



Gadano General Trading Company Ltd v Government of the Republic of South Sudan; Stanbic Bank Kenya Limited & another (Garnishee); Bank of South Sudan (Proposed Interested Party) (Commercial Arbitration Cause E070 of 2022) [2024] KEHC 14368 (KLR) (Commercial and Tax) (20 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E070 OF 2022**

**A MABEYA, J
NOVEMBER 20, 2024**

BETWEEN

GADANO GENERAL TRADING COMPANY LTD APPLICANT

AND

GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN RESPONDENT

AND

STANBIC BANK KENYA LIMITED GARNISHEE

CITIBANK NA GARNISHEE

AND

BANK OF SOUTH SUDAN PROPOSED INTERESTED PARTY

RULING

1. This ruling determines the decree holder's application dated 22/8/2023. The same 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 rule 1 of the Civil Procedure Rules 2010 and sections 34 and 45 of the Central Bank of Kenya.
2. The applicant sought to attach monies belonging to the judgment debtor held by the 1st and 2nd garnishee banks in order to satisfy the decree of the Court issued on 7/8/2023. That the 1st and 2nd garnishee be summoned to appear to show cause as to why they should not pay the decree holder the monies held in 9 accounts held at Stabic Bank Kenya Ltd.



3. In support of the application, the applicant relied on the grounds on the face of it and the supporting affidavit sworn by its managing director Yahya Mohamed Osman on 22/8/2023. He stated that the final award was rendered 9/6/2021 and the same was recognized and adopted as a judgment of the Court on 9/6/2021. That the judgment debtor has failed to pay the amount due and the applicant has been unable to establish any known assets of the judgment debtor save for the monies held in the garnishees bank accounts. He prayed for the monies held by the garnishees be attached to ensure that the decretal amount is satisfied.
4. The 1st garnishee filed a response to the application vide a replying affidavit sworn by Ferina Okemwa on 19/9/2023. He stated that the 1st garnishee held the following accounts belonging to the judgment debtor: -
 - a. Ac No. 0100000296637 for Euro 61,922
 - b. Ac No. 0100000296612 for USD 69,509.48
 - c. Ac No. 0100000451589 for Kshs 5,605.05
 - d. Ac No. 0100000685528 for Euro 40.51
 - e. Ac No. 0100000676793 for USD48.17, and
 - f. Ac No. 0100000682149 for GBP 35.14.
5. The 1st garnishee confirmed that it only held the aforementioned accounts and 4 of the accounts listed by the decree-holder were not held by it.
6. The 2nd garnishee filed a replying and further affidavit dated 30/8/2023 and 20/3/2024, respectively sworn by Nellie Mwirigi. She stated that the judgment debtor closed all its accounts on or about 23/12/2016 and had not banked with the 2nd garnishee since then. That the 2nd garnishee did not hold any funds to the credit of the judgment debtor.
7. The interested party made a response to the application in a replying affidavit dated 10/3/2024 sworn by Deng Aru Bol. He asserted that the interested party was not involved in the arbitration between the decree holder and the judgment debtor. That Central Bank of South Sudan, operates like any other commercial bank. That the interested party does not maintain bank accounts on behalf of the government; instead, it holds accounts for commercial banks in South Sudan.
8. It was further stated that the accounts referenced in paragraph 6 of the decree holder's application actually belong to the interested party, not the judgment debtor. That therefore, the Court lacks the jurisdiction to seize funds that belong to the interested party, which would face prejudice if those sums were attached.
6. I have considered the parties contestations and the main issue for determination is whether the order nisi should be made absolute. Order 23 Rule 1 CPR provides that: -
 - “ 1) A court may, upon the ex parte application of the 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 salary or allowances 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 costs of the garnishee proceedings; and by the same or subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay the decree-holder the debt due from him to the judgement-debtor or so much thereof as may be sufficient to satisfy the decree together with costs aforesaid.”

6. In *Mengich t/a Mengich & Co. Advocates & Another vs Joseph Mabwai & 10 Others* [2018] eKLR, the court laid out the procedure in garnishee proceedings as follows: -

“Garnishee proceedings is done in two different stages. The first stage is for the garnishee order nisi, while the second stage is for the garnishee order absolute. At the first stage, the judgment creditor makes an application ex parte to the court that the judgment debt in the hands of the third party, the garnishee, be paid directly to the judgment creditor unless there is an explanation from the garnishee why the order nisi should not be made absolute. If the judgment creditor satisfies the court on the existence of the garnishee who is holding money due to the judgment debtor, such third party (garnishee) will be called upon to show cause why the judgment debtor’s money in its hands should not be paid over to the judgment creditor, and if the court is satisfied that the judgment creditor is entitled to attach the debt, the court will make a garnishee order nisi attaching the debt.

The essence of the order nisi is to direct the garnishee to appear in court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order nisi must be served on the garnishee and judgment debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the garnishee fails to attend court or show good cause why the order nisi attaching the debt should not be made absolute, the court may subject to certain limitations make the garnishee order absolute. The garnishee, where necessary also have an option of disputing liability to pay the debt.

The primary object of a garnishee order is to make the debt due by the judgment debtor available to the decree holder in execution without driving him to the suit.”

6. It is not in contest that the judgment debtor remains indebted to the decree holder for a sum of USD 1,396,610.17. Through garnishee proceedings, the Court has the jurisdiction to direct the garnishee to pay directly to the decree-holder the amounts owed, or an appropriate portion of those amounts, sufficient to cover the judgment amount and the costs related to the garnishee process. The court must assess how much of the debt from the garnishee is necessary to fulfill the judgment and any related expenses.
7. With respect to the 2nd garnishee, it has been established that the judgment debtor closed its accounts therein and the same has been well substantiated with evidence. It therefore means that there is no money capable of being attached. The 2nd garnishee is hereby discharged.
8. The 1st garnishee on the other hand admitted that the judgment debtor held accounts with it and the same contained monies therein. The same was substantiated through account statements in the name of the respondent. However, the interested party has opposed the application stating that the bank accounts belong to the Central Bank of South Sudan which is a different entity from the judgment debtor



9. From the evidence provided, save for the allegation that the monies held by the 1st garnishee belongs to the interested party, no evidence has been produced to show the distinction in the accounts. The account statements produced by the 1st garnishee clearly state that the monies therein belong to the judgment debtor. The interested party further contended that the Court lacks jurisdiction to seize monies belonging to the interest party.
10. In reviewing the case, it is clear that the decree arose from a determination of a dispute that arose from a contract entered into by the decree holder and the judgment debtor. These proceedings are post judgment. The Court finds that it has the requisite jurisdiction to preside over the same. The Acts of the Government of South Sudan were *acta jure gestionis*, i.e. acts of a commercial or proprietary nature and therefore, the applicant had every justification to seek to enforce its rights against the judgment debtor in this Court.
11. Based on the foregoing, I find that the decree holder has made a case for attachment of the monies held by the 1st garnishee in partial satisfaction of the decree. Accordingly, the application dated 22/8/2023 is hereby allowed. The decree nisi herein is made absolute as follows: -
 - a. The 1st 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.
 - b. The costs of the 1st and 2nd garnishee to be paid by the Judgment-debtor assessed at Kshs. 50,000/= each.
 - c. The 2nd garnishee is discharged from the proceedings.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF NOVEMBER, 2024.

A. MABEYA, FCI Arb

JUDGE

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