



**Pondor & another v Ranguma & 4 others (Civil Suit 511 of 2008)
[2023] KEHC 24605 (KLR) (Commercial and Tax) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 511 OF 2008
MN MWANGI, J
SEPTEMBER 22, 2023**

BETWEEN

MOHAMMAD HASSIM PONDOR 1ST PLAINTIFF

MERCANTILE INSURANCE COMPANY LIMITED 2ND PLAINTIFF

AND

TANYINYA RANGUMA 1ST DEFENDANT

OLIVIA RANGUMA 2ND DEFENDANT

JACK RANGUMA 3RD DEFENDANT

DR. ONDIEK OKELLO 4TH DEFENDANT

SUMMIT TRAVEL SERVICES LIMITED 5TH DEFENDANT

RULING

1. The decree-holder filed an Ex-Parte Chamber Summons application dated 5th July, 2023, brought under the provisions of Article 40 of *the Constitution* of Kenya, 2010, Sections 3A and 38 of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 22 Rule 28 and Order 23 Rules 1 & 2 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law seeking the following orders-
 - i. Spent;
 - ii. Spent;
 - iii. Spent;
 - iv. The funds in the judgment-debtor's Bank Account Number 0361002814 and any other accounts held in his name with Absa Bank Kenya PLC, Premier



Flagship Centre branch, be hereby utilized to pay the outstanding decretal sums of KES.10,414,149.14 and USD 48,881.10 as of October 2021;

- v. In alternative to prayers 2, 3 and 4 above, the Garnishee be hereby directed to transfer the sums of KES.10,414,149.14 and USD 48,881.10 as of October 2021, to the decree-holder's Advocates, ADRA Advocates LLP, within 7 days of the orders hereof; and
 - vi. The costs of this application be hereby borne by the judgment-debtor and recovered and retained out of the money held in the judgment-debtor's Bank Account Number 0361002814 and any other accounts held in his name with Absa Bank Kenya PLC, Premier Flagship Centre branch.
2. The application is brought on the grounds on the face of the Motion and is supported by affidavits sworn on 5th July, 2023 and 19th July, 2023, by Sarah Weru, the Company Secretary of the decree-holder herein. In opposition thereto, Jackton Ranguma, the judgment-debtor filed a replying affidavit sworn on 12th July, 2023. The garnishee filed a replying affidavit sworn on 12th July, 2023 by Michael Massawa, a Legal Counsel at Absa Bank Kenya PLC.
 3. The application was canvassed by way of written submissions. The decree-holder's submissions were filed by the law firm of ADRA Advocates LLP on 20th July, 2023 while the judgment-debtor's submissions were filed on 26th July, 2023, by the law firm of Wasuna & Company Advocates.
 4. Ms. Omamo, learned Counsel for the decree-holder cited Rule 38 of the Practice Directions on Standardization of Practice and Procedures in the High Court, 2021 (Review of Court Interest Rates) and the case of Highway Furniture Mart Limited v Permanent Secretary Office of the President & another [2006] eKLR and submitted that the outstanding decretal amount stood at Kshs.10,414,149.14 and USD 48,881.10 respectively, as at September, 2021, whereas the accrued interest from 12th March, 2012 stands at Kshs.16,505,142.45 and USD 77,470.52.
 5. Counsel referred to the case of Arun C. Sharma v Ashana Raikundalia & Co. Advocates & 2 others [2014] eKLR and further submitted that a judgment is like a debt and a Court order must be complied with and since the judgment herein has never been set aside, the judgment-debtor must fully settle the outstanding sum. Ms. Omamo cited the case of the Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR and stated that it is a matter of public policy for a party who walks through the door of justice with a Court order in his hands to be assured that the order he holds will be obeyed by those to whom it is directed.
 6. She stated that litigation must come to an end and the decree-holder should be allowed to reap the full fruits of its judgment and decree against the judgment-debtor, which was obtained more than 10 years ago. It was submitted by Counsel that the judgment-debtor maintains various bank accounts with Absa Bank including bank account No. 0361002814 hence the monies in the said accounts are available for attachment in satisfaction of the outstanding sum pursuant to the provisions of Order 23 Rule 1 of the Civil Procedure Rules, 2010. She further submitted that the garnishee has sworn an affidavit confirming the credit balances in the judgment-debtor's bank account and confirmed its willingness to comply with the orders given by the Court.
 7. Ms. Omamo relied on the case of Nyandoro & Company Advocates vs National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee) [2021] eKLR and stated that in as much as the amount in the said account may not be sufficient to cover the full outstanding sum, the funds therein should still be used to satisfy as much of the outstanding sum as possible. She stated that the decree-holder has satisfied the conditions provided for under Order 23 Rule 1 of the



