



Vee Vee Enterprises Ltd v Kenya Railways Corporation & another; Kenya Commercial Bank & 2 others (Garnishee) (Miscellaneous Civil Application E601 of 2021) [2024] KEHC 11805 (KLR) (Civ) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11805 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E601 OF 2021
A MABEYA, J
OCTOBER 3, 2024

BETWEEN

VEE VEE ENTERPRISES LTD APPLICANT

AND

KENYA RAILWAYS CORPORATION 1ST RESPONDENT

MINISTRY OF TRANSPORT AND INFRASTRUCTURE 2ND RESPONDENT

AND

KENYA COMMERCIAL BANK GARNISHEE

EQUITY BANK KENYA LIMITED GARNISHEE

CENTRAL BANK OF KENYA GARNISHEE

RULING

1. On 26/9/2024, this Court struck out the judgment-debtor's application dated 7/8/2024. The application was challenging the garnishee order nisi made on 31/7/2024 and sought that it be discharged. The application was struck out because it had been made by an advocate who was not properly on record. That advocate was the firm of Ms Jamal Bake & Associates Advocates.
2. Further to the foregoing, the Court allowed the decree holder's Motion dated 29/7/2024 and made the garnishee order nisi absolute. The Court therefore ordered that certain sums of monies amounting to well over Kshs. 125M be paid over to the decree-holder.
3. On 26/9/2024, the judgment-debtor took out another Motion on Notice seeking a stay of execution of those orders pending appeal. The application was supported by the affidavit of Phillip T. Mainga sworn



- on the same date. It was contended that the monies sought to be paid out was operations revenue of the judgment-debtor. That the judgment-debtor was aggrieved by the order of 26/9/2024 and intends to appeal to the Court of Appeal against the same. That if the money is paid over, the judgment-debtor will suffer substantial loss.
4. Mr. Bake, Learned Counsel for the judgment-debtor submitted that the application was filed timeously having been filed the same day the order was made. That if the order was not stayed, the monies would be paid over thereby subject the judgment-debtor to suffer prejudice and substantial loss. That the judgment-debtor being a government entity, it need not give any security. The provisions of Order 42 Rules 6 and 8 were cited in support of those submissions.
 5. The Motion was opposed vide Grounds of Opposition dated 30/9/2024. It was contended that the application was bad in law, incompetent and incurably defective. That the firm of Jamal Bake & Associates could not purport again to file the application having been held not to be properly on record. That no substantial loss had been demonstrated and that no security had been offered. Further, that no leave had been sought from the Court of Appeal to lodge an appeal against the garnishee Order absolute under Order 23 of the Civil Procedure Rules.
 6. Dr. Mutubwa, Learned Counsel for the decree-holder submitted that no substantial loss will be suffered as the original judgment has not been challenged. That although brought timeously, the application had been lodged by a firm which was not properly on record. That there being no security offered and no leave obtained, the application for stay was a cropper. The cases of Gianfrance Manenthi & Anor v Africa Merchant Assurance Ltd [2019] eKLR and Peter Nyaga Muvake v Joseph Mutunga [2015] eKLR were cited in support of those submissions.
 7. I have considered the deposition by the judgment-debtor and the submissions on record. This is an application for stay pending appeal. Before considering the application on merit, I should first deal with the preliminary issue, the competence of the application.
 8. It was contended by Dr. Mutubwa that the firm of Jamal Bake & Associates having been found not to be properly on record, it could not subsequently purport to lodge the current application.
 9. In the ruling of 26/9/2024 which is sought to be appealed against, I held:-

“In the present case, there was no leave that was sought by the firm of Ms Jamal Bake & Associates Advocates to take over the representation. Even if the previous advocate was a State Counsel, there is no exception in Order 9. The judgment-debtor’s failure to seek the necessary Court’s approval, whether through an oral or written application, undermines the validity of the subsequent actions taken. Further, no consent was recorded to allow the new advocates to come on record. As such, the application lodged by that firm cannot stand and the Court must regard the same as incompetent.”
 10. That still remains the case. In the present application, the said advocates once again have not sought leave to come on record. It does not matter whether they are to appeal against this Court’s finding. The application remains incompetent and is struck out.
 11. Further, the Court cannot give a relief on an incompetent application on the basis that the Court’s holding is to be challenged in the Court of Appeal.
 12. If I am wrong on the foregoing, I should then consider the merits of the application. In applications for stay, the principles applicable are that the application must be made timeously, an applicant must show that if the stay sought is not granted he will suffer substantial loss and must offer security.



13. On the first step, I find that the application was filed timeously having been lodged on the same day the impugned order was made.
14. On substantial loss, it was submitted that the judgment-debtor was offering critical services not only within Kenya but also in East and Central Africa. That if the garnished monies were released, the operations of the judgment-debtor would be affected.
15. It is not in dispute that the judgment-debtor offers critical services within Kenya and without. It may be true that its operations may be hampered if its operations revenue is paid over. However, the Court must balance the interests of both the decree-holder, who has the right to enjoy the fruits of its judgment, and the judgment-debtor's right of appeal.
16. I have combed through the supporting affidavit. There is no averment whatsoever that if the garnished monies are paid over, the same would be out of reach of the judgment-debtor if the appeal succeeds. Such averment lacking, I do not see any substantial loss that may be suffered. See *Butt v Rent Restriction Tribunal* [1982] KLR 417.
17. On security, having held that the judgment-debtor is not a government nor a government department, I am not satisfied that Order 42 Rule 8 of the Civil Procedure Rules is applicable to it. The Judgment-debtor should have offered security.
18. In view of the foregoing, I find the application to be without merit and the same is dismissed with costs. The order of stay is discharged.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024.

A. MABEYA, FCI Arb

JUDGE

