



Ogechi v LTI Kisii Safari Inn Ltd t/a Kaskazi Beach Hotel; Barclays Bank aka Absa Bank (Garnishee) (Cause 12 of 2020) [2024] KEELRC 1388 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 1388 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 12 OF 2020
AK NZEI, J
FEBRUARY 22, 2024**

BETWEEN

DANIEL OGECHI CLAIMANT

AND

LTI KISII SAFARI INN LTD T/A KASKAZI BEACH HOTEL RESPONDENT

AND

BARCLAYS BANK AKA ABSA BANK LTD GARNISHEE

RULING

1. On 15/6/2023, this Court delivered a Ruling on the Claimant/Decree Holder's Notice of Motion dated 29/3/2023 and made the following orders:-

- “(a) A Garnishee Order Absolute is hereby issued attaching a sum of ksh. 4,064,000 (Four Million and Sixty-Four Thousand Kenya Shilling) being the judgment sum herein, together with interest at 14% per annum from the date of judgment (19th May 2022) until payment in full, which amount is held to the credit of the Respondent/Judgment Debtor in account No. 2024584634, Barclays Bank (aka Absa Bank) Limited Diani Branch.
- (b) the attached sum held in the said bank account, kshs. 4,064,000 (Four Million Sixty Four Thousand) together with interest at 14% percent per annum from the date of judgment (19th May 2022) until payment in full, less any amount that may be shown to have been paid to the Decree Holder since the passing of the decree herein, shall be paid to the Claimant/Decree Holder and/or his Advocates herein by the Garnishee forthwith.



- (c) Costs of this application are awarded to the Claimant/Decree Holder, and shall be paid by the Respondent /judgment debtor.”
2. On 26/6/2023, the Garnishee (Barclays Bank Kenya aka Absa Bank) Limited, filed a Notice of Motion dated 23/6/2023 seeking the following orders:-
- a. That the application be certified urgent, and service thereof be dispensed with, and be heard ex-parte in the first instance.
 - b. That pending hearing of the application inter-partes, the Court be pleased to issue stay of execution of the garnishee order absolute issued on 15/6/2023 and all consequential actions arising therefrom.
 - c. That pending hearing and determination of the Garnishee’s appeal, the Court be pleased to grant stay of execution of the garnishee order absolute issued on 15/6/2023 and all consequential actions arising therefrom.
 - d. That costs of the application be provided for.
3. The application is based on the supporting affidavit of Nerea Okanga, a Legal Counsel in the Garnishee Bank. It is deponed in the said affidavit:-
- a. that whereas it is stated in the Court’s Ruling delivered on 15/6/2023 that the Garnishee bank did not oppose the Decree Holder’s execution proceedings, the Garnishee had filed a replying affidavit dated 30/5/2023 to the said proceedings, and that the replying affidavit ought to have been considered by the Court as it depones to the Garnishee’s right to hold the credit balance in the attached account to settle obligations owed to it.
 - b. that the Garnishee is aggrieved by the decision and has filed a Notice of Appeal against it; and the intended appeal has strong grounds, key among them being that a garnishee’s liability is, in law, limited to what it holds in credit for a judgment debtor.
 - c. that the order of 15/6/2023, without legal basis, negates the proprietary interest claimed by the garnishee for the funds held by it in credit for the judgment debtor.
 - d. that the Garnishee will suffer substantial loss if the stay sought is not granted, and that the appeal will be rendered nugatory.
 - e. that the Garnishee is able and ready to deposit the sums it holds in credit for the judgment debtor in Court and to provide such other reasonable security for the due performance of the order of 15th June 2023 in the unlikely event that the aforesaid appeal is not successful.
4. Documents annexed to the said affidavit are a notice of Appeal shown to have been filed in this Court’s Registry on 19/6/2023, a replying affidavit of Nerea Okanga sworn on 30/5/2023 and shown to have been received in this Court’s Registry on 31/5/2023, and a copy of the Court of Appeal’s judgment delivered on 18/11/2011 in the said Court’s Civil Appeal No. 72 of 2008 Nairobi (LTI Kisii Safari Inns Ltd & 2 Others v Deutsche Investition-und Entwicklungsgellschaft (‘DEG’) & 2 Others) [2011] eKLR.
5. The application is opposed by the Claimant/Decree Holder vide his replying affidavit sworn on 5/7/2023. It is deponed in the said replying affidavit that the Garnishee was never keen on defending the Claimant/Decree Holder’s application dated 29/3/2023 in that despite having been served on 11/4/2023 with the application and the order nisi granted on 30/3/2023, the garnishee never appeared in Court on 20/4/2023, and again on 4/5/2023 when the Court reserved a date for delivery of its Ruling on the aforesaid application.



