kenya Limited Haile Selassie Avenue, Accounts Number xxxx, xxxxx

    b. Co-operative bank of Kenya upper hill Nairobi current accounts numbers xxxx, xxxx, xxxx, xxxx, xxxx and xxxxx;

    c. Co-operative Bank of Kenya Limited, Upper Hill, Nairobi Call Deposit Account Number: xxxx

    d. Kenya Commercial Bank Limited, Kipande House, Nairobi Current Account No. xxxx and xxxx;

    e. Kenya Electricity Generating Company PLC (KenGen), Stima Plaza, Kolobot Road, Parklands, Steam Sale Receivables for the benefit of the award debtor.

26. The application was supported by the grounds on the face of it and supporting affidavit sworn by Aquinas Wasike dated 27/2/2023. The applicant avers that on 16/12/2020, the Court adopted and recognized the Award of the sole arbitrator as a judgment of the Court. That the respondent failed to make good of the debts owing and efforts to establish known assets of the respondent have become futile.

27. That it has established that the respondent has monies held in the garnishees which monies amount to a debt owed to it by the award debtor. The applicant therefore sought to have the debts from the garnishees attached in order to have him enjoy the fruits of his judgment.

28. The 2nd Garnishee filed a replying affidavit by Rose Musila sworn on 8/3/2023. She admitted that the judgment debtor held 7 accounts at the bank. That however, the funds held in the attached bank accounts were insufficient to satisfy the whole decretal sum claimed by the applicant and was willing to comply with the orders of the Court with respect to the said issue. The available sums in three accounts was US$ 104,731/43, shs.96,585/73 and Kshs.14,044,610/05, respectively.

29. In a turn of events, the same deponent remembered that the 2nd Garnishee had extended a loan of Kshs.3b in 2018 whereby the judgment-debtor's receivables from the 4th Garnishee were assigned to the 2nd Garnishee. She therefore swore a supplementary affidavit on 2/6/2023 to that effect. This however is water under the bridge as the Court exonerated Ac No. xxxx from the decree nisi.

30. The 1st Garnishee filed two affidavits sworn by Kennedy Kaunda Abuga on 4/5/2023 and 21/6/2023, respectively. He stated that Ac. Nos. xxxx and xxxx that had been garnished were not held by the 1st Garnishee in favour of the award debtor. That the payments exhibited by the applicant as having been made by the 1st Garnishee was actually made by the 2nd Garnishee through the 1st Garnishee's system.

31. The 4th Garnishee filed an affidavit in opposition to the application sworn by George Ominde on 27/3/2023. It was contended that in view of an assignment agreement dated 21/11/2018 the 2nd garnishee was assigned all rights, titles and benefits of the respondent. That as a result the 4th Garnishee entered into a binding acknowledgment where it agreed to pay any receivables to the 2nd Garnishee. It was contended that the 4th Garnishee opposed the application for reason that there was already an assignment and acknowledgement that binds it to remit all the proceeds of the steam charge.

32. The applicant filed a supplementary affidavit sworn by Acquinas Wasike on 4/5/2023. He stated that the applicant was a stranger to the documents referred to by the 4th Garnishee that is the assignment agreement and the acknowledgment contract. With respect to the 1st Garnishee, it was contended that they had not been truthful as to who was the owner of the said two accounts.

33. It was averred that the 4th Garnishee held funds for and on behalf of the respondent arising from steam sales and this was evident in the 4th Garnishees annual report for the year 2022. The applicant stated that the 4th Garnishee had not paid steam sales to the applicant's accounts.

34. The applicant filed a notice of preliminary objection on 10/6/2023 on the grounds that the affidavits dated 2/6/2023 and 9/9/2023 sworn by Rose Mulusa on behalf of the 2nd Garnishee were bad in law and ought to be expunged as they had been commissioned by Geoffrey Imende.

