



**Kibwata v Bellevue Development Limited; Baragu Holdings
Limited (Garnishee) (Miscellaneous Civil Application E132 of 2018)
[2021] KEHC 296 (KLR) (Commercial and Tax) (17 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 296 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E132 OF 2018
F TUIYOTT, J
NOVEMBER 17, 2021**

BETWEEN

MONICA KARUNGI KIBWATA APPLICANT

AND

BELLEVUE DEVELOPMENT LIMITED RESPONDENT

AND

BARAGU HOLDINGS LIMITED GARNISHEE

RULING

1. These are garnishee proceedings in which the applicant holds a decree of Kshs. 6,562,839/= (inclusive of costs and interest) against the judgment debtor.
2. The basis for the application, dated 2nd July, 2020, is that there is an agreement for sale dated 23rd March, 2010 between (Baragu Holdings Limited (the Garnishee) and Saika Two Estate Developers Ltd (Saika) in which the Saika is buying certain portions of land being No. 1428/10 from the Garnishee. The judgment creditor, through its counsel Nimrod Matunda, states that the judgment debtor undertook to pay the decretal sum buy selling certain portions of land and this undertaking was made, not just out of Court, but also before Hon Majanja, J in court proceedings of 13th March, 2020.
3. The Garnishee responded to the application through a replying affidavit of Josephat Mutugi sworn on 10th November, 2020. He is a Director of the Garnishee Company. He states that the Garnishee is the sole owner and proprietor of land referred to as LR. NO. 1428/10 and has shown to the Court a copy of the title. He denies any relationship between the Garnishee and the judgment debtor.



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

“(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.

(2) At least seven days before the day of hearing the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment-debtor.

(3) Service on the judgment-debtor may be made either at the address for service if the judgment-debtor has appeared in the suit and given an address for service, or on his advocate if he has appeared by advocate, or if there has been no appearance then by leaving the order at his usual residence or place of business or in such manner as the court may direct.”

5. The object of garnishee proceedings is to enable a judgment creditor holding an unsatisfied decree to attach debts within the jurisdiction of court, due and owing to the judgment-debtor to answer the decree and attendant costs. Implicit therefore is that for a decree holder to successfully suit for the order, he/she must demonstrate that debt is truly due to the judgment-debtor. In the matter before this Court, the owner of the property whose sale will realize some proceeds is a different person from the judgment-debtor. The decree-holder has not placed evidence before this Court that connects the judgment-debtor to the garnishee, neither is there any evidence that the judgment-debtor is in any way connected to the proceeds that the intended sale of land LR 1428/10 may yield.
6. Simply, the Notice of Motion dated 2nd July, 2010 is without merit and must fail. It is dismissed with costs.

DATED AND SIGNED THIS 11TH DAY OF NOVEMBER 2021

F. TUIYOTT

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF NOVEMBER 2021

A. MABEYA, FCI Arb

JUDGE