Civil Procedure Rules by demonstrating the existence of an unsatisfied decree, the amount unsatisfied in the decree and the existence of another person indebted to the judgment-debtor, thus it is justified in being granted the orders sought herein. To this end, she relied on the case of *Nyagwa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd; NCBA Bank Kenya PLC & another (Garnishee)* [2021] eKLR.

8. It was stated by Counsel that the judgment-debtor has not tendered any evidence of payment of any alleged stamp duty and any other pressing and outstanding liabilities as claimed. As such, in the absence of any evidence of what the funds held in the bank account were to be utilized for, there is no basis for the judgment-debtor's allegations that he will suffer financial prejudice should the funds be attached. Ms Omamo contended that it was up to the judgment-debtor to demonstrate that he would face financial ruin and prejudice and that the burden fell upon him to prove how that would happen if the funds were attached. Counsel relied on the case of *Kenya Pipeline Company Ltd v Corporate Business Forms* [2019] eKLR.
9. Ms Omamo submitted that there is no dispute that the decree-holder is a creditor, and its interests should take priority over any other intended but unsupported/unproven use of the funds held in the judgment-debtor's bank accounts. She concluded that it is in the interest of justice for the prayers sought in the instant application to be allowed as prayed.
10. Mr. Odhiambo, learned Counsel for the judgment-debtor submitted that the principal decretal sum is Kshs.8,961,504.00, and that the judgment-debtor had paid Kshs.9,617,000/= by 14th February, 2022. He further stated that since then, the judgment-debtor had drawn cheques worth Kshs.1,100,000/= which had been received and acknowledged by the decree-holder. It was stated by Counsel that the judgment-debtor had attached copies of receipts for cheques drawn in the decree-holder's favour, showing that he remitted Kshs.200,000/= for the month of March 2023 which was received by the decree-holder. Mr. Odhiambo also stated that the judgment-debtor wrote a cheque for Kshs.600,000/= on 11th July, 2023 to cater for the months of April, May and June, 2023, but the same did not clear on account of the decree-holder's directions and unfair and unnecessary freezing of the judgment-debtor's account.
11. Counsel submitted that the decree-holder failed to disclose to the judgment-debtor that he had made substantial payments since the decree herein was issued and that what is pending is interest. Mr. Odhiambo cited the Court of Appeal decision in *Bahadurali Ebrahim Shamji v Al Noor Jamal & 2 others* [1998] eKLR and contended that in light of the fact that the decree-holder deliberately misled this Court on the status of the outstanding sum, it should not be allowed to benefit from it. He urged this Court to set aside Order 2 of this Court's directions issued on 10th July, 2023 and dismiss the present application with costs to the judgment debtor.
12. It was submitted by Mr. Odhiambo that the decree-holder has applied interest at the rate of 14% to the decretal sum for the period between 12th March, 2012 and 24th July, 2023 without taking into account any of the payments made to offset the debt between that period. He contended that the decree-holder has calculated interest at 14% when in its own warrants of attachment of 12th January, 2017, it acknowledged and calculated interest at 12%. Counsel submitted that interest can only accrue on the outstanding amount and if the exchange rate is established at Kshs.85 per USD for the dollar sum in the decree, if interest is calculated at the rate of 14%, and if all payments outlined in the breakdown are uncontested and offset, the balance payable to the decree-holder as at 14th November, 2022 was Kshs.1,800,000/=. Counsel argued that since the further payments of Kshs.200,000/= per month made pursuant to the payment plan from January 2023 to March 2023 are acknowledged, the outstanding balance is Kshs.1,200,000/=.



