



Muthee v X-Plico Insurance Co Ltd (Employment and Labour Relations Cause 1463 of 2018) [2024] KEELRC 228 (KLR) (9 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 228 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1463 OF 2018
AN MWAURE, J
FEBRUARY 9, 2024**

BETWEEN

GEOFFREY MURIITHI MUTHEE CLAIMANT

AND

X-PLICO INSURANCE CO LTD RESPONDENT

RULING

1. The 1st garnishee filed two applications hereto. One dated 16th August 2023 seeks the following prayers:
 1. That this application be certified urgent and the same be heard ex parte in the first instance.
 2. That the honourable court be pleased to admit this matter for purposes of hearing the application herein during the current vacation.
 3. That pending the hearing and determination of this application inter partes, there be a stay of execution of the order of the honourable court as against the 1st garnishee pursuant to the ruling dated 28/7/2023 but delivered herein on 31st July 2023.
 4. That he honourable court be pleased to review and set aside the ruling dated 28/7/2023 but delivered on 31st July 2023 as against the 1st garnishee and the consequential orders thereof.
 5. That the costs of this application be provided for.
2. The 1st garnishee relied on the supporting affidavit of George Muthui who introduces himself as senior legal manager of the 1st garnishee Prime bank limited.



3. The 1st garnishee avers that as per the honourable court's ruling dated 28th July 2023 the claimants advocates are in the process of calling for the decretal sum from the 1st garnishee.
4. The 1st garnishee states there is an error apparent on record as paragraphs 1 and 5 did not state the court considered application by decree dated 7/7/2022 and had regard to 1st garnishee's replying affidavit and submissions dated 24/3/2023. He says the court revisited the 1st garnishee's application dated 27/1/2023 yet the same had not even conclusively been determined by the ruling dated 16/3/2023.
5. The 1st garnishee deposes there is only kshs 363,182/05 in their account and cannot be expected to satisfy decretal sum of over 5 million as per the ruling of 31st July 2023 but dated 28th July 2023.
6. The 2nd application by the 1st garnishee dated 12th September 2023 seeks the following orders.
 1. That 1st garnishee's notice of motion dated 16/8/2023 seeking an order for review and setting aside of a garnishee order absolute in terms of the ruling dated 28/7/2023 but read on 31/7/2023 in this matter is scheduled for interpartes hearing on 21/9/2023 as directed by the vacation judge on 21/8/2023.
 2. That while the said application is pending consideration as aforesaid the 1st garnishee was proclaimed on 11/9/2023 in execution of warrants of attachment and sale issued by the honourable court on 7/9/2023 in execution of warrants of attachment and sale issued by the honourable court on 7/9/2023 in execution of warrants of attachment and sale issued by the honourable court on 7/9/2023 as confirmed by the annexures to the supporting affidavit herein and its assets risk being taken away in attachment upon the lapse of the proclamation notice on 18/9/2023 before the honourable court has had the opportunity to consider the same.
 3. That rules the matter is admitted for hearing on urgent basis and an interim order of stay of execution granted, the execution process now actively underway will be concluded and the 1st garnishee's pending application already fixed for hearing seeking an order for review as aforesaid will be rendered nugatory.
7. The Deponent George Mathui on behalf of Prime Bank the 1st garnishee in his supporting affidavit dated 12th September 2023 avers that there is an application seeking to review the courts ruling dated 28th July 2023. He prays for stay of warrants of attachment and sale dated 7th September 2023 proclaimed by Jenks auctioneers. He says the warrants are premised on a decree issued on 7/2/2022 which is more than one year old and yet there was no application by notice to show cause under order 22 rule 18 of Civil Procedure Rules and which apply by rule 32 of ELRC procedure rules.
8. He says the proceedings are therefore irregular.
9. He further states the amount proclaimed is kshs 8,600,978/30 and yet all there is in the account is kshs 363,182/02 which places a burden on the 1st garnishee which is unmerited.
10. The court has considered the judgment creditor submissions dated 24th October 2023.
11. 1st garnishees submissions dated 24th October 2023 have been also considered by the court.



