



**Nyali Chemicals Limited v Thugi River Estate Limited & another; Judicial Service Commission & 5 others (Garnishee) (Civil Suit 134 of 1999) [2016] KEHC 108 (KLR) (Commercial & Admiralty) (5 September 2016) (Ruling)**

*Nyali Chemicals Limited v Thugi River Estate Limited & 7 others [2016] eKLR*

Neutral citation: [2016] KEHC 108 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
CIVIL SUIT 134 OF 1999  
FSM AMIN, J  
SEPTEMBER 5, 2016**

**BETWEEN**

**NYALI CHEMICALS LIMITED ..... PLAINTIFF**

**AND**

**THUGI RIVER ESTATE LIMITED ..... DEFENDANT**

**AND**

**PAUL KIBUGI MUIITE SC ..... JUDGMENT DEBTOR**

**AND**

**JUDICIAL SERVICE COMMISSION ..... GARNISHEE**

**NATION MEDIA GROUP LIMITED ..... GARNISHEE**

**STANDARD GROUP LIMITED ..... GARNISHEE**

**ROYAL MEDIA SERVICES ..... GARNISHEE**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... GARNISHEE**

**ISSA MANSUR & COMPANY ADVOCATES ..... GARNISHEE**

**RULING**

1. This Court has before it an Application dated 23<sup>rd</sup> January 2015 filed on 26<sup>th</sup> January 2015. It is brought under Order 23 Rules 1, 3 &, 9 Order 51 Rule 1 of the [Civil Procedure Rules](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and all other enabling provisions. It principally seeks an Order that the



Court “ make a Garnishee Order Nisi against 6 garnishees comprising the Judicial Service Commission, Nation Media Group, Standard Group Limited, Royal Media Services Limited, Director of Public Prosecution and Issa Mansur & Company Advocates, for monies allegedly owed by the Garnishees to the Judgment Debtor Paul Kibugi Muite SC as legal fees and/or any debt, and these sums be attached to answer the Decree, costs and interest on the Decree for the sum of Kenya Shillings Eleven Million, Four Thousand and Twenty Five Twelve million (Kshs.11,004,025.00) to the Plaintiff herein and further costs of these Garnishee Proceedings; as well as orders that; “... an Order Nisi upon the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Garnishees do issue and the same be served on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Garnishees before being served on the Judgment Debtor Plaintiff Paul Kibugi Muite SC or his Advocates;” and that “... the Garnishees do appear before this Honourable Court on an appointed date and time to show cause why they should not pay to the Plaintiff the sum of Kenya Shillings Eleven Million, Four Thousand and Twenty Five Twelve million (Kshs.11,004,025.00) being the decretal sum, costs and interest herein and further costs of these Garnishee Proceedings;

2. The Grounds relied upon by the Applicant/Judgment Creditor are that:

- (1) There is an outstanding decree and Certificate of Costs of this Honourable Court against the Judgment Debtor, Paul Kibugi Muite SC,
- (2) The Final Decree and Certificate of Costs against Thugi River Extates Limited obtained in Milimant in Nairobi High Court Civil Case No 134 of 1999 Nyali Chemicals Limited versus Thugi River Estate Limited were taken over by the Judgment Debtor as Director of of Thugi River Estate Limited and following an application for examination of directors of Thugi River Estate Limited under Order XXI Rule 36 of the of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)(sic) undertook to personally pay the debts of Thugi River Estate Limited and that failure to do so execution to issue against him personal for the entire outstanding decretal sum. The Grounds also state that the decretal sum was KShs.3,500,000.00 with interest payable at 14% per annum. Costs were also awarded and taxed at KShs.164,025.00. The Applicant states that at the time of the present Application the Judgment Debtor had paid Kenya Shs.11,004,025.00. Ground 6 and 7 state that the Plaintiff has tried severally to execute without success and that the Plaintiff has learnt that the Judgment Debtor has acted and is still acting as Counsel for the Parties listed and being the garnishees named above. Ground 8 states that “It shall be in the best interests of justice to admit the application filed herewith for hearing and orders urgently before the sums held by the Garnishees are paid to the Judgment Debtor.”

