



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 95 OF 2018

IN THE MATTER ADVOCATES ACT CHAPTER 16 LAWS OF KENYA

AND

IN THE MATTER OF AN OF THE ADVOCATE’S BILL OF COSTS ARISING FROM LEGAL SERVICES IN OYUGIS SRM NO. 220 OF 2009 LAVENDER ATIENO VERSUS LACOOIN INVESTMENTS & ANOR

BETWEEN

JAMES AGGREY MWAMU t/a MWAMU & COMPANY ADVOCATES...APPLICANT/DECREE HOLDER

VERSUS

AFRICAN MERCHANT ASSURANCE COMPANY LIMITED.....JUDGMENT DEBTOR

AND

DIAMOND TRUST BANK KENYA LIMITED.....GARNISHEE

RULING

1. By a notice of motion dated 21.11.19, brought under Sections 1A, 1B, 3A and 38 of the Civil Procedure Act Cap 21 Laws of Kenya and Order 23 Rules 1,2,3 and 10 of the Civil Procedure Rules, the Applicant/ Judgment Creditor prays for orders:

a) THAT all monies deposited, lying and held by the Garnishee, Diamond Trust Bank Kenya Ltd in Judgment Debtor’s account number 800365007, 365537002 and FDR FDLC 190590503 be attached to answer the decree herein for the sum of Kshs. 275,000/- plus interest at 14%

b) THAT costs be borne by the Garnishee

2. The motion is premised on the grounds on the body of the application and the supporting affidavit of **JAMES AGGREY MWAMU** the Decree Holder and an advocate of the High Court of Kenya, sworn on 21.11.19. He avers the Applicant/ Judgment Creditor’s costs against the Judgment Debtor were taxed at Kshs. 275,000/- and a decree thereof was issued on 28.02.19 and remain unsettled to date. Annexed to the affidavit is the Certificate of Costs.

3. The application and the Decree Nisi were served on the Judgment Debtor and the Garnishee and was not opposed.

4. I have considered the notice of motion in the light of the affidavit on record.

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. It has not been denied that the Garnishee is holding funds on behalf of the Judgment Debtor. It is similarly not disputed that the Judgment Debtor is indebted to the Applicant/ Judgment Creditor.

DISPOSITION

7. On the material presented by the parties, this court is satisfied that the Applicant/ Judgment Creditor has demonstrated that it is entitled to recover its debt from sums held for the Judgment Debtor by the Garnishee in account number **800365007, 365537002 and FDR FDLC 190590503** as much as may be sufficient to pay the judgment debt and the costs of the Garnishee proceedings.

8. It is therefore hereby ordered THAT:

a) THAT the monies held by the Garnishee, Diamond Trust Bank Kenya Ltd, on behalf of the Judgment-Debtor M/s Africa Merchant Assurance Company Limited, in account number 800365007, 365537002 and FDR FDLC 190590503 be and is hereby attached to answer the decree herein, the amount unsatisfied being Kshs. 275,000/- plus interest at 14%

b) THAT the monies held by the Garnishee, Diamond Trust Bank Kenya Ltd, on behalf of the Judgment-Debtor M/s Africa Merchant Assurance Company Limited, in account number 800365007, 365537002 and FDR FDLC 190590503 be and is hereby attached to the extent of Kshs. 20,000/- to answer the costs of these garnishee proceedings to be assessed by the Deputy Registrar of this court.

c) Costs of these Garnishee proceedings shall be borne by the Judgment Debtor

DATED, DELIVERED AND SIGNED THIS 05th DAY OF December 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi

For Judgment Creditor - Mr Achola/Mr Mwamu

For Judgment Debtor - N/A

For Garnishee - N/A