13. Mr. Odhiambo contended that the judgment-debtor has despite several challenges toiled endlessly to offset the debt arising from the decree in issue and the delay in making payments for the months of April, May and June 2023 was occasioned by the fact that the judgment-debtor was appointed the Chairperson of the Sacco Societies Regulatory Authority on 6th February, 2023, which involved an elaborate induction program, several demanding engagements with State and State Adjacent Cooperative Organizations and a relentless travel schedule which affected the management of his personal obligations but the same is being remedied. Counsel submitted that these proceedings are only meant to embarrass, frustrate and financially ruin the judgment-debtor as is evident from the contents of paragraph 16 of the decree-holder's affidavit.
14. Counsel for the judgment-debtor submitted that if Order 2 of the decree-holder's application granted by this Court on 10th July, 2023 is not forthwith vacated, the judgment-debtor will face irreparable financial ruin on account of the applicant's deliberate, malicious and disingenuous manipulation of what is apparent on the Court record.

Analysis And Determination.

15. I have considered the application filed herein, the grounds on the face of it and the affidavits filed in support thereof. I have also considered the replying affidavits filed by the judgment-debtor and the garnishee and the written submissions by Counsel for the parties. The issue that arises for determination is whether a garnishee order absolute should issue.
16. The decree-holder in its affidavit in support of the instant application deposed that the outstanding decretal amount stood at Kshs.10,414,149.14 and USD 48,881.10 as at September 2021. That due to the judgment-debtor's failure to fully comply with the said decree, it took out a notice to show cause against the judgment-debtor, which application was allowed in its favour.
17. The decree-holder averred that subsequently, vide letters dated 14th November, 2022 and 23rd November, 2022, the judgment-debtor committed to settle the outstanding sum but he has failed to settle the same as per the terms of his written commitment noting that the last payment made towards the decretal amount was in February 2023.
18. The judgment-debtor in its replying affidavit deposed that the instant application is founded on a fundamental and obvious misstatement of facts which should defeat the application herein ab initio. He averred that in this Court's ruling dated 14th February, 2022, it was stated that it was not denied that the sum of Kshs.9,617,000/= had been paid to settle the principal amount due.
19. He further averred that he has paid the entire principal amount of the decree being Kshs.4,779,329.70 and USD 48,881.10 and what has been outstanding is interest which he has paid a significant portion of, because as at 11th July, 2023 he had paid Kshs.1,700,000/= in interest. It was stated by the judgment-debtor that instalments are due at the end of and not at the start of each month, thus the last payment of the instalments agreed upon in the consent of 14th November, 2022 was March 2023, which payment was made vide cheque No. 201219 dated 23rd March, 2023 for Kshs.200,000/= drawn in favour of the decree-holder's Advocates on record.
20. He further stated that as it stands, he is wholly compliant with the consent of 14th November, 2022 since he drew a cheque for Kshs.600,000/= in favour of the decree-holder's Advocates on record as instalments for the months of April, May and June 2023.
21. The judgment-debtor contended that after paying Kshs.500,000/= in November 2022, the outstanding interest ought to have been Kshs.1,800,969.00. He contended that after making payments