3. The Supporting Affidavit is sworn by Mr. Nicholas Abidha, an Advocate of this Court. He says that there is an outstanding decree. In it he sets out the details of the outstanding decree and debts. At paragraph 4 he states that the Judgment Debtor undertook to pay the debts of the Defendant. It is said that was following an application for examination of the Directors of Thugi River Estate Limited (the Defendant). It is not clear from that statement whether the undertaking was given in the course of the public examination or thereafter or separately altogether, however the documents show that there was a consent order. The date of the undertaking is not set out but the Court Record contains a Letter dated 12<sup>th</sup> May 2003 which asks the Deputy Registrar to record several orders by consent including the order that “The Director of the Defendant/Judgment Debtor, Hon Paul Kibugi Muite, do pay the decretal amount herein by way of monthly installments of KShs. 200,000/=, the first such payments to be made forthwith and thereafter on the 30<sup>th</sup> day of every month commencing 30<sup>th</sup> June, 2003 until



payment in full”. The Affidavit at paragraph 10 lists the sources of income that the application seeks to garnish, on the basis that:

“ The Plaintiff has learnt that the judgment Debtor has acted as counsel for parties below for fees and, is naturally owed money as legal fees for legal services rendered to the following garnishes...”. Again, the source of that knowledge is not identified. The Affidavit states that:

- (i) There is outstanding a decree and Certificate of costs of this Honourable court against the Judgment Debtor, Paul Kibugi Muite SC;
- (ii) The final decree and Certificate of Costs against Thugi River Estates Limited obtained in Milimani, Nairobi High Court Civil Case No. 134 of 1999 Nyali Chemicals Limited v Thugi River Estate Limited were taken over by the Judgment Debtor as director of the Defendant formally by Order of Court of 13<sup>th</sup> May 2003 wherein Mr. Paul Kibugi Muite SC as director of thugi River Estate Limited and following an application for examination of directors of Thugi River Estate Limited under Order XX1 Rule 36 of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) undertook to personally pay the debts of Thugi Rivers Estate Limited and that failure to do so execution to issue against him personally for the entire outstanding decretal sum;
- (iii) The Decree is for the sum of Kshs.3,500,000.00 plus interest at 14% per annum;
- (iv) Costs were taxed at Kshs. 164.025.00;
- (v) As at the time of the present application giving credit to the sum paid by the instalments by the Judgment Debtor leaves as outstanding Kenya Shillings Eleven Million Four Thousand and Twenty Five Twelve Million (Kshs.11,004,025.00);
- (vi) The Plaintiff has tried severally to execute without success;
- (vii) The Plaintiff has learnt that the Judgment Debtor has acted and is still acting as Counsel for parties below for fees and, is naturally owed money as legal fees for legal services rendered to the following Garnishees:
  - (a) For the 1<sup>st</sup> Garnishee in Nairobi High Court Petition No. 39 of 2013 Gladys Boss Shollei v Judicial Service Commission;
  - (b) Communications Commission of Kenya & 5 others v Royal Media Services Limited and 5 others Petition No. 14 of 2014 consolidated with No. 14 A, 14B and 14C of 2014.
  - (c) For the 5<sup>th</sup> Garnishee as special prosecutor in the Malili Ranch cases, including Nairobi Resident Magistrate’s Court Anti-Corruption Case Number 19 of 2014;
  - (d) The 6<sup>th</sup> Garnishee appears as advocates together with the Judgment Debtor. Legal fees are on occasions paid to the Judgment Debtor through the 6<sup>th</sup> Garnishee.



- viii. it shall be in the best interests of justice to admit the application filed herewith for hearing and orders urgently before the sums held by the Garnishees are paid to the Judgement Debtor.
- ix. The Garnishees by the annexed affidavit of Nicholas Abidha and other reasons to be canvassed at the hearing hereof.

