



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

HCCC NO. 109 OF 2014

CHRIS SANDEN.....PLAINTIFF

VERSUS

JATCO TOURS & TAXIS

LIMITED.....1ST DEFENDANT/JUDGMENT DEBTOR

CHRIS BANKS.....2ND DEFENDANT

DANIEL MUOKI.....3RD DEFENDANT

AND

STANDARD CHARTERED BANK..... 1ST GARNISHEE

NCBA BANK KENYA PLC.....2ND GARNISHEE

CFC STANBIC BANK LIMITED..... 3RD GARNISHEE

RULING

1. In a verdict of 18th October 2017 this Court entered Judgment for the Plaintiff against Jatco Tours & Taxis Limited (**the 1st Defendant or Jatco**) in the sum of Kshs.2,882,500.00 with interest thereon at Court rates from the date of filing suit until payment in full. Costs were also awarded to the Plaintiff.
2. The Plaintiff now states that the Judgment debt, as at 6th June 2019, stood at Kshs.5,678,345.26. This constitutes the principal sum, costs and interests.
3. It is common ground that the debt remains unpaid.
4. For that reason, and in pursuant of satisfaction of the decretal sum, the Plaintiff has brought a Notice of Motion dated 18th November 2019 for the following orders:-

a) A garnishee order nisi be issued against the garnishes, Standard Chartered Bank, Westlands Branch and NCBA Bank of Kenya Plc, Upper Hill Branch and CFC Stanbic Bank Limited, Chiromo Branch to lock and to hold in the said Account Numbers [....] , [....] and [....] respectively the sum of Kenya Shillings 5,678,345.26/= and all monies due, payable and held by the garnishees, in the said accounts and accruing to the credit of Jatco Tours and Taxis Co. Limited, the Judgment debtor herein or so much of it as may sufficiently satisfy the decretal sum, together with the costs of these garnishee proceedings be attached and the same be applied to satisfy the decretal debt herein.

b) The Court be pleased to issue summons to Christopher Harvey Banks, Daniel Mutua Muoki and Walter Enock Nyambati Osebe being the directors of the 1st Defendant/Judgment Debtor Jatco Tours & Taxis Limited to attend Court and to be orally examined on

oath as to the business and affairs of Jatco Tours & Taxis Limited, as the 1st Defendant/Judgment debtor and/or the property or properties, and/or their means of satisfying the decretal sum herein and in the event of disobedience, warrants of arrest be issued against them to compel their attendance before the Court.

c) The Court be pleased to issue an order directed to Christopher Harvey Banks, Daniel Mutua Muoki and Walter Enock Nyambati Osebe being directors of Jatco Tours & Taxis Limited the Judgment Debtor to produce before the Court books of account, audited financial statements, annual returns, bank statements, cheque books and other statutory documents relating to the operations and transactions of the Judgment debtor for the last four (4) years and the said Christopher Harvey Banks, Daniel Mutua Muoki and Walter Enock Nyambati Osebe, directors of Jatco Tours & Taxis Limited, be examined on oath on the said documents, and in the event of disobedience, warrants of arrest be issued against them to compel his attendance before the Court and the production of the records.

d) The garnishee order nisi so issued hereof be made absolute as prescribed and consequently a garnishee order absolute be issued in favour of the decree holder, CHRIS SANDEN against the garnishees, Standard Chartered Bank, Westlands Branch, NCBA Bank of Kenya Plc, Upper Hill Branch and CFC Stanbic Bank Limited, Chiromo Branch ordering and compelling the said garnishees, to forthwith pay to the Decree-holder's Advocates Meritad Law Africa LLP the sum of Kenya Shilling 5,678,345.26/= being so much of the debt due from the garnishee to the Judgment debtor, Jatco Tours & Taxis Limited, as held in Account Numbers [....] , [....] and [....] held at Standard Chartered Bank, Westlands Branch, NCBA Bank of Kenya Plc, Upper Hill Branch and CFC Stanbic Bank Limited, Chiromo Branch respectively, as is sufficient to satisfy the said decree and costs together with the costs of these garnishee proceedings, and that in default thereof execution do issue forthwith against the garnishees, Standard Chartered Bank, Westlands Branch, NCBA Bank of Kenya Plc, Upper Hill Branch and CFC Stanbic Bank Limited, Chiromo Branch for the same.

e) The Court be pleased to award costs of this application and to assess fix and add same in the garnishee order absolute and the same be paid together with the decretal debt to the decree holder's Advocates Meritad Law Africa LLP, by the garnishee from funds due to the Judgment debtor in Account Numbers [....] , [....] and [....] held at Standard Chartered Bank, Westlands Branch, NCBA Bank of Kenya Plc, Upper Hill Branch and CFC Stanbic Bank Limited, Chiromo Branch respectively,

5. The application is for Garnishee orders as well as a request for examination of the Judgment-Debtor as to its property.

