



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NUMBER 388 OF 2012

HASSAN M. IBRAHIM -----
1ST PLAINTIFF

ABDIRAHMAN NURROW ISAAK ----- 2ND
PLAINTIFF

VERSUS

THE MONARCH INSURANCE COMPANY LIMITED-----
DEFENDANT

AND

NATIONAL BANK OF KENYA ----- 1ST
GARNISHEE

KENYA COMMERCIAL BANK ----- 2ND
GARNISHEE

RULING

1. For determination are the 1st Plaintiffs'/Judgement Creditors' Notice of Motion dated 28th July 2023 and the Defendant's Judgement Debtor's Notice of Motion dated

1st August 2023. I shall begin with the latter Application which challenges orders given in the former Application.

2. The Application dated 1st August 2023 is for the following reliefs;-

1. Spent.

2. The Garnishee Order Nisi issued herein on 28th July 2023 be set aside.

3. The costs of this application be provided for.

3. Through affidavit evidence of the Defendant's Legal Manager (Rose Kangwana), it is averred that Bank Account No. 0102060196500 sought to be attached by the Plaintiffs/Judgement Creditors is a statutory account the Defendant's Life Insurance Business operates. Pursuant to the provisions of **Sections 26(2) and 46 of the Insurance Act** such account is not subject to attachment. Funds in the account are used to pay staff salaries and settlement of valid insurance claims, according to the Defendant.

4. Moreover, the Defendant contends that there is no basis for attachment there being no decree issued in compliance with **Rule 6 of the Arbitration Rules.**

5. The Defendant further states that the dispute is the subject of an intended Appeal to the Court of Appeal as evidenced by a draft Memorandum of Appeal exhibited.
6. For the stated reasons *inter alia* the Plaintiffs' garnishee proceedings against the Defendant are said to lack in merit.
7. The Plaintiffs responded to the Application *vide* affidavit of the 1st Plaintiff. The Application is said to be unnecessary for the reason that an order *nisi* has been issued and execution was underway before the Court of Appeal ordered stay. The Defendant is also said to have since filed another similar Application dated 8th February 2024.
8. No submissions seem to have been filed or made on the Application.
9. The Application is predicated upon the provisions of **Sections 3 and 3A of the Civil Procedure Act** which save the inherent jurisdiction of the Court to administer justice in any case before it, notwithstanding absence of

express legal provisions governing a case under consideration.

10. Is this Application merited? **Section 26(2) and 46 of the Insurance Act** the Defendant relies upon relate to regulation of Insurers carrying on long term general insurance and general insurance business. I see nothing in these provisions precluding a Judgement Creditor from attaching property of an Insurance Company held by a Garnishee.
11. As regards the contention that there is no decree arising from the arbitration proceedings in issue, there is no dispute that execution proceedings had commenced following adoption of the arbitral award as the Judgement of the Court. This argument is not therefore valid.
12. The record shows that Garnishee Order *Nisi* has already been issued. It is a temporary relief that may or may not be made absolute depending on the Garnishees' reply, as to whether or not they hold the Judgement Debtor's Funds. It is therefore premature to set aside the Garnishee Order *Nisi* herein before learning the

Garnishees' position. Besides, a similar Application dated 8th February 2024 has been irregularly filed.

13. In the premises, this Application is dismissed with costs to the Plaintiffs/Judgement Creditors.

14. In the Notice of Motion dated 28/7/2023 the Plaintiffs seek these reliefs;-

1. Spent.

2. Spent.

3. THAT the Honourable Court be pleased to make a Garnishee Order Nisi against National Bank of Kenya, Harambee Avenue Branch, the 1st Garnishee herein, being "Account Number 0102060196500" and the Kenya Commercial Bank the 2nd Garnishee herein "Account Number 1142514773" ordering that all monies lying and/or held in deposit by the Garnishees to the credit of the Monarch Insurance Company Limited, the Respondent herein, be attached to answer the Decree for the sum of Kenya Shillings fifty million four hundred and six thousand (50,406,000/=) being the amount in respect of which ruling was entered in favour of the claimants/applicants herein.