4. The Orders sought in the Application are:

- (1) That the Honourable Court be pleased to make a Garnishee Order Nisi against the Judicial Service Commission, Nation Media Group, standard Group Limited, Royal Media Services Limited, Director of Public Prosecutions and Issa Mansur & Company Advocates, for monies owed by the Garnishees to the Judgment Debtor Paul Kibugi Muite SC. As legal fees and or any debt, and these sums be attached to answer the Decree, costs and interest on the Decree for the sum of Kenya Shillings Eleven Million, Four Thousand and Twenty Five Million (Kshs.11,004,025.00) to the Plaintiff herein and further costs of these Garnishee proceedings;
  - (2) That an Order Nisi upon the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Garnishees do issue and the same be served on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Garnishees before being served on the Judgment Debtor Plaintiff Paul Kibugi Muite SC Or his Advocates.
  - (3) That the Garnishees do appear before this Honourable Court on an appointed date and time to show cause why they should not pay to the Plaintiff the sum of Kenya Shillings Eleven Million, Four Thousand and Twenty Five Twelve Million (Kshs.11,004,025.00) being the decretal sum, costs and interest herein and further costs of these Garnishee proceedings;
  - (4) That the Plaintiff be at liberty to apply for any such further orders and/or directions as the Honourable Court may deem fit and Just to grant.
  - (5) That the costs of this application be borne by the Garnishees.
5. A copy of the Decree is exhibited at 'NA-1'. The certificate of costs appears on the following page. There is also a copy of a letter to the Deputy Registrar setting out an Order by consent agreed by the Parties. That letter was dated 12<sup>th</sup> May 2003 (Exhibit WK-2). It was received by the Court on 13<sup>th</sup> May 2003 and adopted as an Order of the Court on the same day by the Deputy Registrar. However the Order attached is not identical as it refers to monthly instalments of Shs 250,000.00 with effect from 15<sup>th</sup> July 1999. Execution followed thereafter, according to the Court File.
6. The Affidavit recognises that some payments were made, which are not quantified. Mr Muite failed to make all the payments due. The Plaintiff attempted to gain satisfaction of the debt. The Plaintiffs pursued repayment to the extent of attachment but were again thwarted by someone called Trading Desk International who claimed to have an interest in the goods proclaimed
7. Previously, in the course of attempting to enforce the decree, on 8<sup>th</sup> December 2004 the Decree holder filed an application for a garnishee order. against Charterhouse Bank Ltd for a garnishee order to recover sums from the Judgment Debtors account(s) to satisfy a debt of Kshs.5,803,000.34 as it had become by then. On 8<sup>th</sup> December 2004, an interim Order was made. Around 11<sup>th</sup> February 2005 the matter was before the Court for a mention. The record shows the attendance of an Objector, in the form of a "Chattels Mortgage". That Application was dismissed with costs. At that stage the Decree Holder was free to proceed with execution thereafter. The Ruling was delivered on 4<sup>th</sup> May 2005. It appears that the Decree Holder did nothing between then and the current application.



## The Application

8. The current Application came before this Court for Hearing on 29<sup>th</sup> January 2015. On that occasion the Court did accede to the Submissions on behalf of the Applicant/Judgment Creditor and grant a Decree Nisi. The matter was listed for Hearing on 18<sup>th</sup> February 2015.
9. The sixth Garnishee raised a preliminary objection by a Notice of Preliminary Objection dated 16<sup>th</sup> February 2015 and filed on 17<sup>th</sup> February 2016. The Preliminary Objection is raised on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Garnishees (Judicial Service Commission, Nation Media Group Ltd and Royal Media Services). The Preliminary Objection is made on the following grounds:
  1. That the Garnishee proceedings are statute barred by the provisions of Section 4(4) of the Limitation of Actions Act as the Decree was issued on 11<sup>th</sup> May 1999.
  2. That the Decree Holder is barred from claiming any arrears of interest on the Decretal sum on expiry of six years from the date of decree
10. The Sixth Garnishee is represented by the same Advocates (Messrs Issa & Company). The 6<sup>th</sup> Garnishee has filed (on 17<sup>th</sup> February 2015) a Replying Affidavit which raises the same issues. It states:
  - “ 3. That the 6<sup>th</sup> Garnishee has raised a Preliminary Objection in limine on the grounds that:
    - i) The garnishee proceedings are statute barred by the provisions of Section 4(4) of the Limitation of Actions Act, Cap 22, as the Decree was issued on 11<sup>th</sup> May 1999; and
    - ii) The Decree Holder is barred from claiming any arrears of interest on the Decretal Sum on the expiry of six years from the date of the Decree
  4. That, the Decree issued on 11<sup>th</sup> May 1999 is not available for execution as the twelve years statutory period within which it could be executed as per the provisions of Section 4(4) of the Limitation of Actions Act lapsed on 11<sup>th</sup> May 2011
  5. That, similarly the interest upon the decretal sum sought by the Applicant is also not recoverable as it is also time barred.
  6. That, we hold no sums due on the Judgment Debtor Thugi River Estate Limited, against whom the Decree was passed on 11<sup>th</sup> May 1999. We do not have any legal fees due to SC Paul Muite
  7. That, in the circumstances, the instant application is for dismissal as the purported enforcement of the Decree through a Garnishee Order Nisi (sic) is time barred ...” The Affidavit is sworn by a Mansur Muather Issa. The Sixth Garnishee has also provided a List of Authorities. They comprise:
    - (1) *Limitation of Actions Act* Chapter 22 Laws of Kenya
    - (2) *Karauri v Cheche* [1995-1998] 1EA 84 (CAK)
    - (3) *Mwangi S/O Kirungu v Sloonon Njuguna T. Mbutia & Another* [2004] eKLR



