



**Ogechi v Kisii Safari Inn Ltd t/a Kaskazi Beach Hotel (Cause
12 of 2020) [2023] KEELRC 63 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 63 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 12 OF 2020
AK NZEI, J
JANUARY 19, 2023**

BETWEEN

DANIEL OGECHI CLAIMANT

AND

KISII SAFARI INN LTD T/A KASKAZI BEACH HOTEL RESPONDENT

RULING

1. The application before me is a Notice of Motion dated July 19, 2022 and filed by the Claimant on July 20, 2022 under a Certificate of Urgency. Orders sought in the application are as follows:
 - a. that the application be certified as urgent, and be considered *ex-parte* in the first instance.
 - b. that the Court be pleased to issue an Order *Nisi* forthwith attaching the sum of Kenya Shillings Four Million and Sixty-Four Thousand (Kshs 4,064,000) being the decretal sum together with an additional interest at 14% per annum from the date of Judgement i e May 19, 2022 until payment in full, which sum is held to the credit of the Judgement Debtor in Account Number 4770860018 NCBA Bank Kenya.
 - c. that the Court be pleased to order the above named Garnishee and Judgement Debtor to attend Court to show cause why the said Garnishee should not pay to the decree holder the decretal sum herein or so much thereof as may be sufficient to satisfy the said sum of Kenya Shillings Four Million and Sixty-Four Thousand (Ksh 4,064.00), being the decretal sum together with an additional interest at 14% per annum from the date of Judgement i e May 19, 2022, until payment in full.
 - d. that upon the *inter-partes* hearing of the application, the Court be pleased to issue a Garnishee Order Absolute in terms of prayer (b) herein above.
 - e. that costs of the application be provided for, and be borne by the Judgement Debtor.



2. The application is expressed to be brought under Order 51 Rule 1 and Order 23 Rules 1, 2, 3, and 10 of the Civil Procedure Rules and Article 159(2) of the Constitution of Kenya, and is supported by the Claimant/Decree Holder's supporting affidavit sworn on July 19, 2022.
3. The application is opposed by the Respondent/Judgement Debtor vide a replying affidavit of Charles Gekonde Otara, a Director of the Respondent/Judgement Debtor Company sworn on October 3, 2022 and filed herein on October 6, 2022. It is deponed in the said replying affidavit, *inter-alia*:
 - a. that the Respondent/Judgement Debtor has already instructed its Advocates to file an application to set aside the *ex-parte* judgment herein; and the application has good grounds with overwhelming chances of success.
 - b. that the Respondent/Judgment Debtor has a good defence with overwhelming chances of success and would wish to be heard on the same.
 - c. that it would be fair and reasonable that the Garnishee application awaits the outcome of the application to set aside the *ex-parte* Judgement herein.
4. The application herein was presented to the duty Court on July 20, 2022, and a Garnishee Order *Nisi* was issued in terms of prayer No (b) in the application as set out in paragraph 1 of this Ruling. While the application was pending *inter-partes* hearing, the Respondent/Judgement Debtor filed a Notice of Motion dated October 4, 2022, seeking the setting aside of this Court's *ex-parte* Judgement delivered on May 19, 2022. On October 24th October 2022, I directed that both the application herein and the Notice of Motion dated 4, 2022 be heard on the same date.
5. Parties subsequently filed affidavits and written submissions on the two applications, and a Ruling on the Notice of Motion dated October 4, 2022 has been delivered today (January 19, 2023), dismissing the same.
6. Back to the application before me. Rule 32 of the Employment and Labour Relations Court (Procedure) Rules 2016 provides that rules on execution of an order or decree shall be enforceable in accordance with Civil Procedure Rules. Order 23 Rule 2 of the Civil Procedure Rules provides that a credit in a deposit account with a bank or other financial institution shall, for the purpose of the order, be a sum due or accruing and shall be attachable.
7. Vide its Judgement delivered on May 19, 2022, this Court awarded the Claimant/Applicant Kshs 4,064,000. A decree has since issued. The Claimant has deponed that the Respondent holds an account with the Garnishee Bank, being account No 4770860081. This fact has been confirmed by the Garnishee vide a replying affidavit of one Jackson Nyaga sworn on October 13, 2022 and filed herein. The Respondent/Judgement Debtor has not denied holding the account.
8. Other than exhibiting a copy of a statement on the Respondent/Judgement Debtor's said bank account and deponing that the account held Kshs 148,370.32 as at August 5, 2022, which amount is not sufficient to satisfy the decretal sum herein, the Garnishee has not shown cause why it should not pay to the Decree Holder the amount held in the said account in full and/or part satisfaction of the decree herein.
9. Consequently, I allow the Notice of Motion dated July 19, 2022 in the following terms:
 - a. a Garnishee Order Absolute is hereby issued attaching the sum of Kenya Shillings Four Million and Sixty-Four Thousand (Kshs 4,064,000) being the judgment sum herein, together with an additional interest at 14% per annum from the date of Judgement i e May 19, 2022 until



payment in full, which sum is held to the credit of the Respondent/Judgement Debtor in account No 4770860018 NCBA Bank Kenya.

- b. the sum held in the said bank account, or so much thereof as may be sufficient to satisfy the decree herein of Kenya Shillings Four Million and Sixty-Four Thousand (Kshs 4,064,000) together with an additional interest at 14% per annum from the date of Judgement i e May 19, 2022 until payment in full shall be paid to the Claimant/Decree Holder and /or his Advocates herein by the Garnishee.
- c. the Claimant/Decree Holder will be at liberty to take out further execution proceedings in the event of insufficiency of funds in the Respondent/Judgement Debtor's attached bank account.
- d. Costs of this application shall be paid by the Respondent/Judgement Debtor.

10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 19TH DAY OF JANUARY 2023.

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr Odhiambo for Claimant

Mr Ngaine Respondent