Analysis and determination

12. The issues for determination is whether there are valid grounds to grant stay of execution of the orders of the honourable court dated 28th July 2023. The 1st garnishee's ground for their prayers for review of this courts ruling is that the same is premised on an order made on 7th February 2022 which has lapsed and there is no notice to show cause filed by the judgment/creditor. He says that is against order 22 rule 18 of the [Civil Procedure Rules](#) which apply the provisions of rule 32 of the [Employment and Labour Relations Court Act Procedure Rules](#).
13. The said order 22 rule 17 & 18 of [Civil Procedure Rules](#) provides as follows:

“The court may in its discretion refuse execution at the same time against the person and property of judgment debtor (in certain cases) where an application for execution is made one year after the date of decree. Also rule 32 of ELR procedure rules provides as follows:- “the rules of execution of an order or decree shall be enforced in accordance to civil procedure rules.
14. The 1st garnishee states the decree was delivered over one year ago on 7th February 2022 and yet there was no application for notice to show cause. The interpretation of this court is that first this is not a ground for review as it was not raised in the application dated 27th January 2023 and hence it was not an error made by the court. Hence the grounds for review of the orders of the court is not satisfied.
15. Secondly, the court in its ruling of 28th July 2023 made it clear it considered the 1st garnishees submissions dated 14th February 2023 and claimants submissions dated 17th February 2023.
16. The court also in paragraph 2 of its ruling made it clear it referred to the 1st garnishee's application of 7th July 2022 and although there was a typo that referred to 7th July 2020 but clearly the court considered all the said pleadings.
17. The 1st garnishee also raised a point that for the 2nd garnishee M- Oriental limited a garnishee order was not made against it. The court is also aware that the 1st garnishee did aver that there is a frozen bank account of the judgment debtor which has been frozen because of internal wranglings of the owners. The court has not been availed specific court orders related to the aforesaid frozen account in their Westlands branch and so is not clear if it is legally frozen or is just internal arrangements with the bank. The 1st garnishee did not give the statements of the funds in that account.
18. The 1st garnishee admitted there was an amount of kshs 363,182/- in their targeted account and therefore the honourable court in its ruling dated 28th July 2023 stated:

“the 1st garnishee is only expected to pay the decree holder what is in their possession and so have nothing to lose from their possession.”
19. The court however having studied the court order dated 4th November 2021 and noting the explicit orders from the High Court of Kenya in the commercial suit E901/2021 there is an order that the defendant or its agents or officers or any other persons acting on their behalf should not withdraw funds from that account.
20. In view of the fact that the honourable high court had made an order in relation to the same subject matter in relation to M- Oriental bank limited dated 12th January 2023 whereby the court declined to grant a garnishee order against the said 2nd garnishee the court is persuaded to exercise its discretion and



review its ruling as per the order dated 28th July 2023 against the first garnishee in view of the said High court order of 4th November 2021 issued by Justice W.A. Okwany.

21. The amount that the 1st garnishee admits is in their account being kshs 363,182/- is in the same account whereby another court had issued another order restraining any dealings with the said account. On that strength the court concedes to exercise its discretion and review its ruling of 28th July 2023.
22. Rule 33 of *employment and labour relations procedure (rules)* provide that a person aggrieved by a decree or order from which an appeal is allowed but from which no appeal is preferred or no appeal is allowed may within a reasonable time apply for a review of the judgment or ruling for among others a sufficient reason.
23. The fact that there are orders from a court of concurrent jurisdiction which has restrained dealings with this account is in the view of his court sufficient reason to allow a review.
24. In view of the foregoing the prayers in the notice of motion dated 16th August 2023 and specifically prayers 3 and 4 are hereby granted.
25. Each party will meet their respective costs of this application.
26. The prayers in the notice of motion dated 13th September 2023 and especially prayers 3 and 4 are also granted.
27. Costs of the application to be borne by the respective parties as well.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF FEBRUARY, 2024.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