- of the instalments for the months of January to June 2023, the outstanding balance payable ought to be Kshs.600,969.00. He stated that despite a few challenges, he has shown great commitment towards settling the decretal amount and a larger percentage of the interest accrued thereon.
22. The judgment-debtor deposed that the funds held by the garnishee in bank account No. 0361002814 were to be used to pay for urgent and crucial expenditure, including stamp duty for recently concluded transactions hence he faces the possibility of defaulting which will compromise his ability to settle his outstanding liabilities, including the applicant's unpaid interest payments.
 23. The garnishee in its replying affidavit deposed that the judgment-debtor holds an account No. 00361002814 in the Absa Bank Kenya PLC, Premier Flagship Centre branch and the said account had a credit balance of Kshs.7,896,639.20 as at 11th July, 2023. The garnishee averred that in light of the above, the garnishee does not hold sufficient funds to satisfy the entire decretal sum of Kshs.10,414,149.14 and USD 48,881.10 claimed by the decree-holder.
 24. The decree-holder in its further affidavit deposed that the decree required payment of the decretal amount of Kshs.4,779,329.70 and USD 48,881.10, together with interest at Court rates. That as at September 2021, the decretal amount stood at Kshs.10,414,149.14 and USD 48,881.10.
 25. It averred that the accrued interest on Kshs.10,414,149.14 and USD 48,881.10 calculated at 14% from 12th March, 2012 to 24th July, 2023 stands at Kshs.16,505,142.45 and USD 77,470.52. It deposed that if this Court applies interest on Kshs.4,779,329.70 and USD 48,881.10 at the rate of 14% from 12th March, 2012 to 24th July, 2023, it would amount to Kshs.7,574,648.34 and USD 77,470.52.
 26. It was stated by the decree-holder that based on the above, the judgment-debtor's claim that only Kshs.600,969.00 is outstanding is misleading and false noting that the decree-holder has expended significant costs and fees pursuing the full settlement of the decretal amount. The decree-holder further stated that vide letters dated 14th November, 2022 and 23rd November, 2022, the judgment debtor committed to settle the outstanding sum, but he has only made payments of Kshs.1,100,000/= pursuant to the alleged consent of 14th November, 2022, being Kshs.500,000/= in November, 2022 and Kshs.200,000/= per month in January, February and March 2023. The decree-holder pointed out that no consent was ever signed or adopted by this Court for the judgment-debtor to claim that the decree-holder is bound by the same.
 27. It was stated by the decree-holder that the Court record confirms that the judgment-debtor has been acquiring assets and even campaigning for the position of Governor in the recently concluded elections in flagrant disregard of his obligations to settle the outstanding sum despite having the financial capacity to do so in complete disregard to the orders of this Court. The decree-holder further stated that the judgment-debtor's conduct demonstrates that he is not committed to honouring and finally settling his legal obligation to the decree-holder.
 28. The decree-holder reiterated that it is a creditor and its interest should take priority over any other intended use of the funds held in the judgment-debtor's bank accounts.

Whether a garnishee order absolute should issue.

29. Garnishee proceedings, are proceedings whereby the judgment-debtor's property, or credit in possession or under control of, or owing by another, are applied to the payment of a debt to the decree-



holder by proper statutory process against the debtor and garnishee. The said proceedings are provided for under Order 23 Rule 1(1) of the Civil Procedure Rules, 2010, which states as hereunder-

“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”.

30. In defining what entails garnishee proceedings, the Court in *Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)* (supra) referred to the holding by the Nigerian Supreme Court in *C.B.N. v Auto Import Export* [2013] 2 NWLR (Pt. 1337) 80 p. 126 paras. E – F which offered an explanatory yet concise definition of garnishee proceedings as follows -

“Garnishee proceedings are special specie of process by which a judgment creditor may attach (or garnishee) debts due in satisfaction of the judgment debt. The debt owed by the third party to the judgment debtor, on being attached, shall ultimately be paid by him to the judgment creditor on the order of court. Thus, garnishee proceedings involve the attachment of debt due from a third party to the judgment debtor, and the use of the amount of that debt in liquidating the judgment debt. In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand, is referred to as the garnishor.”

31. More often than not, in garnishee proceedings, the garnishee has no objection to garnishee orders being made absolute as long as there is a discernible debt due and owing from the judgment-debtor and the garnishee holds or is in possession of sums of money belonging to the judgment-debtor, sufficient to satisfy the debt due. This Court is empowered under Order 23 Rule 4 of the Civil Procedure Rules, 2010 to order the garnishee to pay directly the sums it owes the judgment-debtor to the decree-holder or so much of it as may be sufficient to satisfy the amount of the judgment and the costs of the garnishee proceedings if the garnishee does not dispute the debt due to the judgment-debtor. Order 23 Rule 4 of the Civil Procedure Rules, 2010 states as follows-

“If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings; and the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.”

