

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CIVIL APPLICATION NO. 477 OF 2016

OMAYA & CO. ADVOCATES.....ADVOCATE/DECREE-HOLDER

VERSUS

MUMIAS SUGAR & CO. LTD.....JUDGMENT-DEBTOR/RESPONDENT

KCB BANK, MUMIAS BRANCH.....GARNISHEE/RESPONDENT

RULING

1. I am tasked with determining the Motion dated 5th July 2019, which seeks, principally, that monies held by the garnishee in a certain account belonging to the judgement-debtor be attached to satisfy a decree herein together with the cost of the garnishee proceedings.

2. The background is that the court had passed a decree on 20th June 2018 that the judgement-debtor pay the decree-holder a sum of Kshs. 357, 952.80, with interest from 21st July 2016 till payment in full. The said money is said to be still outstanding as the judgement debtor is yet to pay it, and as at 3rd July 2019 it stood at Kshs. 552, 450.00, excluding costs of these proceedings. It is averred that the judgement debtor has an amount of money in its account number [...] which is operated with the garnishee, which can support payment or full settlement of the debt.

3. When the Motion was placed before me on 8th July 2019, I made an order attaching the monies held in that account, and directed the garnishee to appear before me on 17th July 2019 to show cause why it should not settle the decree the subject of these proceedings from the moneys held in that account to the credit of the judgement debtor. In response to the order the garnishee, through one of its officers, swore an affidavit, on 3rd July 2019, to say that the said account did not hold money that could settle the decree of Kshs. 552, 450.00. He attached a bank statement which showed that the balance standing in that account as at 17th July 2019 was Kshs. 60, 834.80.

4. The parties argued the application on 24th September 2019. They both stated that they were relying on the documents that they had filed.

5. From the material before me it is quite clear that the garnishee does concede that the judgement debtor does operate an account with it, to wit the account the subject of these proceedings. The only contest is that the said account does not hold enough funds to settle the decree, as the account has a paltry Kshs. 60, 834.80.

6. What the decree-holder seeks is settlement of the decree from such monies as the garnishee holds in the account operated by the judgement debtor. That would mean that the garnishee ought to pay out of that account whatever monies there may be towards settling the said decree.

7. I shall accordingly decree that the garnishee order *nisi* dated 8th July 2019 be and is hereby made absolute to the extent of the garnishee paying out of account number [...] the sum of Kshs. 60, 834.80, or whatever balance is standing on the said account, to the decree-holder.

8. It is so ordered.

DATED, SIGNED and DELIVERED at KAKAMEGA this 11th DAY OF December, 2019

W. MUSYOKA

JUDGE