

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO 3619 OF 1988

KABANSORA LIMITED.....APPLICANT

VERSUS

AHMED BAHANNAN.....RESPONDENT

RULING

The Garnishee applies for stay of execution and setting aside the Garnishee order Nisi of October 15, 1990 served on October 17, 1990 and was for hearing on October 23, 1990. Among matters ordered and notified was the fact that Garnishee do within seven days after the service of the order inform the court what sum is due from him to the judgement debtor. Another requirement of that order nisi on the Garnishee is that the should attend the court on the application by the decree holder on October 23, 1990, and that the Garnishee pays to the decree holder the debt due from the Garnishee to the judgment debtor.

Rule 1 (2) of Order 22 of the Civil Procedure Rules require at least seven days before the day of hearing the Garnishee order nisi shall be served on the Garnishee. According to the affidavit on the Return of Service it is deponed that the Garnishee was served on October 17, 1990 for hearing on October 23, 1990. This is five days not seven days given and does not comply with the rule 1 (2) of the said order.

It is clear that the Garnishee more or less complied with the requirement of the order that it must inform the court what sum was due from it to the judgment debtor. The Garnishee is required to have done this within seven days of service on it of the order of Nisi. The order was served on October 17, 1990 and was for hearing on October, 23, 1990 and seven days within which to inform the court of any debt owing would have been done on October 24, 1990 a day after the hearing and making of garnishee order absolute.

That notification would have served no purpose on that date for no fault of the Garnishee who was not served as provided by Rule 1 (2) of the said order.

Nevertheless attempts were made to inform counsel for the decree holder of the position that no debts owing to the judgment debtor from the Garnishee. This was on November 6, 1990 with a copy to the court. It would also seem from an affidavit in support that the garnishee made some belated attempts to ascertain what happened from the court file but was not lucky.

The application is opposed and submitted that Rule 3 of Order 22 cannot be invoked by the Garnishee who was given appropriate notice to appear and did not appear to show that no debt was due from it to the judgment debtor. As such the garnishee is finally bound by the garnishee order absolute that money owing from it to the judgment debtor.

The decree holder has put in issue the fact that the garnishee had been given appropriate notice to appear in court on its application to show that it is not owing any money to the judgment debtor. One must of course examine what is meant by Notice under the applicable Rule. I have already referred to Rule 1 (2) of the said Order 22 and found that it has not been complied with as five days instead of seven days were given.

I therefore must hold that the Garnishee was not given sufficient notice to appear in court on October 23, 1990. I must therefore stay execution of the order as prayed and also set it aside. This is more so when the Garnishee swears that no debt is due from it to the judgement debtor and that has not been contradicted by

the decree holder. The Garnishee to have the costs of the application against the decree holder.

Dated and delivered at Nairobi this March 20, 1995

M.O KEIWUA

JUDGE