



**Ludaava v Musebe & 2 others (Employment and Labour Relations
Cause 3 of 2020) [2024] KEELRC 987 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 987 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS CAUSE 3 OF 2020**

**JW KELI, J
APRIL 8, 2024**

BETWEEN

PETER ADAMS LUDAAVA CLAIMANT

AND

KEN MUSEBE 1ST RESPONDENT

TOURIST HOTEL BUNGOMA 2ND RESPONDENT

BONITO HOTELS LIMITED 3RD RESPONDENT

RULING

1. Before the court was an application for garnishee proceedings dated 5th March 2024 with respect to decree of the Court dated 24th March 2022 following the judgment of the court in favour of the Claimant for the Sum of kshs. 2,966,283/- subject to PAYE deductions. The costs were assessed at Kshs. 251,909.21/- the cost of the decree was Kshs. 1500 of which the total without the deductions amounted to Kshs, 3,219,692.21. The judgment awarded interest at the court rate from the date of judgment till payment in full. On the 14th April 2023 the court issued a ruling that the PAYE deduction was at 30% of the award amount of Kshs. 2,966,283/-
2. The Notice of Motion dated 24th March filed under certificate of urgency and heard *ex parte* sought the following substantive order:-
 - a. That this Honourable court be pleased to issue an Order Nisi to wit freezing and attaching the total sum of Kshs. 3,921,858.3294 for the Respondent's accounts with the garnishees namely;
Account No. 099XXXXX07 Bank of Africa Ltd, Bungoma Branch
Account No. 121XXXXX76 Kenya Commercial Bank, Bungoma Branch
Account No. 077XXXXX623 Family Bank, Bungoma Branch.



3. The application was supported by the affidavit of the claimant who sought to garnish for Kshs. 3,921,858.3294/- based on the stated award of Kshs. 3,219,692.21 costs of Kshs. 251,409.21 and interest of 450,756.9094 and relied on decree of court dated 24th March 2022.
4. The Court *ex parte* issued Order of Garnishee Nisi on the 20th March 2024.
5. The court ordered for interpartes hearing of the Garnishees and the applicant for 8th April 2024. The judgment debtor was to be served and they appeared. Only the 1st Garnishee sent its advocate Maondo to appear.
6. There was no written response before the court as at time of hearing by the Garnishees. The 1st Garnishee appeared through Maondo Advocate and indicated they were in process of filing a response to the effect that there was only Kshs. 81,243/- in the bank account of the client and that the amount would be used to also defray their costs. The counsel for Applicant Ms. Masakhwe submitted that the advocates were under advocate client bill. Mr. Maondo stated the costs were allowed for the Garnishee bank.
7. The Respondent through Agutu Advocate informed the court they had filed an application dated 3rd April 2024 in objection to the application for garnishee proceedings. In the application, the 1st respondent sought for:-
 - a. The Consent between Lumumba & Ayieko Advocates and Agutu Advocates be adopted as order of the court.
 - b. The Honorable Court be pleased to set aside vary and review the Garnishee order issued on 2024 pending the hearing and determination of the application.
 - c. In the alternative and without prejudice the Honourable Court be pleased to interpret its judgment and determine the exact total sum that the judgment debtor should deduct from the total decretal sum as statutory deductions
 - d. Costs of the application.
 - e. Any other relief the Honourable Court deems fit and appropriate

Decision

8. The court suo moto consolidated the two applications.
Decision on the application in objection by 1st respondent of the 3rd April 2024.
9. The law firm of Agutu Advocates for Respondent, Bonito Hotels Limited seeks for leave to come on record pursuant to Order 9 rule 9 of the [Civil Procedure Rules](#) to wit:- “When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court— (a) (b) upon an application with notice to all the parties; or upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”. The application refers to a consent filed but the same is not annexed. The court has no basis to grant the order 1 as sought.
10. On prayer 2 the court suo moto dispensed the application in this ruling.
11. On the alternative prayer No. 3 the court finds the same to be resjudicata having pronounced itself in the ruling dated 14th April 2023 at paragraph 12 that the deduction was 30 % as PAYE.



12. The application by the Judgment debtor is dismissed.

Decision on the notice of Motion Application by the Claimant dated 5th March 2024

13. This was an application brought under Order 23 rule 1 and 2 of the [Civil Procedure Rules](#) to wit:-
“23(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.”
14. The Court in compliance with Order 23 rule 1 having considered the application *ex parte* issued Order Nisi on the 20th March 2024 and ordered for interpartes hearing pursuant to the aforesaid Order 23 rules 1 and 2 of the [Civil Procedure Rules](#). The application was not opposed by the Garnishees. The Judgment debtor filed an application in objection which I have dismissed above.
15. The court having heard the parties orally and perused the pleadings in depth notes that there is substantive error in the garnishee proceedings. The Applicant relied on the decree of the court. The decree of the court was extracted from Judgment of the Court dated 24th March 2022. The Decree following judgment of the court in favour of the Claimant was for the award Sum of Kshs. 2,966,283/- subject to PAYE deductions. The costs were assessed at Kshs. 251,909.21/- the cost of the decree was Kshs. 1500 of which the total without the deductions amounted to Kshs, 3,219,692.21. The judgment awarded interest at court rate from date of judgment till payment in full.
16. The application for Garnishee orders was supported by the affidavit of the Claimant who sought to recover Kshs. 3,921,858.3294 based on sum Kshs. 3,219,692.21 costs of Kshs. 251,409.21 and interest of 450,756.9094 and relied on decree of court dated 24th March 2022. The court finds that this was contrary to the Decree of the court which awarded Sum of Kshs. 2,966,283/- subject to PAYE deductions. The costs were assessed at Kshs. 251,909.21/- the cost of the decree was Kshs. 1500.
17. The Court holds and orders that the Order of Garnishee nisi issued on the 20th March 2024 is set aside for being based on erroneous figures on the face of the court record. The award of was for the Sum of kshs. 2,966,283/- subject to PAYE deductions at 30% as ordered by court. It is the sum after deductions that is subject to interest at court rates from the judgment date. The execution is thus to be based on the award of award Sum of Kshs. 2,966,283/- minus PAYE deductions at 30%, costs of Kshs. 251,909.21/- and the cost of the decree of Kshs. 1500. The court awarded interest at the court rate from the date of judgment. A correct Decree Nisi ought to be issued by the Deputy Registrar.
18. In the upshot the application dated 20th March 2024 is dismissed for being based on erroneous figures, The Garnishee Order of nisi of even date is hereby set aside.
19. There was no response in writing by the Garnishees hence no order as to costs.



20. The application dated 3rd April 2024 by the 1st respondent is dismissed for failure to annex the consent between the advocates and for being resjudicata on prayer 3 on statutory deductions. No order as to costs.
21. Each party to bear own costs in all the consolidated applications.
22. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 8TH DAY OF APRIL 2024.

J.W. KELI

JUDGE

In the Presence of:-

C/A Brenda Wesonga

For Applicant: Masakhwe

For Judgment Debtor : Boaz Agutu

For 1st Garnishee: Maondo