6. I will start with the Garnishee proceedings. The home for such proceedings is Order 23 Rule 1 which reads:-

“Order for the attachment of debts

1. (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 decreeholder 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.

(4) An order nisi shall be in Form No. 16 of Appendix A.”

7. The Garnishees are Standard Chartered Bank, NCBA Bank Kenya PLC and CFC Stanbic Bank Limited. This Court had on 25th November 2019 issued a decree-nisi against the said Garnishees to the sum of Kshs.5,678,345.26. The Garnishees made appearances in Court in deference to the Garnishee proceedings.

8. Standard Chartered Bank Kenya Limited confirms that Jatco is its customer at Westlands Branch holding Account No. [....] . It produced a statement of Account of the Debtor which showed that, as at 16th December 2019, Jatco had a debit balance of Kshs.904,941.20. This is not doubted by the Decree-holder. Obviously no money is available in that account to answer the due debt.

9. This holds as well in respect to NCBA Bank Kenya PLC, which through an affidavit of Steve Atenya sworn on 4th December 2019 states that Jatco Tours does not operate A/c No. [....] or any other account with the Bank. There is no evidence to the contrary.

10. As to CFC Stanbic Bank Limited, it held a credit balance of Kshs.23,176.52 as at 30th November 2019. This amount is due to the Jatco and an order absolute will issue in that regard.

11. I am not able to understand the Judgment Creditors insistence that an order absolute should also issue against Standard Chartered Bank.

Order 23 Rule 2 cited by counsel in fact not in consonance with the argument. It reads:-

“Attachment of deposits

2. A credit in a deposit account with a bank or other financial institution shall for the purposes of this Order be a sum due or accruing and shall be attachable accordingly notwithstanding that any of the following requirements is applicable to the account and has not been complied with-

- (a) that notice is required before any money is withdrawn;**
- (b) that a personal application must be made before any money is withdrawn;**
- (c) that a deposit book must be produced before any money is withdrawn; or**
- (d) that a receipt for money deposited in the account must be produced before any money is withdrawn.**

12. There is simply no credit in Jatco’s account at Standard Chartered Bank. That said, nothing bars the Judgment Creditor from seeking similar orders if the debt remains unpaid and the account comes into credit.

13. I turn to the second issue.

14. Order 22 Rule 35 of the Civil Procedure Act reads:-

“Examination of judgment-debtor as to his property.

Where a decree is for the payment of money, the **decree-holder may apply to the court for an order that—**

- (a) the judgment-debtor;**
- (b) in the case of a corporation, any officer thereof; or**
- (c) any other person,**

be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”

15. It is not in dispute that a substantial portion of the debt is due. Indeed Daniel Muoki, the Managing Director of Jatco concedes as much in the replying affidavit of 6th December 2019. In that affidavit he also proposes that the company pays a lump sum of Kshs.300,000.00 and thereafter Kshs.150,000.00 per month. He states that the Judgment debtor has no substantial assets. Yet other than the bank statements, he does not reveal the particulars of the alleged insubstantial assets.

16. A case has been made out for the oral cross-examination by the Directors of Jatco so as to facilitate discovery in execution. The Directors of Jatco are Daniel Muoki and Walter Enock Nyambati Osebe. Neither of them states that they will be unable to disclose the property of the company or means of satisfying the decree.

17. Although the Decree-holder had also wanted Christopher Harvey Banks summoned, it turns out that he is not a director of the company. See a copy of record of the company as at 16th January 2020 issued by the Registrar of Companies annexed to the affidavit of Christopher Banks sworn on 3rd January 2020.

18. I notice that in its submissions, the Decree-holder may have given up the quest to include Christopher Banks in the examination. This change of heart was well advised in view of the provisions of Rule 35 which only grant the Court power to summon, as regards a corporation, any officer. Christopher Banks is not an officer of Jatco.

19. Ultimately the orders I grant are:-

- 1. A Garnishee order absolute in respect to the Defendants Account No. [...] at Stanbic Bank Kenya Chiromo Branch to the extent of Kshs.5,678,345.26.
- 2. I grant orders (c) and (d) of the Notice of Motion of 18th November 2019 but only in respect to Daniel Mutua Muoki and Walter Enock Nyambati Osebe.
- 3. Costs in respect to the Motion shall be in cause. However, the Decree-holder shall pay costs to Christopher Harvey Banks in respect thereof.

Dated, Signed and Delivered in Court at Nairobi this 13th Day of July 2020

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17th April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Miss Musebe holding brief for Moibi for the Applicant.

No appearance for 1st and 3rd Respondents

Muthee for the 2nd Respondent.