- (4) [\*M’kiara M’Rinkanya & Another v Gilbert Kaveere M’Mbijiwe\*](#) [2007] eKLR
- (5) [\*Nelson Iteba Ombongi v Patrick Kimeli Chepngok\*](#) [2014] eKLR
- (6) [\*Helda Alo Okoth v Matayo Owako Oyiera\*](#) [2015] eKLR

11. The Preliminary Objection was therefore listed to be heard on the same date. The Grounds relied upon by the Plaintiff/Decree holder are that :-

- (i) There is outstanding a decree and Certificate of Costs of this Honourable Court against the Judgment Debtor, Paul Kibugi Muite SC;
- (2) The Final Decree and Certificate of Costs against the Defendant, Thugi River Estates Limited were taken over by the Judgment Debtor as director of the Defendant formally by Order of Court of 13<sup>th</sup> May 2003 wherein Mr. Paul Kibugi Muite SC, whereby he undertook to personally pay the debts of Thugi River Estate Limited and that failure to do so execution to issue against him personally for the entire outstanding decretal sum;
- (3) The Decree is for the sum of Kshs.3,500,000.00 plus interest at 14% per annum and (4) Costs were taxed at Kshs.164,025.00; The Judgment Creditor now seeks to enforce that decree against the Judgment Debtor in the sum of Kshs.11,004,025.00. The Application does not set out how that figure is arrived at.

12. The 6<sup>th</sup> Garnishee filed a Replying Affidavit raises the issue of execution being time barred both in relation to the principal sum as well as the interest. It states that the Decree issued on 11<sup>th</sup> May 1999 is not available for execution as 12 years have lapsed and they lapsed on 11<sup>th</sup> May 2011. It also confirms that it does not hold any funds due to either the Judgment Debtor no any legal fees due to S.C. Paul Muite.

13. On 18<sup>th</sup> February 2015, the Applicant expected to be heard but in accordance with The [\*Owners of Motor Vessel “Lillian S” v Caltex Oil \(Kenya\) Limited\*](#) [1989] KLR 1, the Court decided to deal with the Preliminary Objection first. The Submissions on behalf of the 6<sup>th</sup> Garnishee entail repetition of the Affidavit and the ground, mainly that there is a limitation period on recovery of 12 years and for interest of 6 years. In relation to the quantum it is said that it can only relate to interest. It is also said that the Plaintiff did not take any steps to recover. The 6<sup>th</sup> Garnishee argues that the applicable date is the date of the Order (1<sup>st</sup> June 1999) and not the date of the consent (12 May 2003). It is argued that the Consent gave the Plaintiff only two years of interest and did not extend the period to a further 6 years. It is argued that the effect of the consent does not change the Parties to the suit and does not change the limitation of time. The Court has considered the arguments and the authorities provided.

14. Mr Mwire on behalf of the Judgment Creditor opposed the Objection. He accepts that the limitation period of 12 years applied but that it should not be computed from the date of judgment but from the date of the consent therefore 12 years would lapse on 15<sup>th</sup> May 2015. He argues that garnishee proceedings are different, they are execution. He relation to the authorities he seeks to distinguish them on the basis that they are based on different facts. He submits that the Garnishee Application is made in accordance with Order 23 and from a decretal sum with a judgment rate of interest. Mr Mwire also states that for a preliminary objection the facts cannot be speculative, they have to be certain, this in relation to the submission that the quantum can only relate to interest. In fact a preliminary objection is an argument on the law accepting certain facts. Mr Mwire also argues that a Garnishee cannot raise any argument that disputes a judgment.



## The Issues

15. The Issues that arise are:
- a) Is there a valid and subsisting judgment or decree that can be enforced?
  - b) If so, what is the date of the Judgment/Order/Decree that the Garnishor seeks to enforce?
  - c) Is such enforcement permitted by the *Limitation of Actions Act* Cap 22 Laws of Kenya
  - d) When does interest stop running?
  - e) Can a Garnishee raise an issue on the enforcement of the judgment?
  - f) What is the correct quantum that could be recovered?
16. As to whether there is a valid and subsisting debt, the Court is guided by the *Limitation of Actions Act*. Section 2 of the *Act* contains an Interpretations section. Section 2(4) provides:
- (4) In Part III, references to a right of action include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the movable estate of a deceased person; and references to the date of the accrual of a right of action are—
- (a) in the case of an action for an account, references to the date on which the matter arose in respect of which an account is claimed;
  - (b) in the case of an action upon a judgment, references to the date on which the judgment was delivered;
  - (c) in the case of an action to recover.....
- From the above, it is clear that the date of the judgment is the first reference point. Section 4 of the Act provides:
4. Actions of contract and tort and certain other actions
- (1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—
- (a) actions founded on contract;
  - (b) actions to enforce a recognizance;
  - (c) actions to enforce an award;
  - (d) actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
  - (e) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.
- (2) An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued:
- Provided that an action for libel or slander may not be brought after the end of twelve months from such date.