32. In this case, the garnishee does not dispute the fact that the judgment-debtor maintains an account with it. It however avers that it does not hold sufficient funds to satisfy the entire decretal sum of Kshs.10,414,149.14 and USD 48,881.10 claimed by the decree-holder as the said account had a credit balance of Kshs.7,896,639.20 as at 11th July, 2023. The judgment-debtor on the other hand



contends that in as much as he is indebted to the decree-holder, he is only indebted to the tune of Kshs.600,969.00 and not Kshs.10,414,149.14 and USD 48,881.10 as alleged by the decree-holder.

33. It is not disputed that the judgment-debtor has settled the principal sum due and what is due and owing to the decree-holder is the interest awarded by the Court. On perusal of the record, it is evident that the decree-holder caused a notice to show cause dated 23rd November, 2021, to issue for the judgment-debtor to show cause why execution should not issue. The said Notice to Show Cause indicated that the debt due and owing to the decree-holder from the judgment-debtor was Kshs.10,433,004.58 and USD 48,881.20. Thereafter, the Court delivered a ruling on the Notice to Show Cause on 14th February, 2022.
34. In the said ruling, it was held that it was not denied that the sum of Kshs.9,617,000/= had been paid to settle the principal amount due but the interest awarded by the Court still remained unpaid and it continued to increase. The Court further held that there had been no payment or attempt to pay the interest and the judgment-debtor had not shown cause why his movable assets should not be attached to satisfy the interest on the decretal amount. The Notice to Show Cause dated 23rd November, 2021 was allowed as prayed.
35. It is evident that no appeal and/or application for review has been lodged against the said ruling. It thus follows that the ruling dated 14th February, 2022 has not been varied and/or set aside. In light of the above, it is my finding that as at 14th February, 2022, the judgment-debtor was indebted to the decree-holder to the tune of Kshs.10,433,004.58 and USD 48,881.20. The judgment-debtor vide a letter of undertaking dated 14th November, 2022 proposed to the decree-holder a payment plan to offset the aforementioned debt. Out of the said plan, the judgment-debtor has paid and the decree-holder has received a total of Kshs.1,100,000/=, that is Kshs.500,000/= paid in the month of November 2022 and Kshs.200,000/= paid monthly for the months of January, February & March 2023.
36. The judgment-debtor attempted to pay the instalments for the months of April, May and June 2023 vide a cheque dated 11th July, 2023 for Kshs.600,000/=, but the said cheque was dishonored upon presentation to the bank due to the garnishee order nisi issued by this Court on 10th July, 2023. The judgment-debtor's averments that he was appointed Chairperson of the Sacco Societies Regulatory Authority on 6th February, 2023, which involved an elaborate induction program, several demanding engagements with State and State Adjacent Cooperative Organizations, which included a relentless travel schedule which affected the management of his personal obligations, is not sufficient explanation to justify the judgment-debtor's non-compliance with the terms of its undertaking dated 14th November, 2022. It is apparent that the judgment-debtor did not seek the decree-holder's indulgence and/or to ask for more time within which to comply.
37. Based on the foregoing factors, it is my finding that the debt due to the decree-holder from the judgment-debtor as at March 2023 when the decree-holder received the last instalment from the judgment-debtor, is Kshs.9,333,004.58 and USD 48,881.20. For this reason and the fact that the decree-holder is a successful litigant with the right to reap the fruits of its judgment, I agree with Counsel for the decree-holder that the funds held by the garnishee on behalf of the judgment-debtor should be used to offset part of the said debt. It is however noted that the said funds are not sufficient to settle the entire debt.
38. In the result, the application dated 5th July, 2023 is merited and it is allowed in the following terms-
 - i. The Garnishee Order Nisi made on 10th July, 2023 is hereby made absolute, specifically for the attachment of the sum of Kshs.7,896,639.20 being the credit amount held by the garnishee in the judgment debtor's Bank Account



No. 0361002814 at Absa Bank Kenya PLC, Premier Flagship Centre branch;
and

- ii. Costs of this application shall be borne by the judgment-debtor.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF SEPTEMBER, 2023.

NJOKI MWANGI

JUDGE