35. The respondent filed a replying affidavit by Agnes Muthengi sworn on 14th June, 2023. She stated that the respondent had a loan taken in March, 2018 repayable in 32 quarterly instalments. That the security for the loan was the Assignment by the respondent of all its steam sale proceeds due from the 4th Garnishee to the 2nd Garnishee. That the Assignment Agreement was a continuing security for the said loan. That the 2nd Garnishee had since issued a demand on the loan arrears amounting to US$ 1,295,821/91. That in the premises, the respondent's disclosed account with the 2nd Garnishee cannot be garnished.

36. The applicant responded to the responses and averred that ever since 27/6/2022, the 4th Garnishee had not paid the 2nd Garnishee into the subject account the steam sales. That the averments by the 1st, 2nd and 4th Garnishees was in collusion with each other and were meant to steal a match against the applicant.

37. The application was canvassed by way of written submissions which I have considered. There are two issues for determination the first one is to establish whether the preliminary objection is merited. The second issue is whether the applicant has made out a case for grant of the orders sought for attachment of the accounts held by the garnishees to satisfy the decree.

Preliminary objection

38. In *Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd* [1969] EA 696, it was held that a preliminary objection consists of a point of law which is pleaded or arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. It raises a pure point of law which is argues on the assumption that all the facts pleaded by the other side are correct.

39. The applicant's preliminary objection challenged the affidavits sworn by Rose Musula on the ground that they were commissioned contrary to section 4 of the Oaths and Statutory Declaration Act. The section provides: -

> " A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court:
>
> Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the advocate for any of the parties to the proceeding or concerned in the matter, or clerk to any such advocate, or in which he is interested."

40. In *James Francis Kariuki & Another vs. United Insurance Co. Ltd* Civil Appeal No. 1450 of 2000, the court held that: -

> " ... the verifying affidavit sworn by the plaintiffs is incurably defective as the Commissioner for Oaths while exercising the powers given, offended the mandatory proviso of Section 4(1) of the *Oaths and Statutory Declarations Act*."

41. This was reiterated in *Kenya Federation of Labour & Another vs. Attorney General & 2 others* Cause No. 735 of 2012 wherein it was held: -

> " ...it would be against the provisions of the *Oaths and Statutory Declarations Act*. A Lawyer cannot commission a document drawn by his/her firm. Indeed, the further affidavit by the claimants was defective in form as the jurat was not in conformity with the Oaths and Statutory Declaration Act".

42. In view of the foregoing, by dint of section 4 of the *Oaths and Statutory Declarations Act*, an advocate is barred from commissioning documents prepared by his own law firm. An advocate and/or a partner in a law firm that is acting for any of the parties and in a particular matter, cannot administer an oath to any litigant and/or witness in the subject matter, in which the same is retained and/or engaged as such advocates.

43. The 2nd garnishee submitted that the advocate who commissioned did not practice within the law firm representing the deponent of the affidavit. On its part the applicant submitted that the commissioner

of the affidavits Geoffrey Imende worked for the law firm representing the judgment debtor and had represented him in the arbitration proceedings.

44. From the facts and evidence presented in Court, it is not in dispute that the three affidavits from the 2nd garnishee were commissioned by Mr. Geoffrey Imende. The Court notes that the issue of Mr. Imende working for the law firm representing the respondent was made on oath. The same was neither denied nor challenged by either the respondent or the 2nd Garnishee.

45. It is trite that where an allegation is made on oath, the same can only be denied on oath and not by way of submission. The burden of proof shifted to the two to either deny or dispute the same. They failed to do so and the same remained an undisputed fact.

46. In this regard, the affidavits of Rose Mulusa are bad in law. They contravene the law and cannot be allowed to stand. They are in breach of the law and the preliminary objection is hereby upheld and the affidavits are hereby struck out.

Garnishee Proceeings

47. Garnishee proceedings are taken out under the provisions of Order 23, Rule 1 of the *Civil Procedure Rules*, which provides: -

> " 1(1) 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".