- 4. THAT an Order Nisi upon the 1st and 2nd Garnishee do issue and the same be served on the Garnishee before being served on the respondent.**
- 5. THAT the 1st and 2nd Garnishees do appear before this Honourable Court on an appointed date and time to show cause why it should not pay to the claimants'/applicants' Advocates the sum of Kenya Shillings fifty million four hundred and six thousand (Kshs. 50,406,000) in favour of the claimants/applicants being the amount in respect of which ruling was entered in favour of the claimants/applicants herein and further costs of these Garnishee proceedings.**
- 6. THAT an order do issue upon the 1st garnishee to release the sum of Kenya Shillings eighteen million (Kshs. 18,000,000) or more towards the settlement of the Kenya shillings fifty million four hundred and six thousand (Kshs. 50,406,000) being the amount in respect of which ruling was entered in favour of the claimants/applicants to the claimants'/applicants' advocates through their Bank Account, A/c Gordon Ogola, Kipkoech & Co. Advocates, Bank**

Name: ABC Bank, Account No. 008224001000312 Branch Nakuru.

7. THAT an order do issue upon the 2nd garnishee to release the sum of Kenya Shillings two million (Kshs. 2,000,000) or more towards the settlement of the Kenya Shillings fifty million four hundred and six thousand (Kshs. 50,406,000) being the amount in respect of which ruling was entered in favour of the claimants/applicants, to the claimants'/applicants' advocates through their Bank Account, A/c Gordon Ogola, Kipkoech & Co. Advocates, Bank Name ABC Bank, Account No. 008224001000312 Branch Nakuru.

8. THAT the costs of this application be borne by the respondent.

15. The 1st Plaintiff swears by affidavit in support of the Application that the dispute herein was referred to arbitration. Upon hearing the parties, the Arbitrator made an award in favour of the Plaintiffs, which award was adopted as the Judgement of the Court as required, for the purpose of execution. That Arbitral award has not been set aside, contends the 1st Plaintiff.

16. Despite the Judgement, the Defendant allegedly declined to settle the decretal sum. The 1st Garnishee is said to be holding Kshs. 18,000,000 while the 2nd Garnishee keeps Kshs. 2,000,000 to the credit of the Defendant. The Plaintiffs want the cash to be applied in the part settlement of the Decree.
17. The Plaintiffs therefore see no basis for dismissal of their Application in the circumstances.
18. The Defendant's Legal Officer (Rosemary Kangwana) replied, adopting the same averments in her affidavit supporting the Application dated 1st August 2023 *supra*.
19. The two Garnishees confirm by affidavit evidence holding the Defendant's/Judgement Debtor's funds although not sufficient to meet the Decree. They express readiness to release the funds as may be directed by the court.
20. The parties do not seem to have put in submissions.
21. The Defendant as the Judgement Debtor cannot lawfully challenge execution in Garnishee proceedings while owing the Plaintiffs in terms of the Decree in their favour.

22. As the Garnishees confirm holding the Defendant's funds, albeit in sufficient to satisfy the Decree, the Application is allowed in terms of prayers 6), 7) and 8). For avoidance of doubt, attachment shall be limited only to the funds held by the Garnishees to the credit of the Defendant.
23. The Defendant shall bear the costs of this Application as incurred by the Plaintiffs and the two Garnishees.
24. Ruling accordingly.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 4th of November, 2025.

In the presence of:

Mr. Kiage Advocate for Mr. Ogola Advocate for the Plaintiffs
Ms Bundi Advocate for Mr. Ndung'u Advocate for the Defendant
Mr. Mwangi Advocate & Ms Yidah Advocate for the Objector
Mr. Ojou Advocate for the 1st Garnishee
Court Assistant (Mr. Ng'eno)

J. M. NANG'EA, JUDGE.