



Onenga t/a Omongo Gatune & Company Advocates v Kenya Tertiary and Schools Workers Union; ABSA Bank Limited (Garnishee) (Miscellaneous Application E150 of 2023) [2024] KEELRC 2224 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2224 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E150 OF 2023
BOM MANANI, J
SEPTEMBER 19, 2024**

BETWEEN

**CLEMENT OMONGO ONENGA T/A OMONGO GATUNE & COMPANY
ADVOCATES APPLICANT**

AND

KENYA TERTIARY AND SCHOOLS WORKERS UNION RESPONDENT

AND

ABSA BANK LIMITED GARNISHEE

RULING

1. By the application dated 18th March 2024, the Applicant has moved this court for an order directing the Garnishee to apply the funds on account number 2036751064 in the name of the Respondent to satisfy the Certificate of Costs dated 13th March 2024 which was issued in its favour. The Applicant contends that the court assessed the Client-Advocate Bill of costs between it and the Respondent dated 17th July 2023 at Ksh. 1,847,729.20 and certified this amount as due to it from the Respondent. However, the Respondent has declined to settle the amount.
2. The Applicant avers that the Respondent’s aforesaid account is housed at the Garnishee institution. The Applicant prays that judgment be entered in its favour in terms of the Certificate of Costs and an order be issued compelling the Garnishee to apply the amount on the account to satisfy the resultant decree.
3. The record shows that the Respondent was served with the application on 19th March 2024. It acknowledged receipt of the application by stamping on the face of it. The Applicant has filed an affidavit of service to evidence the foregoing.



4. Despite the foregoing, the Respondent did not respond to the application. As such, the court deems the application as not opposed by the Respondent.
5. The application was also served on the Garnishee. In response, the Garnishee filed the replying affidavit dated 12th April 2024.
6. In the affidavit, the Garnishee confirms that indeed the impugned account is held by the Respondent. The Garnishee further avers that the account has a credit balance of Ksh. 346,069.55.
7. The Garnishee points out that the account has an ongoing dispute regarding who is to operate it. The Garnishee points out that various individuals have approached the court through a series of cases claiming to either be the rightful persons with the mandate to operate the account on behalf of the Respondent or seeking to block those claiming to be the rightful mandatees from operating it.
8. The Garnishee contends that when there is a dispute regarding who is to operate an account which is housed by it, it (the Garnishee) has the power to suspend operations on the account. The Garnishee contends that it has invoked this power to freeze transactions on the impugned account. As such, the court cannot issue the orders sought in relation to the account.
9. The Garnishee also contends that the amount on the account is not sufficient to satisfy the Certificate of Costs. As such, the orders sought should not issue.

Analysis

10. Section 51 (2) of the [Advocates Act](#) provides as follows:-

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”
11. By this provision, once a Certificate of Costs has issued in favour of an advocate, it represents the amount that is due to him unless it is set aside by the court. At the same time, the court has authority to enter judgment in favour of the advocate in terms of the Certificate of Costs.
12. The Applicant has sought an order that judgment be entered in his favour in terms of the Certificate of Costs aforesaid. The record does not suggest that the Respondent has opposed this request. As such and in terms of the aforesaid provision of statute, I hereby enter judgment for the Applicant against the Respondent for the sum of Ksh. 1,847,729.20 as per the Certificate of Costs dated 13th March 2024.
13. The Garnishee has challenged the Applicant’s request against it on two grounds namely: insufficiency of funds; and disputed mandate to run the account. However and in my view these are not cogent reasons why the application should not be granted.
14. Regarding the issue of insufficiency of funds, the Garnishee confirms that the account has a credit balance of Ksh. 346,069.55. It is true that this amount is not sufficient to offset what the Applicant is seeking to recover from the Respondent. However, that cannot be reason to reject the application.
15. The law is only concerned to confirm that the Garnishee is holding money for the benefit of the Judgement Debtor. Once this is confirmed, the amount available is susceptible to be applied towards satisfying the outstanding decree in favour of the Judgment Creditor irrespective of whether this will satisfy the decree wholly. As such, I reject the Garnishee’s resistance to the application on this account.



16. Regarding the second objection, the court notes that the account in question is held by the Respondent. Indeed the Garnishee confirms this fact.
17. It does not matter that there is a dispute regarding who is to run the account on behalf of the Respondent. This does not change the fact that the account is in the name of the Respondent and the funds held on it are the property of the Respondent. This being the case, the funds on the account can lawfully be applied to satisfy the decree in question notwithstanding the dispute as to who should be the mandatees to the account.

Determination

18. Having regard to the foregoing, I find that the application dated 18th March 2024 is merited and is thus allowed as presented.
19. The court hereby enters judgment for the Applicant against the Respondent for the sum of Ksh. 1,847,729.20 as set out in the Certificate of Costs dated 13th March 2024.
20. The court hereby issues an order of Garnishee Absolute attaching the sum of Ksh. 346,069.55 which is currently on the Respondent's account number 2036751064 housed at the Garnishee's Queens-Way branch.
21. The Garnishee is ordered to forthwith apply the said funds to partially satisfy the Respondent's indebtedness to the Applicant as per the Certificate of Costs aforesaid.
22. Each party to bear own costs in respect of this application.

DATED, SIGNED AND DELIVERED ON THE 19TH DAY OF SEPTEMBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent

.....for the Garnishee

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