48. In *Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd; Diamond Trust Bank (Garnishee)* [2020] eKLR the court cited the case of *Choice Investments Ltd vs. Jeromnimon (Midland Bank Ltd, Garnishee)* (1981) 1 All ER 225 at page 227 where it was stated:

> " The word 'garnishee' is derived from the Norman-French. It denotes one who is required to 'garnish', that is, to furnish, a creditor with the money to pay off a debt. A simple instance will suffice. A creditor is owed £100 by a debtor. The debtor does not pay. The creditor gets judgment against him for the £100. Still the debtor does not pay. The creditor then discovers that the debtor is a customer of a bank and has £150 at his bank. The creditor can get a 'garnishee' order against the bank by which the bank is required to pay into court or direct to the creditor, out of its customer's £150, the £100 which he owes to the creditor.
>
> There are two steps in the process. The first is a garnishee *order nisi*. Nisi is Norman-French. It means 'unless'. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors: see Pritchard v Westminster Bank Ltd [1969] 1 All ER 999, [1969] 1 WLR

547 and Rainbow v Moorgate Properties Ltd [1975] 2 All ER 821, [1975] 1 WLR 788. If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if he himself directed the bank to pay it. If it is a deposit on seven days' notice, the order nisi operates as the notice."

49. In view of the above, where the existence of an unsatisfied decree is undisputed and a decree-holder establishes that the judgment-debtor is owed by a 3rd party, unless such debt is disputed, the Court is entitled to garnish such debt to the satisfaction of the unsatisfied decree.

50. In the present case, the existence of an unsatisfied decree is not disputed. What is in dispute is whether the garnishees hold monies belonging to the judgment-debtor which is capable of being attached.

51. With respect to the first garnishee, from the replying affidavit of Kennedy Kaunda, it is doubtful if the accounts cited by the applicant indeed belong to the judgment-debtor. Mr. Kaunda explained, and it was not challenged, how the applicant confused the payments that seemed to emanate from the 1st Garnishee. The payments emanated from the 2nd Garnishee's accounts through a system run by the 1st Garnishee.

52. Accordingly, there was no satisfactory evidence to show that the disclosed accounts belong to the judgment-debtor. The same cannot therefore be attached.

53. With respect to the 2nd Garnishee, it had admitted that it had no objection to paying monies that it held in the accounts held by the judgment-debtor. It later made a U-turn and alleged that monies due to the judgment-debtor had been assigned to it. The affidavits of Rose Musula having been struck out, the 2nd Garnishee cannot be said to have satisfactorily explained not being indebted to the judgment-debtor. Save for any funds in the Ac. No. xxxx, all other funds held by the 2nd Garnishee in all the other accounts belonging to the judgment-debtor should be paid over to the decree-holder.

54. As regards the 4th garnishee, it relied on the Assignment Agreement between the 2nd Garnishee and the judgment-debtor and the Acknowledgement and Acceptance that it gave to attempt and avoid liability. It admitted that it owes the judgment-debtor funds in respect of payments for Steam Charge for the connected judgment-debtor's 59 wells. That it pays the said sums to the receivable Ac. No. xxxx held by the judgment-debtor at the 2nd Garnishee.

55. That because of the Assignment Agreement and the Acknowledgement and Acceptance, the 4th Garnishee was bound to pay the said receivables to the said account lest it be in breach of its obligations in the Acknowledgement and Acceptance.

56. With greatest respect, there can be no breach where a party is acting in compliance with a court order. The monies that can be said to be ringfenced by the Assignment Agreement are those that hit the receivable account held by the 2nd Garnishee. This is so because, it is from that account then that the loan to the 2nd Garnishee is payable. However, the monies in the hands of the 4th Garnishee from the Steam Charge same remain a debt owed to the judgment-debtor which is attachable by way of garnishment until it is paid over to the receivable account.

