



Simiyu v Nzoia Sugar Co. Ltd; Standard Chartered Bank Eldoret & 2 others (Garnishee) (Employment and Labour Relations Cause E005 of 2021) [2024] KEELRC 1729 (KLR) (9 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 1729 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS CAUSE E005 OF 2021**

**JW KELI, J
APRIL 9, 2024**

BETWEEN

STEPHEN BUKHEBI SIMIYU APPLICANT

AND

NZOIA SUGAR CO. LTD RESPONDENT

AND

STANDARD CHARTERED BANK ELDORET GARNISHEE

DTB BANK BUNGOMA GARNISHEE

KENYA COMMERCIAL BANK GARNISHEE

RULING

1. The Applicant filed in court notice of motion application dated 29th February 2024 Under Order 23. Rules 1. 2. 3 And 4 And Order 51 Rule 1 Of The Civil Procedure Rules And Section 3. 3a of The Civil Procedure Act. and All Enabling Provisions seeking for the following ORDERS:
 - (a) That the application be heard ex-parte in the first instance.
 - (b) That all monies held in or hereafter to be held by the Garnishee to the credit of Nzoia Sugar Company Limited in the accounts;
 1. 0102417955300 at Standard Chartered Bank Eldoret Branch.
 11. 0267463001 at DTB Bank Bungoma Branch.
 111. 11078113840 at KCB Bungoma Branch.



Be attached and pay the decretal sum of Ksh 4,121,694/= together with further accrued interest thereon at court rates and costs of these garnishee proceedings to be assessed by court to the decree holder in satisfaction of the decree herein.

- (c) That costs of this application be provided for.
2. The Application was premised on the following grounds:-
1. That the judgment/ Decree of this honourable court remains unsatisfied to the tune of ksh 4,121,694/-.
 2. That the Respondent/Debtor has only paid a total of ksh 2,304,379/=.
 3. That ksh 1,065,769 was adjusted from the decree pursuant to the Ruling of court delivered on 27th November 2023.
 4. That it is interest of justice that the orders be issued.
3. The application was further supported by the Affidavit of the Decree Holder Stephen Bukhebi Simiyu.
4. The Decree-holder averred that upon entry of judgment in this matter, a decree was drawn for execution for ksh 6,171,599 and execution commenced by way of garnishee proceedings. That an application for review was then made by the respondent and a sum of ksh 1,065,769 was adjusted and or reviewed from the limb that involved payment of unremitted National Bank of Kenya loan deductions. That the respondent had paid in total ksh 2,304,379/- prior to the review by this Honourable court. That a fresh amendment to the decree and current interest rate less ksh1,066,283.35 paid after review order leaves a balance of ksh 4,121,694 which to date the Respondent has not shown any commitment to settle.
5. The Decree holder stated that he had been unable to enjoy my decree due to the Respondent's recalcitrance and reluctance to pay as they are currently crushing cane and are in position to pay (find a copy of further amended decree marked SBS-1).
6. On the 29th February 2024 the court considered the application *ex parte* and pursuant to Order 23 rule 1 of the Civil Procedure Rules issued Garnishee Order Nisi and ordered service on the Garnishees and the Judgment debtor for interpartes hearing.
7. The 1st Garnishee filed replying affidavit of Wycliffepotas Onyango dated 12th March 2024 and attached statement of the Judgment Debtor's account held with their bank indicating balance in the account as Kshs. 6,462.30.
8. The 2nd and 3rd Garnishee did not file response.
9. The Judgement Debtor filed a preliminary Objection dated 11th March 2024 staining non-compliance by the Applicant with section 21 of the *Government Proceedings Act*. They further filed Replying affidavit of Rita Mukhongo dated 11th March 2024 explaining payments done and further stating that as guarantor they had issue with payments made to claimant as he had not settled the loans with the two banks, Family bank and National Bank of Kenya with home they had Memorandum of understanding.
10. The parties canvassed the application on whether the garnishee order of nisi can be confirmed absolute.
11. The Counsel for the applicant stated that since only the 1st Garnishee had filed statement indicating they held approx. Kshs. 6000 the Order Nisi be confirmed absolute with respect to the 2nd and 3rd Garnishees only. The 1st Garnishee sought cost for the proceedings for Kshs. 20,000.



12. The Counsel for the Judgment debtor reiterated they had an issue with the outstanding loans which the claimant was not settling as they were guarantors and were worried of paying him the judgment money. Counsel did not address the preliminary objection and the court was of the opinion it was not an issue. The execution had been going on for months before the court. The court found the Preliminary Objection based on the Government Proceedings Act section 21 was an afterthought. The court cannot prosecute position of the law on behalf of the parties.
13. The role of the court in Garnishee proceedings is as per Order 23 rule 1 and 2 of the Civil Procedure Rules to wit:- “(1) 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. (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.”
14. The court finds that it has no jurisdiction over any agreement entered between the bank and the judgment debtor. The court found the judgment had not been satisfied. The court having been satisfied there is no sufficient money held by the 1st Garnishee in the bank account of the judgment debtor releases the bank from the Order Nisi. The Order Nisi is confirmed absolute for the 2nd and 3rd Garnishees.
15. The 1st Garnishee is awarded costs of the garnishee proceedings for the sum of Kshs. 20,000 payable by the Applicant less the Kshs. 6000 held in the bank account.
16. It is so Ordered.

DATED , SIGNED AND DELIVERED THIS 9TH DAY OF APRIL 2024 IN OPEN COURT AT BUNGOMA.

J.W.KELI

JUDGE

In The Presence Of

C/A Brenda Wesonga

Applicant/ Decree Holder - Sichangi

1st Garnishee- Otieno Monica

2Nd Garnishee – Absent

3rd Garnishee – absent

Judgment Debtor- Odeck

