



**Casucci v Bando Project (K) Limited; Kenya Commercial Bank Limited & another (Garnishee)
(Environment & Land Case 232B of 2020) [2024] KEELC 3359 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 232B OF 2020
NA MATHEKA, J
APRIL 24, 2024**

BETWEEN

FATUMA KALTHUMA CASUCCI APPLICANT

AND

BANDO PROJECT (K) LIMITED RESPONDENT

AND

KENYA COMMERCIAL BANK LIMITED GARNISHEE

HFC BANK LIMITED GARNISHEE

RULING

1. The application is dated 6th December 2023 and is brought under Order 51 Rule I, Order 23 Rule 1,2,3 & 10 of the Civil Procedure Rules, 2010; Article 159(2) d of the Constitution of Kenya seeking the following orders;
 1. That this application be certified as urgent and be considered ex-parte in the first instance.
 2. That this Honourable Court be pleased to issue an Order Nisi forthwith attaching the sum of Kenya Shillings Three Million Two Hundred Forty-Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 3,247,926.67) being the decretal sum together with an additional interest at 12% per annum from the date of filing the suit i.e. 16th December 2020 until payment in full, which sum is held to the credit of the Judgment Debtor in account number XXXXXXXXXX at Kenya Commercial Bank Limited, Mvita Branch, Mombasa and account number XXXXXXXXXX at HFC Bank Limited, Rehani Branch, Mombasa.
 3. That this Honourable Court be pleased to order the above-named Garnishees and Judgment Debtor to attend court to show cause why the said Garnishees should not pay to the Decree Holder the decretal sum herein or so much thereof as may be sufficient to satisfy the said



sum of Kenya Shillings Three Million Two Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 3,247,926.67) being the decretal together with an additional interest at 12% per annum from the date of filing the suit i.e., 16th December 2020 until payment in full.

4. That upon the inter parties hearing of this Application, this Honourable court be pleased to issue a Garnishee Order Absolute in terms of prayer 2 herein above.
 5. That the costs of this application be provided for and be borne by the Judgment Debtor.
2. It is supported by the annexed affidavit of Fatuma Kalthuma Casucci and grounds that this Honourable Court issued a judgment on the 23rd day of March 2023 in favour of the Decree Holder and against the Respondent/Judgment Debtor for a sum of Kenya Shillings Two Million Nine Hundred Thousand (Kshs2,900,000.00) with interest at court rates from the date of filing this suit until payment in full together with costs of the suit. That on 27th day of September 2023 the Deputy Registrar taxed the Bill of Costs between party and party and allowed against the Respondent/Judgment Debtor in the sum of Kenya Shillings Three Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 347,926.67). That the decretal sum is Kenya Shillings Three Million Two Hundred Forty-Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 3,247,926.67) which amount has continued to accrue interest at the rate of 12% per annum from the date of filing the suit i.e., 16th December 2020 until payment in full. That hitherto the decree issued is yet to be satisfied. No plausible reason has been advanced as to why the Respondent/Judgment Debtor has not paid the decretal sum. It is therefore for this reason that the Decree Holder seeks the Honourable Court's assistance in executing the decree. That attempts to engage the Respondent/Judgment Debtor have remained futile as the Respondent/Judgment Debtor has kept ignoring all communication and correspondence from the Decree Holder. That the Applicant/Decree Holder is aware that the Respondent/Judgment Debtor has accounts with the Garnishees who are holding funds to their credit. That unless this application is considered on a priority basis, the Respondent/Judgment Debtor may move quickly and remove the said funds from the account leaving the Applicant/ Decree Holder with no recourse.
3. This court has considered the ex parte application. The definition the word garnishee proceedings in the *Black's Law Dictionary* states that;
- a statutory proceeding whereby a person's property, or credit in possession or under control of, or owing by, another are applied to payment of former debt to third person by proper statutory process against debtor and garnishee.”
4. In the case of *Nyandoro & Company Advocates vs National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)* (2021) eKLR the court stated that;
- Garnishee proceedings serve to facilitate the satisfaction of judgment debts. “Garnishees, in this regard, often have no objections to garnishee orders being made final, so long as there is a discernible debt due and owing to the judgment debtor; once such indebtedness is established, it is inconsequential to the garnishee who the debt is paid to. However, garnishee orders are premised on indebtedness – without such indebtedness to the judgment debtor, it would be plainly unjust to order a party to pay a sum to the judgment creditor.”