6. The Claimant/Decree Holder further deponed:-
 - a. that despite having been notified of the Ruling date by the Claimant/Decree Holder on 4/5/2023, the Garnishee never took any action until 30/5/2023 when they purported to file a replying affidavit. That the said replying affidavit was of no consequence as it was filed after the Court had already reserved a ruling date on the application and without leave; and that no application was filed to admit the said affidavit on record.
 - b. that the replying affidavit (filed on 30/5/2023) was filed out of time, without leave and is therefore of no consequence.
 - c. that the liability of a garnishee is on the amount being held on behalf of the judgment debtor, and that the Garnishee has not demonstrated any proprietary interest in the funds it is holding on behalf of the judgment debtor, why it should not release it, or what prejudice or substantial loss it stands to suffer if the funds are released.
 - d. that the funds do not belong to the Garnishee, but are held in an account belonging to the judgment debtor.
 - e. that despite the order nisi issued on 30/3/2023, the Garnishee continued to allow transactions in the subject bank account as indicated in the statements, and that there is a real risk that the Garnishee will deplete the account if stay orders are issued.
7. It is to be noted that the Garnishee did not file any further affidavit disputing any of the facts deponed to in the Decree Holder's foregoing replying affidavit, and did not seek the Court's leave to do so. In particular, service of the application dated 29/3/2023, the order nisi granted on 30/3/2023 and subsequent notices on the application was never denied by the Garnishee.
8. On 20/4/2023, in the presence of Counsel for the Decree Holder and Counsel for the judgment debtor, but in the absence of the Garnishee, this Court gave directions on filing of written submissions on the said application, and fixed the matter for mention on 4/5/2023 for purposes of reserving a Ruling date, with an order that a mention notice be served on the Garnishee by the Claimant/Decree Holder. A ruling date was reserved on 4/5/2023. As already stated in this Ruling, service has not, and was never disputed by the Garnishee.
9. The Garnishee now alleges that it filed a replying affidavit on 30/5/2023, long After the Court had reserved a ruling date on the application that the Garnishee purported to be responding to. This Court was never moved by way of an application or otherwise, to admit the alleged replying affidavit on record. Conventionally, any Court file pending delivery of a ruling or judgment is put in the custody of the judge or judicial officer presiding over the case in issue, and the judge or judicial officer is not reasonably expected to be aware of any document filed in the Court's Registry or uploaded onto the Court's e-filing portal after a judgment date/ruling date has been reserved.
10. Cases belong to parties, not to the Court, and parties are obligated to timeously file in Court any document that they expect the Court to see and to consider when determining their case. Any document filed after the Court reserves a Ruling/judgment, unless filed with the Court's leave or pursuant to the Court's order in that regard, is of no consequence, and the Court cannot consider it. It is for good reason that the law and rules of procedure require that documents filed in Court proceedings should be served on the other party, and that the served party be granted an opportunity to respond to issues raised in such filed documents if he or she wishes to do so.
11. Allowing parties to file documents at will after a judgment/ruling date is reserved is bound to open a floodgate of illegalities, injustices and iniquities.



12. What the Garnishee is purporting to tell the Court at this stage should have been placed before this Court on or before 4/5/2023 when the Court reserved a ruling date. As stated in this Court's Ruling delivered on 15/6/2023, the Garnishee did not oppose the decree holder's Notice of Motion dated 29/3/2023.
13. The wheels of justice have moved on regarding the said application. The Garnishee has confirmed at paragraph 7 of the affidavit sworn in support of the application herein that the funds held in the subject bank account are held by it in credit for the judgment debtor. The Garnishee has not demonstrated that it has any proprietary interest in the said funds; and that it will suffer substantial loss if the orders sought are not granted.
14. Finally, and having considered written submissions filed, I find no merit in the Notice of Motion dated 23/6/2023, and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND FEBRUARY 2024

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable

Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance

..... Applicant

..... Respondent