57. It should be noted that in *Barclays Bank of Kenya Ld vs. Kepha Nyabera & 191 others* [2013] eKLR, what the Court of Appeal held was in respect of monies held in a specific account which has been charged. The Assignment Agreement cannot be said to be a complete legal charge of the monies in the hands of the 4th Garnishee. If that was the case, the same would have been payable to the 2nd Garnishee

directly without necessarily passing through the subject receivable account. So long as the monies remained in the hands and/or accounts of the 4th Garnishee, the same is garnish able.

58. Accordingly, the Court finds that there was admission on the part of the 4th Garnishee that it holds monies for and on behalf of the judgment-debtor. It did not deny that it had never paid over to the receivable account at the 2nd Garnishee since June, 2022. The 4th Garnishee failed to disclose how much it owes the judgment-debtor. In terms of section 112, the extent of the 4th Garnishee's indebtedness was in the special knowledge of the 4th Garnishee. It refused to disclose and the Court is entitled to presume that if the same was disclosed, it would have been prejudicial to the 4th Garnishee.

59. It is trite that where a Garnishee is given an opportunity to show cause why it should not be made liable to settle a decree against a judgment-debtor, it is imperative that such Garnishee appears and explains the extent of its indebtedness, if any, to the judgment-debtor. Where it either fails to appear, or appears and admits owing the judgment-debtor without disclosing the extent of such indebtedness, the decree Nisi is to be made absolute against such a Garnishee to settle the entire decretal amount. That is where the 4th Garnishee finds itself. It admitted owing the judgment-debtor but failed to disclose to Court the extent of such indebtedness. It sought to hide behind an Acknowledgment and Acceptance that has no force of a legal Charge.

60. This is a very unsatisfactory state of affairs. The decree-holder was contracted by the judgment-debtor to execute some construction or extraction works. It spent its finances in respect thereof for the benefit of the judgment-debtor. As a result, thereof, the judgment-debtor has or continues to benefit from the decree-holder's services.

61. A lawful Arbitral Award in favour of the decree-holder was adopted as a judgment of this Court. Instead of making effort to pay the sum decreed and thereby reduce losses arising out of interest, the judgment-debtor resorted to taking the decree-holder in circles in a game of musical chairs. The 2nd and 4th Garnishees have also joined in the dance, to the detriment of the decree-holder and the legal process. That won't do! Courts do not issue orders or decrees in vain. It is a constitutional imperative that they must be enforced and effectively so. Garnishee proceedings were designed to help the courts assist a decree-holder traverse to all corners of the jurisdiction to trace that which is payable to a judgment-debtor, wherever it may be in order to satisfy an outstanding decree.

62. In the premises, the Court dismisses the application dated 31/5/2023 with costs and allows the application dated 27/2/2023 with costs. Consequently, the Decree nisi is hereby made absolute as follows: -

    a. The 2nd Garnishee do forthwith pay over to the decree-holder, all sums of money that stand in credit in all the accounts held by it on behalf of the judgment-debtor save for Ac. No. xxxx.

    b. The 4th Garnishee having admitted indebtedness to the judgment-debtor but failed to disclose the extent of such indebtedness in respect of the Steam Sale Receivables, it is to pay over to the decree-holder the decretal sum of US$ 26,687,017/47, less any sums received by the decree-holder from the 2nd Garnishee.

    c. In order to effect order b) above, an order hereby issues directed at all banks within Kenya maintaining any account(s) for and on behalf of the Kenya Electricity Generating Company PLC (KenGen), to pay over to the decree-holder all such sums of money as shall be available in those accounts to satisfy the decree herein in the sum of US$26,687,017/47 less sums paid over by the 2nd Garnishee.

    d. The costs of the 1st Garnishee to be paid by the Judgment-debtor assessed at Kshs. 150,000/=.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2023.

A. MABEYA, FCIArb

JUDGE