5. Denning M.R. considered the procedure for attachment of debts in the case of *Choice Investments Ltd vs. Jeromnimon (Midland Bank Ltd, Garnishee)* (1981) 1 All ER 225 at page 227 where he said that;

The word ‘garnishee’ is derived from the Norman-French. It denotes one who is required to ‘garnish’, that is, to furnish, a creditor with the money to pay off a debt. A simple instance will suffice. A creditor is owed £100 by a debtor. The debtor does not pay. The creditor gets judgment against him for the £100. Still the debtor does not pay. The creditor then discovers that the debtor is a customer of a bank and has £150 at his bank. The creditor can get a ‘garnishee’ order against the bank by which the bank is required to pay into court or direct to the creditor, out of its customer’s £150, the £100 which he owes to the creditor.

6. There are two steps in the process. The first is a garnishee order nisi. Nisi is Norman-French. It means ‘unless’. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors: see *Pritchard v Westminster Bank Ltd* [1969] 1 All ER 999, [1969] 1 WLR 547 and *Rainbow v Moorgate Properties Ltd* [1975] 2 All ER 821, [1975] 1 WLR 788. If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if he himself directed the bank to pay it. If it is a deposit on seven days’ notice, the order nisi operates as the notice.
7. As soon as the garnishee order nisi is served on the bank, it operates as an injunction. It prevents the bank from paying the money to its customer until the garnishee order is made absolute, or is discharged, as the case may be. It binds the debt in the hands of the garnishee, that is, creates a charge in favour of the judgment creditor: see *Joachimson v Swiss Bank Corpn* [1921] 3 KB 110 at 131, [1921] All ER Rep 92 at 102, per Atkin LJ. The money at the bank is then said to be ‘attached’, again derived from Norman-French. But the ‘attachment’ is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay.”
8. The home for such proceedings is Order 23 Rule 1 which reads:-

Order for the attachment of debts

1. A court may, upon the ex parte application of a decree- holder, and either
 - (1) 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 residence or place of business or in such manner as the court may direct.
- (4) An order nisi shall be in Form No. 16 of Appendix A.”

9. Order 23 Rule 4 of the [Civil Procedure Rules](#) states that;

If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings; and the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.”

10. I have perused the court file and find that indeed Court issued a judgment on the 23rd day of March 2023 in favour of the Decree Holder and against the Respondent/Judgment Debtor for a sum of Kenya Shillings Two Million Nine Hundred Thousand (Kshs2,900,000.00) with interest at court rates from the date of filing this suit until payment in full together with costs of the suit. • That on 27th day of September 2023 the Deputy Registrar taxed the Bill of Costs between party and party and allowed against the Respondent/ Judgment Debtor in the sum of Kenya Shillings Three Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 347,926.67). That the decretal sum is Kenya Shillings Three Million Two Hundred Forty-Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 3,247,926.67) and the same has not been paid to date. The Applicant has attached a letter and deposit slip to confirm the said bank accounts belong to the judgement debtor. I find this application is merited and I grant the following orders;

- a. An Order *Nisi* is issued attaching the sum of Kenya Shillings Three Million Two Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 3,247,926.67) being the decretal sum together with an additional interest at 12% per annum from the date of filing the suit i.e. 16th December 2020 until payment in full, which sum is held to the credit of the Judgment Debtor in account number XXXXXXXXXX at Kenya Commercial Bank Limited, Mvita Branch, Mombasa and account number XXXXXXXXXX at HFC Bank Limited, Rehani Branch, Mombasa.
- b. The above-named Garnishees and Judgment Debtor to attend court to show cause why the said Garnishees should not pay to the Decree Holder the decretal sum herein or so much thereof as may be sufficient to satisfy the said sum of Kenya Shillings Three Million Two Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs 3,247,926.67) being the decretal together with an additional interest at 12% per annum from the date of filing the suit i.e., 16th December 2020 until payment in full.
- c. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE

