



**Ogola & 46 others v Raghbir Singh Sandhu t/a Hotel Royale; Bank of Baroda (K) Ltd (Garnishee) (Cause 16 of 2013) [2023] KEELRC 570 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 570 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 16 OF 2013  
CN BAARI, J  
MARCH 9, 2023**

**BETWEEN**

**JOHN OSEWE OGOLA & 46 OTHERS ..... CLAIMANT**

**AND**

**RAGHBIR SINGH SANDHU T/A HOTEL ROYALE ..... RESPONDENT**

**AND**

**BANK OF BARODA (K) LTD ..... GARNISHEE**

**RULING**

1. Before Court is the Respondent/Applicant's motion dated 26<sup>th</sup> October, 2022, brought pursuant to Sections 1, 1A, 3A, 98 and 100 of the *Civil Procedure Act*, and Order 10 Rule 11 of the *Civil Procedure Rules*. The Respondent/Applicant seeks orders THAT: -
  - i. Spent
  - ii. The this Honourable Court be pleased to lift the restriction placed on account number 9585XXXXXXXX32 in the name of BALBIR SINGH SANDHU held at Bank of Baroda (K) Ltd- Kisumu Branch.
  - iii. The Court do order for full accounts to be taken for all amounts paid in respect to this cause.
  - iv. The Court orders that any amounts found to have been paid in excess of the decretal sum herein be refunded to the said BALBIR SINGH SANDHU by the Claimants Advocates or their clients herein within 30 days.
  - v. The Costs of this application be provided for.
2. The application is supported by grounds on the face of the motion and the affidavit of Balbir Singh Sandhu sworn on 26<sup>th</sup> October, 2022, and a further affidavit sworn on 27<sup>th</sup> January, 2023. The crux



of the motion is that pursuant to a judgment of this court (differently constituted) delivered on 14<sup>th</sup> January, 2013, the Court issued a garnishee order on 9<sup>th</sup> September, 2019, freezing the operations of account number 9585XXXXXXXX32, held at Bank of Baroda's Kisumu Branch in the name of Balbir Singh Sandhu.

3. The Applicant avers that by yet another order of the Court issued on 20<sup>th</sup> January, 2020, the Court ordered payment of Kshs. 1,500,000/- to the Claimants' Advocates, and that the effect of the order was to lift the freeze on the subject bank account.
4. The Applicant further avers that despite the clear and direct position, the Bank has declined to lift the restriction on the Applicant's account to enable him access his money. The Applicant avers that he needs urgent medical attention, hence the need to be allowed to access the funds in the subject account.
5. The Claimants/Respondents opposed the application vide a replying affidavit sworn by William Odongo Matoro on 24<sup>th</sup> January, 2023. The Claimants/Respondents aver that the Applicant frustrated execution in this matter resulting in garnishee proceedings against the Applicant.
6. The Respondents further aver that the last amount paid from the account subject of the freeze orders is Kshs. 1,500,000/-, and that the bill of costs filed by the Respondents covered up to the year, 2015.
7. The Respondents states that their bill was taxed at Kshs. 496,453/- and that a reference on the bill is pending determination by the Court of Appeal. The Respondents further aver that in the event the Court of Appeal agrees with them, they stand to lose if the freeze on the account is lifted.
8. The Respondents further state that they have filed a further bill of costs and which is yet to be taxed. It is the Respondents' further case that the decretal sum of Kshs. 3,939,882/- was to attract interest from the date of judgment and which amount remains unpaid.
9. The motion was urged by way of oral submissions on 30<sup>th</sup> January, 2023. Parties reiterated their grounds in support and those in opposition.

### **Analysis and Determination**

10. A consent order dated 20<sup>th</sup> January, 2020, exhibited by the Applicant varied the garnishee order granted on 19<sup>th</sup> July, 2019, by allowing the opening of the Applicant's account subject of this application, on condition that a sum of Kshs. 1,500,000/- is paid to the Claimants' Advocates.
11. The order further required the Respondent/Applicant herein, to deposit a bank guarantee for the disputed amount of Kshs. 4,466,340/- within 14 days of the order, and that parties take accounts and reconcile the disputed amount within 30 days. The order also allowed the Applicant to operate the account normally.
12. The garnishee's refusal to allow the Applicant to operate his account is premised on failure to provide a bank guarantee as agreed in the consent order referred to herein. The Claimants/Respondents did not submit on the issue of the bank guarantee which I believe is due to their admission that the decretal sum has since been settled.
13. The Bank guarantee was the only condition precedent to allowing the Applicant to operate his account, and which is seemingly not an issue anymore between the parties herein, owing to the settlement of the decretal sum as admitted by the Claimants/Respondents.
14. Further, the Respondents have admitted that the decretal sum was paid and their only issue with opening the account is the issue of costs which are subject of a reference pending before the court of



- Appeal. They further argue that they have filed a further bill of costs that is yet to be taxed and which they argue will be defeated if the freeze is lifted.
15. Although it is evident that the Respondents reference on taxed costs is pending determination before the Court of Appeal, no stay has been issued in that respect.
  16. Further, the garnishee order was in relation to moneys owed to the Claimants/Respondents by virtue of the judgment and the resultant decree issued on 14<sup>th</sup> January, 2013.
  17. In my considered view, the Respondents reasons for the continued freeze of the Applicant's account are not plausible. The new bill of costs has not been taxed yet, and even if it were, execution would issue in the normal way, including taking out of further garnishee orders.
  18. Additionally, garnishee orders are ordinarily premised on indebtedness and without such indebtedness by the judgment debtor, it would be plainly unjust to freeze a party's account in anticipation of a debt, when none has been established.
  19. In the upshot, I hereby order that the restriction placed on account number 9585XXXXXXXX32 in the name of BALBIR SINGH SANDHU held at Bank of Baroda (K) Ltd- Kisumu Branch, be and is hereby lifted.
  20. On the prayer for taking of accounts, the Applicant is at liberty to file the appropriate application for determination before the Deputy Registrar upon receipt of his Bank Statement.
  21. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 9<sup>TH</sup> DAY OF MARCH, 2023.**

**CHRISTINE N. BAARI**

**JUDGE**

Appearance:

N/A for the Claimants/Respondents

N/A for the Respondent/Applicant

**Christine Omolo – C/A**

