



**Kenya Pipeline Company Limited v Lupain Investments (K) Limited & another  
(Civil Appeal 380 of 2018) [2025] KECA 257 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KECA 257 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 380 OF 2018  
DK MUSINGA, SG KAIRU & JM MATIVO, JJA  
FEBRUARY 21, 2025**

**BETWEEN**

**KENYA PIPELINE COMPANY LIMITED ..... APPELLANT**

**AND**

**LUPAIN INVESTMENTS (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SITICO PETROLEUM PRODUCTS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the Ruling and Orders of the High Court of Kenya at  
Nairobi (Ngetich, J.) dated 27th July 2018 in HCCC No. 623 of 2015)*

**JUDGMENT**

1. In this appeal, the appellant, Kenya Pipeline Company Limited (KPC), has challenged a ruling delivered on 27<sup>th</sup> July 2018 by which the High Court at Nairobi (R. Ngetich, J.) allowed an application dated 28<sup>th</sup> July 2017 made by the 1<sup>st</sup> respondent, Lupain Investments (K) Limited (Lupain), as a judgment creditor for the attachment of stocks of petroleum products held by KPC (the garnishee) to satisfy a decree in favour of Lupain against the judgment debtor, the 2<sup>nd</sup> respondent, Sitico Petroleum Products Limited (Sitico).
2. The background is that by a decree given on 11<sup>th</sup> March 2016 and issued on 7<sup>th</sup> April 2016, the High Court at Nairobi in HCCC No. 623 of 2015 decreed that Sitico was indebted to Lupain for USD 52,586.00 and interest at 22% per month and entered judgment for Lupain against Sitico accordingly.
3. In its effort to execute that decree, Lupain made the application dated 28<sup>th</sup> July 2017 to which we have referred. It asserted in support of that application that it had discovered that Sitico had stocks of petroleum products held by KPC at its storage facilities and that it was necessary, in the interest of justice, for KPC to be compelled to release the same to Lupain to satisfy the decree.



4. Opposing the application, KPC referred to a Transportation and Storage Agreement dated 1<sup>st</sup> March 2015 that governed its relationship with Sitico, pointing out that it had a lien on all products in its custody belonging to Sitico, and that it was at liberty to sell the same and apply the proceeds to satisfy such lien in the event of default in payment by Sitico of any amounts due to it. It asserted that it had in custody, Sitico's loadable product of 48.662m<sup>2</sup> and that Sitico was indebted to it for outstanding transportation and storage fees of USD 88,989.55, and that it was entitled to dispose of the stock to recover the outstanding amounts.
5. After hearing the application, the learned Judge in her ruling framed the issue for determination as being whether the petroleum products held by KPC belonged to Sitico and whether KPC was entitled to those products, thus extinguishing ownership of the same by Sitico. The learned Judge stated that the Transportation and Storage Agreement dated 1<sup>st</sup> March 2015 between KPC and Sitico had a dispute resolution provision in clause 22.0, including provision for giving of notices; that KPC had given Sitico 14 days' notice to clear its debt; that clause 16.4 of that agreement provided for disposal of Sitico's products to recover amounts owing to KPC but that KPC:

“...has not demonstrated any steps taken to recover amount owing from the judgment. There is no evidence of any formal steps taken by [KPC] after failure of informal process to yield fruits. It is therefore evident that the petroleum product being held by the Garnishee still belongs to [Sitico]. From the foregoing, I find it appropriate to attach the petroleum products held by the Garnishee to satisfy decree held by the Decree Holder herein against the judgment debtor.”
6. With that, the learned Judge allowed Lupain's application, and hence this appeal. Expounding on the grounds of appeal set out in the memorandum of appeal, learned counsel Mr. E. Masese holding brief for Mary Chege, learned counsel for KPC, submitted that the Judge erred by failing to take relevant factors into account, namely, that Sitico was indebted to KPC for a substantial amount of USD 171,755.03 as deponed in the replying affidavit of Janice Rogo; that under Clause 16.2 of the the Transportation and Storage Agreement, KPC had a lien on all petroleum products in its custody that belonged to Sitico; that the Judge should have enquired whether Sitico was indebted to KPC before allowing the application but failed to do so; and that by failing to give effect to Clause 16.2 of the said agreement, the Judge effectively re-wrote the contract between the parties against the principle in the case of *National Bank of Kenya Limited v. Pipeplastic Samkolit (K) Limited and Another*(2001) KLR 112.
7. Learned counsel Mr. Ochieng for Lupain in opposing the appeal submitted that the learned Judge was right in allowing the application; that KPC had in its communication with Lupain confirmed it held stocks of petroleum products on behalf of Sitico, and it was on that basis that Lupain moved the High Court for an order of attachment; that KPC does not deny that it was in possession of Sitico's petroleum products and that by the time the garnishee order nisi was issued by the court, KPC's right of lien had not accrued as KPC had not taken steps to dispose of the product to recover its debt. Citing the decision of the High Court in *Nyandoro & Company Advocates v. National Water Conservation & Pipeline Corporation: Kenya Commercial Bank Group Limited (Garnishee)* [2021] eKLR, counsel submitted that Lupain was within its rights to enforce its judgment against Sitico in the manner that it did.



8. We have considered the appeal and the submissions in keeping with our mandate under rule 31(1)(a) of the *Court of Appeal Rules*. The impugned ruling and order of the High Court was made under Order 23 of the *Civil Procedure Rules* on attachment of debts. Rule 1(1) of Order 23 provides that:

“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.”

9. In effect, the grant or refusal of a garnishee order under those provisions involves exercise of the court’s judicial discretion. Consequently, the circumstances in which this Court can interfere with that exercise of discretion are limited. See for instance *United India Insurance Company Limited Kenindia Insurance Company Limited & Oriental Fire & General Insurance Company Limited v. East African Underwriters (Kenya Limited)* [1885] eKLR.
10. With that in mind, and as already stated, the learned Judge in allowing the application before her stated that KPC had not taken steps to recover the amount owing to it by Sitico, and that the petroleum products it held still belonged to Sitico and therefore liable for attachment. In doing so, the learned Judge does not appear to have considered the import of Clause 16.2 of the Transportation and Storage Agreement between KPC and Sitico in which it was provided:

“16.2 KPC shall have a lien on all products belonging to Sitico Petroleum Products Limited in the custody of KPC. After 45 days’ notice from the due date KPC shall be at liberty to sell all such products and apply the proceeds of such sale in or towards the satisfaction of such lien and all proper charges and expenses in relation thereto...

Such lien shall remain in force notwithstanding that Sitico Petroleum Products Limited’s Product have been stored, landed or otherwise dealt with...”

11. A lien, as defined in *Black’s Law Dictionary*, 8<sup>th</sup> edition, is “a legal right or interest that a creditor has in another’s property, lasting usually until a debt or duty it secures is satisfied.” As the Judge appreciated, KPC exhibited invoices and demands sent to Sitico. Sitico remained indebted to KPC. In other words, Sitico’s indebtedness to KPC was established and uncontested. The fact that KPC had not taken steps towards selling Sitico’s products the subject of lien did not, in our view, extinguish the lien, as the Judge appears to have implied.
12. Sitico’s petroleum products under KPC’s custody therefore remained encumbered by KPC’s lien until its debt could be discharged and were not available for attachment by Lupain. To that extent, the Judge misdirected herself. We are therefore entitled to interfere with her decision. Consequently, we allow the appeal and set aside the ruling and order of the High Court dated 27<sup>th</sup> July 2018 in Civil Case No. 623 of 2015. We substitute therefor an order dismissing, with costs, the 1<sup>st</sup> respondent’s application dated 28<sup>th</sup> July 2017. The appellant will also have the costs of this appeal.



DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

*signed*

**DEPUTY REGISTRAR**

