



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 164 OF 2018

BETWEEN

MAUWA & COMPANY ADVOCATES.....APPLICANT

AND

MUSIC PUBLISHERS ASSOCIATION OF KENYA.....1ST JUDGMENT DEBTOR

BENARD KIOKO t/a BERNSOFT INTERACTIVE LTD.....1ST JUDGMENT DEBTOR

AND

EQUITY BANK1ST GARNISHEE

COMMERCIAL BANK OF AFRICA.....2ND GARNISHEE

JUDGMENT

1. By a notice of motion dated 16.04.19, brought under Sections 1A, 3A and 3B of the Civil Procedure Act Cap 21 Laws of Kenya and Order 23 Rules 1, 4 and 10 of the Civil Procedure Rules and all enabling provisions of the law, the applicant prays for orders:

a) THAT a Garnishee Order Nisi do issue against EQUITY BANK directing that all the monies belonging to the 1st Judgment Debtor in account No. [xxxx] in the name of MUSIC PUBLISHERS ASSOCIATION OF KENYA or any other account held and operated by MUSIC PUBLISHERS ASSOCIATION OF KENYA and/or BENARD KIOKO t/a BERNSOFT INTERACTIVE LTD be attached to answer the decree herein, the amount unsatisfied being Kshs. 13,988.810.77 and interest thereon as well as costs of these garnishee proceedings.

b) THAT a Garnishee Order Nisi do issue against COMMERCIAL BANK OF AFRICA directing that all the monies belonging to the 1st Judgment Debtor in account No. 6527160012 in the name of BERNSOFT INTERACTIVE LTD or any other account held and operated by MUSIC PUBLISHERS ASSOCIATION OF KENYA and/or BENARD KIOKO t/a BERNSOFT INTERACTIVE LTD be attached to answer the decree herein, the amount unsatisfied being Kshs. 13,988.810.77 and interest thereon as well as costs of these garnishee proceedings.

c) THAT the costs of this application be provided for.

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of ROBERT MAUWA, Advocate of the High Court of Kenya, sworn on 16.04.19. He avers judgment was entered against the judgment debtors for Kshs. 13,913,242.66 together with interest at 14% from 20.09.18 out of which only Kshs. 150,000/- has been paid. Annexed to the affidavit are copies of cheque No. 000438 drawn on 2nd Judgment Debtor's account with the Judgment Debtor's statement of account with the 1st Garnishee with a balance of Kshs. 3,108.15 as at 31.12.17.

3. The application was opposed by the 2nd Garnishee by way of a replying affidavit sworn on 24th June, 2019 by FIDELIS O. MOMO who describes himself as the Garnishees' Kisumu Branch Operations Officer. He avers that the 2nd Judgment Debtor holds account No. 6527160012 at the branch which had a closing balance of Kshs. 6,021.53 as at 01st May, 2019 and does not sufficient funds to satisfy the decree. Annexed to the affidavit is a statement of account marked **FOM-1**.

4. The 1st Garnishee, though served did not file any response nor send a representative at the hearing.

5. Garnishee proceedings are proceedings where a third party holding funds or property on behalf of a judgment debtor can be called upon to honour the claim of a judgment creditor over those funds or property. A Garnishee order can only issue in instances where there is something which the law recognizes as a debt. Issuance of a notice to a Garnishee binds the funds in the hands of the Garnishee.

6. There is no dispute that the Judgment Debtors are indebted to the Applicant. It is similarly not disputed dispute that the Garnishees are holding funds on behalf of the Respondent. The sums in those accounts have however been demonstrated not to be sufficient to pay the judgment debt and the costs of the Garnishee proceedings. To grant the orders sought will therefore be an exercise in futility.

7. The notice of motion dated 16.04.19 is therefore disallowed with no order as to costs.

DATED, DELIVERED AND SIGNED THIS 07th DAY OF November 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Okodoi

For Applicant - Mr. Otieno

For Respondent - N/A

For 1st Garnishee - Ms. Owuor

For 2nd Garnishee - Ms. Onsongo