



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL CASE NO.59 OF 2011

THE TOWN CLERK NYAMIRA TOWN COUNCIL 1ST PLAINTIFF/APPLICANT
NYAMIRA TOWN COUNCIL 2ND PLAINTIFF/APPLICANT

VERSUS

THE CHIEF EXECUTIVE OFFICER

LOCAL AUTHORITIES PROVIDENT FUND..... DEFENDANT/RESPONDENT

AND

KENYA COMMERCIAL BANK LTD. (NYAMIRA BRANCH)..... GARNISHEE

RULING

1. The application for determination before court is the one dated 20th March 2014 brought pursuant to **Section 1A, 1B, 3, 63 (e)** of the **Civil Procedure Act**. Applicant seeks for orders:-

1.

2.

3. *There be stay of further proceedings in respect of the application dated 13th March 2014 till the hearing and determination of this application inter parties and thereafter the determination of the application dated 9th December 2013.*

4. *The Deputy Registrar's order dated 13th March 2014 be declared null and void for want of jurisdiction and the same be lifted ex debito justitiae.*

5. *The honourable court do give further directions for efficient and final determination of this matter.*

6. *The garnishee orders issued in respect of account No.1141208989 be lifted ex debito justitiae.*

7. *Costs be paid by the respondent.*

1. The application is premised on the grounds set out on the face of the application and supported by the annexed affidavit of Erick Omariba the county attorney and legal advisor for Nyamira County

sworn on the 20th day of March 2014.

2. Briefly he states in his affidavit that on 9th December 2013 they instructed the firm of Nyachiro Nyagaka and Company Advocates to move the court to stay and set aside the garnishee proceedings herein which they did. Orders of stay were issued on the 10th December 2013 pending the hearing and determination of the application inter partes.

3. He states that the application was partly disposed off on 27th February 2014 and the orders of 10th December 2013 extended. The reason for the application of 9th December 2013 was to challenge the consent order made herein between the firm of M/s Chokaa and Company Advocates for the respondents and the firm of M/s G.A. Mongare who initially acted for Nyamira Town Council which has been set down for hearing on 6th October 2014. He explains in his affidavit that the import of the consent order of 27th February 2014 was that there would be no other execution of the garnisheed account or any other properties belonging to the judgment debtor emanating from the decree that is sought to be satisfied.

4. The deponent further depones that despite the orders issued on 10th December 2013 and extended on the 27th February 2014, the defendant has moved to court and obtained further garnishee orders in respect of account No.1141208989 held in Kenya Commercial Bank Nyamira Branch vide orders obtained on 13th March 2013.

5. He adds that the Deputy Registrar having stayed the garnishee proceedings and granted stay of execution of decree herein could then not entertain an application for garnishee of yet another account which is in further execution of the same decree against which stay has been issued by consent.

6. He contends that this order has stopped operations at the county as no essential services can be facilitated as this is an operational account thus the need for the orders sought to be issued. He adds that the existence of these orders will confuse court process bearing in mind that the consent leading to the decree herein is being challenged. That unless the orders sought are granted the applicant is likely to suffer harm and damages as a result of the orders. He concluded by stating that the orders sought are in the interest of justice and for good justice and judicial order.

7. The application is opposed; there is filed a replying affidavit sworn on 1st April 2014 by Vincent A. Chokaa advocate who has the conduct of this suit on behalf of the defendant. He has also filed grounds of opposition dated the 24th day of March 2014. In his replying affidavit he depones that the orders made on 10th December 2013 were in relation to garnishee proceedings against monies held in the plaintiff's account at Kenya Commercial Bank Account No.1141208989 at Nyamira Branch which had been attached by a garnishee order made on 28th November 2013 and the application to be heard inter partes to which the order related is the notice of motion by the plaintiff dated 9th December 2013 by which it sought to have the garnishee order made in relation to that account stayed.

8. He states that the order made on 10th December 2013 did not bar the defendant from making another garnishee application in relation to any other account held by the plaintiff at the Kenya Commercial Bank or any other bank.

9. He states further that by the notice of motion dated 13th March 2014, the defendant sought to have monies lying in a different account No.1141598779 at the Kenya Commercial Bank Nyamira Branch attached. That that is not illegal or in contravention of the order made on 10th December 2013 and extended on 27th February 2014 as that order related to account No.1141208989 and not No.1141598779.

10. Finally that there is no order in this case staying any garnishee proceedings as claimed by the plaintiff/applicant except in relation to account No.1141208989.

11. It is important to note that on the 2nd April 2014 parties herein made their oral submissions and came up with a consent which is in the court records. Thereafter Mr. Nyachiro for the plaintiff/applicant sought for the extension of this court orders granted on the 20th March 2014 which were to expire on the 2nd April 2014 the reason for this ruling. Mr. Chokaa opposed the said application for extension.

12. I have considered the rival arguments by counsel. I have also considered the fact that operations at Nyamira County Council may come to a halt if the orders sought to be extended herein are not extended, thereby removing the substratum of this application. I have also taken note that there are two accounts in issue.

13. Having made the above considerations and it being found that account, No.1141598779 Kenya Commercial Bank Nyamira is the operations account I do hereby extend the stay orders pending the final hearing and determination of this application inter parties.

Dated, signed and delivered at Kisii on this 8th day of July, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Mr. Nyachiro Nyagaka for the Plaintiff

Mr. V. Chokaa for the Defendant

Mr. Bibu - Court Assistant