



REPUBLIC OF KENYA



**KENYA LAW**

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**Muthee v Explico Insurance Company Ltd; Prime Bank Limited & another (Garnishee)  
(Cause 1463 of 2018) [2023] KEELRC 13 (KLR) (12 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 13 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1463 OF 2018  
AN MWAURE, J  
JANUARY 12, 2023**

**BETWEEN**

**GEOFFREY MURIITHI MUTHEE ..... CLAIMANT**

**AND**

**EXPLICO INSURANCE COMPANY LTD ..... RESPONDENT**

**AND**

**PRIME BANK LIMITED ..... GARNISHEE**

**M ORIENTAL BANK LIMITED ..... GARNISHEE**

**RULING**

1. The claimant decree holder by way of a Notice of Motion dated July 7, 2022 seeks the following prayers:-
  1. That service hereof be dispensed with and this application be heard ex parte in the first instance.
  2. That an Order Nisi upon the Garnishee do issue and same be served upon it and the Judgement-debtors, freezing operations on A/C No. xxxx held at Prime Bank Limited by the Judgement Debtors and any other account with the Garnishee, at least Seven (7) Days before the hearing hereof.
  3. That an Order Nisi upon the Garnishee do issue and same be served upon it and the Judgement-debtors, freezing operations on A/C No. xxxx held at M. Oriental Bank Limited by the Judgement Debtors and any other account with the Garnishee, at least Seven (7) days before the hearing hereof.
  4. That this honourable court be pleased to make Garnishee Order absolute that such sums or debts as are sufficient to answer the Decree obtained by the Decree-holder against the



Judgement-debtor, or the unsatisfied part thereof owing or accruing due from the Garnishee, Prime Bank Limited, to the Judgement-debtor be attached to answer the Decree passed herein against the Judgement-debtor together with the costs of these Garnishee proceedings.

5. That this honourable court be pleased to make Garnishee Order absolute that such sums or debts as are sufficient to answer the Decree obtained by the Decree-holder against the Judgement-debtor, or the unsatisfied part thereof owing or accruing due from the Garnishee, M. Oriental Bank Limited, to the Judgement-debtor be attached to answer the Decree passed herein against the Judgement-debtor together with the costs of these Garnishee proceedings.
  6. That the costs of this application be borne by the Judgement-Debtor.
2. The application is grounded on the supporting affidavit of Geoffrey Muriithi Muthee and inter-alia the grounds are:-
- a. The Decree herein for the sum of Kshs.5,439,310.25/= together with costs which amounts continue to attract interest and remain unsatisfied.
  - b. The Garnishee has accruing in its hand, credit deposits on behalf of the Judgement-debtor in respect of the Judgement-debtor's A/C No. xxxx held at Prime Bank Limited and A/C No. xxxx held at M. Oriental Bank Limited.
  - c. It is only just and fair that the credit deposits be attached to satisfy the decretal sum/warrants sum and enable the Decree-holder recover what is due to it.
  - d. The Garnishee is within the Jurisdiction of this honourable court.
  - e. This application only seeks to enable the realization of the decretal sum.
  - f. Such other and further grounds and reasons as shall be adduced at the hearing hereof.
3. The deponent Geoffrey Muriithi Muthee deposes in his sworn affidavit dated July 7, 2022 that he obtained a decree and a certificate of costs against the Judgement-debtor on April 25, 2022 for a sum of Kshs.5,439,310.25/=
4. He says the said sum remains unpaid and he has then established the Judgement-debtor owns various accounts with Prime Bank Limited including A/C No. xxxx and A/C No. xxxx held at Oriental Bank Limited which remains active and sufficiently credited to satisfy the decree.
5. He prays that the court therefore allow the garnishee proceedings and further avers he is not aware of any other immovable or movable assets of the Judgement-debtor.
6. The parties to the application are as follows;
- a. The respondent represented by the firm of Omega Advocates.
  - b. The Decree-holder is represented by Mwangi & Kihanga Advocates and there is
  - c. Laubor Advocates for M. Oriental Bank Limited, one of the garnishee.
  - d. The other garnishee Prime Bank Limited was not represented.
7. The parties were ordered by this honourable court on the October 13, 2022 to file their respective submissions by November 30, 2022 and avail copies to the honourable court physically failure of which the court will not accept those submissions if any.



8. The court did not receive any submissions but was availed the replying affidavit by M. Oriental Bank Limited sworn by Irene, Twala branch manager of the said M. Oriental Bank and dated August 1, 2022.
9. The replying affidavit by M. Oriental Bank Limited said they were served by a court order made by Justice Okwany on November 4, 2021 and is aware the matter is active in case No. HCCC E901 of 2021.
10. She says she was served with another court order in HC Insolvency Petition No. E030 of 2020 and finally was served an Agency Notice by Kenya Revenue Authority requesting remittance of Kshs.43,187,619/=.
11. She says there are other garnishee orders in various subordinate courts freezing the same account.
12. She says the bank complied with the court orders issued on November 11, 2021 and will always comply with orders of this honourable court.

### **Determination**

13. The court is seized of the Decree issued in this case in favour of the Decree-holder against Explico Insurance Company Limited and the certificate of taxation of June 29, 2022.
14. The court finds there are other earlier subsisting and live orders of High Court issued to M. Oriental Bank freezing the accounts of the Judgement-debtor being Account number xxxx issued on November 4, 2021 by Justice Okwany in Case No. E901 of 2021 Sahi Rajeshwar Harbana Bal –vs-explico Insurance Company Limited as deponed by the branch manager of M. Oriental Bank Limited.
15. The court therefore is not in a position to grant the prayers No. 3 and No. 5 of the Decree-holder application since the account is still frozen by an order of a High Court and there is no evidence that the order has been vacated or set aside.

The court therefore declines to grant garnishee order against M. Oriental Bank Limited and issues no orders as to costs herein.

16. As for the prayers for issuance of Order Nisi against the garnishee Prime Bank Limited, there is no objection by the said bank to issuance of the same.

The court therefore hereby grants prayers 2 and prayer 4 of the Decree-holder Notice of Mention and therefore freezes operations on A/C No. xxxx held by Prime Bank Limited by the Judgement-debtor and any other account with the garnishee and also makes Garnishee Order absolute that such sums or debts as are sufficient to answer the decree obtained by the Decree-holder against the Judgement-debtor or the unsatisfied part be so applied. Thereof owing or accruing dues from the Garnishee Prime Bank Limited to the Judgement-Debtor be attached to answer the Decree passed herein against the Judgement-debtor together with costs of these garnishee proceedings being borne by the respondent.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 12<sup>TH</sup> DAY OF JANUARY, 2023.**

**ANNA N. 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 March 15, 2020 and subsequent directions of April 21, 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 *Civil 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.

**ANNA N. MWAURE**

**JUDGE**

