



**Vee Vee Enterprises Limited v Kenya Railways Corporation & another; Kenya Commercial Bank & 2 others (Garnishee) (Miscellaneous Civil Application E601 of 2021) [2024] KEHC 13634 (KLR) (Commercial and Tax) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13634 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E601 OF 2021**

**A MABEYA, J  
NOVEMBER 7, 2024**

**BETWEEN**

**VEE VEE ENTERPRISES LIMITED ..... APPLICANT**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF TRANSPORT AND INFRASTRUCTURE .... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA COMMERCIAL BANK ..... GARNISHEE**

**EQUITY BANK KENYA LIMITED ..... GARNISHEE**

**CENTRAL BANK OF KENYA ..... GARNISHEE**

**RULING**

1. On 26/9/24, this Court issued garnishee orders absolute against the funds of the judgment debtor to the tune of Kshs. 124M. In that ruling, the court was of the view and so held that, the Judgment-debtor is not a government agency and the provisions of Government Proceedings Act are not applicable.
2. Subsequently, three applications were filed by the parties as follows:-
  - a. Motion dated 22/10/2024 by the decree-holder garnisheeing several accounts of the judgment-debtor.
  - b. Motion dated 25/10/2024 by the 1<sup>st</sup> respondent seeking to lift the Garnishee Order Nisi of this Court made on 23/10/2024, which garnished accounts held in six institutions by the judgment debtor.



- c. Motion dated 28/10/2024 by the 2<sup>nd</sup> respondent seeking stay of execution of the orders of 23/10/2024 and the lifting of the same.
3. Today, the matters came up for the hearing of two of the applications and directions on the 3<sup>rd</sup> application. Before their hearing, the Court brought to the attention of the parties the fact that subsequent to the ruling of 26/9/2024, the Court of Appeal sitting at Mombasa in *Kenya Railways Corporation & Anor v Milly Glass Works Ltd* CA No. E 083 of 2023 (consolidated with E 035 of 2023) had pronounced itself on section 88 (a) of the *Kenya Corporation Act*. For this reason, the Court invited the Counsels to address it on that holding.
4. Dr. Mutubwa for the decree-holder submitted that since the decision of the Court of Appeal was subsequent to my decision of 26/9/2024, it did not affect that decision. That the said section 88 (a) can only apply where the Managing Director of the judgment-debtor is acting in good faith. That in the present case, the Managing Director of the judgment-debtor had failed to settle the decree for over 5 years. That the said section 88(a) does not override the Constitutional provisions on the rule of law and fair hearing in Articles 10 and 50 of the *Constitution* of Kenya.
5. Mr Bake would hear none of that. He urged the Court to consider that since the Court of Appeal had pronounced itself on S 88 (a) of the said *Act*, this Court was bound thereby. That for certainty and consistency, this Court is bound by the principle of stare decisis.
6. Mrs. Nthiga for the 2<sup>nd</sup> respondent supported Mr. Bake. She submitted that what was before Court was a fresh application for garnishee and not the one decided on 26/9/2024. That the doctrine of res-judicata was not applicable. The two counsels were supported by Ms. Koskei Learned Counsel for the CBK.
7. The other Counsels for the garnishees left it to the Court.
8. I have considered the said submissions. I have considered the decision of the Court of Appeal. That decision was issued one month after my decision of 26/9/2024. What is before me is not a challenge to my decision of 26/9/2024 but my jurisdiction over the subsequent application for garnishee orders dated 22/10/2024.
9. While I agree with Dr. Mutubwa that the decision of the Court of Appeal does not have a retrospective application, I hold and find that it has a binding nature from the date of its pronouncement and the days following. In this regard, any decision that is made subsequent to the 25/10/2024, the High Court and all other courts are bound by the pronouncement of the Court of Appeal of 25/10/2024.
10. In that case, the Court of Appeal held as follows:-

“Pronouncing himself on the effect of section 88 of the Act in *Hezron Ossorey Jura v Kenya Railways Corporation & another* (supra) Muchelule, J. (as he then was) correctly observed that:

“It is clear the section restricts execution against the Corporation, or against property of the Corporation. In the case of *Total (Kenya) Limited.v Kenya Railways Corporation* [2004] E.A. 339, the court considered the section in an application where the plaintiff sought to garnish the bank balance of the Kenya Railways Corporation. The question was whether execution by attachment of a debt in the nature of the balance at the Kenya Commercial Bank was proper. It was held that the Corporation’s money held in the account at the bank was its ‘property’ which could not be proceeded against by way of execution. The



court followed the decision in *Wambugu and Co. Advocates.v Managing Director Kenya Railways Corporation* [2001] Llr 4491 (HCK) and observed that if the managing director has failed to pay the decretal sum the applicant should proceed against him by way of Mandamus to compel him to pay the sum claimed from the amounts of the Corporation.' [Emphasis added]

.....

Be that as it may, it would be remiss of us not to express our view on the contentious issue as to whether the 1<sup>st</sup> appellant is a state agency deserving of protection from execution under and by virtue of section 88 of the Act. We hasten to observe that the trial court was enjoined to pay homage to the stipulations of the Act notwithstanding the consequent delay occasioned to the respondent in realising the fruits of its judgment. The solution to the emerging mischief lies elsewhere, and no degree of criticism levelled at that section would reverse its effect in the absence of legislative intervention to effectively reverse its express intention.

.....

In view of the foregoing, we reach the conclusion that section 88 of the Act prohibits execution by garnishment upon its bank deposits or attachment and sale of its property. In effect, the 1<sup>st</sup> appellant's appeal succeeds as against the ruling and orders of the ELC (M. Sila, J.) dated 1<sup>st</sup> November 2022."

11. I say no more. The Court of Appeal has pronounced itself and this Court is firmly bound thereby. The accounts of the judgment debtor cannot be garnished. That the other modes of execution have to be undertaken but not by way of attachment.
12. In the premises, I allow the application by the judgment debtor dated 25/10/2024. The application dated 28/10/2024 by the 2<sup>nd</sup> respondent is struck out with no order as to costs. As for the application by the decree holder dated 22/10/2024, for garnishee orders, the same is dismissed with costs.
13. Consequently, the orders of garnishee nisi made on 23/10/2024 are hereby lifted and set aside.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