- (3) An action for an account may not be brought in respect of any matter which arose more than six years before the commencement of the action.
  - (4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due. (Emphasis added)
  - (5) An action to recover any penalty or forfeiture ....."
17. The Application is brought under Order 23 of the *Civil Procedure Rules* which provides: Order 23, rule 1 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 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 address. (emphasis added)
18. The Application seeks to execute against the fees due to the Director of the Judgment Debtor. That is akin to salary. Salary is expressly excluded from CPR Order 23. The *Act* refers to the date of the judgment and/or the decree. The Rules also refer to the decree and satisfaction of the "decree". The only decree that exists in this matter is the decree whereby the Plaintiff (now Judgment Creditor) was awarded the sum of Kshs3,500,000 plus costs and interest against the Defendant (Judgment Debtor). That relationship does not change. In the course of executing that Judgment and the Decree that followed, the Judgment Creditor made an application for the public examination of the Directors. One of the Directors of the Judgment Debtor was SC Paul Kabugi Muite. He took over the payments due under the Decree. The Applicant now seeks to rely on that Consent Order as if it were a fresh decree against the Director of the Judgment Creditor. It is also said it is an undertaking. An undertaking, in particular a professional undertaking has very specific characteristics and consequences. There is no evidence before the Court that there was an undertaking given by the Director.
19. It is interesting to note that the suit was compromised by an Order by the Consent (Exhibit WK-1) which provided for staged payments. Likewise the Application for Public Examination of the Directors was com-promised by an Order by Consent also providing for stages payments that were not made.



20. The Court Order made embodying the consent is based on the consent. It is in fact a contract. The agreement of the parties is embodied in the Order. In this case it is based on the original decree. It is made in reliance upon and with reference to the original decree. It is not a separate and new judgment against the Director. If it were interpreted as a separate decree, that could give rise to a situation of double recovery when both the Company and the Director were pursued for payment. That would be unfair. The limitation period provided in the Act for a contract is six years.

21. The Applicant concedes that some payments were made. Unfortunately, the current Application does not state how much was paid. In addition it does not set out the calculations by which the sums now claimed are calculated. It is said the original debt was Kshs 3,500,000/= plus interest. If interest of 14% was charged on that sum for a period of 12 years that would produce a result of 9,300,000/=. That is without any deductions at all. As for the calculation of interest, again Kshs164,025 @ 14% interest over 6 years would produce a sum of Kshs 137,781. In the circumstances, it is unclear from the Application how the figure of Kshs11,004,025.00 is calculated. The Application is incomplete. The figures presented to the Court are:

Principal 3,500,000.00

Interest 5,880000.00

Costs 164,025.00

Interest 137,781.00

Kshs 9,678,806.00

.....

22. The Applicant argues that the procedure does not allow for the potential garnishees to raise legal arguments against the order sought. In view of the fact that the rules provide that the prospective garnishee must "show cause why..." there can be no other interpretation than that it is open to that party to raise questions of law, fact and both. Any other interpretation of the phrase "to show cause why..." would be unduly restrictive, In the circumstances the Court has considered and taken into account the legal arguments put forward by the 6th Garnishee.

23. Even if the Court were not of that view, Article 159(2) of the Constitution of Kenya 2010 provides:

In exercising judicial authority, the courts and tribunals shall be guided by the following principles-

- (a) Justice shall be done to all, irrespective of status;
- (b) Justice shall not be delayed;
- (c) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
- (d) Justice shall be administered without undue regard to procedural technicalities; and
- (e) The purpose and principles of this Constitution shall be protected and promoted.....

and therefore the Court would be duty bound and correct to take into account the arguments before it without artificial distinctions that could limit a party's access to justice.

24. In the circumstances, and for the reasons set out above, the Plaintiff's application is dismissed with costs.

Order accordingly.



**FARAH S. M. AMIN**

**JUDGE**

**DATED 5<sup>TH</sup> AUGUST 2016**

**SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF SEPTEMBER 2016.**

**In the Presence of:**

Clerk: Isaiah Otieno

Mr Kimani HB for Mr Marabu for Applicant

Miss Ohongo HB Mr Mansur Issa for 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondent/Garnishees

