



**Ilukol v Board of Management Father Okodoi Secondary School; Co-operative Bank of Kenya Limited (Garnishee) (Cause 102 of 2017) [2023] KEELRC 547 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 547 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
CAUSE 102 OF 2017**

**JW KELI, J  
MARCH 2, 2023**

**BETWEEN**

**WYCLIFFE OJUMA ILUKOL ..... CLAIMANT**

**AND**

**THE BOARD OF MANAGEMENT FATHER OKODOI SECONDARY  
SCHOOL ..... RESPONDENT**

**AND**

**CO-OPERATIE BANK OF KENYA LIMITED ..... GARNISHEE**

**RULING**

1. The Judgment holder vide Notice of Motion dated 14<sup>th</sup> November 2022 under Order 23 Rules 1 & 2 of the *Civil Procedure Rules* 2010 sought to garnishee the judgment debtor's Bank Account No 01\*\*\*\*\*000 held by the Garnishee at its Malaba Branch to be attached to answer the unsettled amount of the decree and certificate of costs arising from the claim herein in the sum of Kes.519637/- (Five Hundred and Nineteen Thousand Six Hundred and Thirty Seven Shillings Only).
2. The Court directed the application be heard interpartes.
3. The Garnishee Bank entered appearance and filed Replying Affidavit sworn by Obed Mogaka on the 15<sup>th</sup> December 2022 where he averred that the bank balance as at the close business on 5<sup>th</sup> December 2022 under the said bank account was Kes. 7,507.65/- (RM- 1) which was not enough to cover the decree amount as well as their legal costs assessed at Kes.20,000/-.
4. The Judgement Debtor filed Replying Affidavit sworn by John Ouma, the Secretary, who averred that the school had issued cheque dated 5<sup>th</sup> October, 2022 in the sum of Kes.129,904.24 to the decree holder being partial settlement of the decretal amount and assessed costs.



5. That the bank account sought to be garnishee was the school's operation account where the government sends money for day today running of the school.
6. That they had prepared payment schedule to the Applicant in October and paid first instalment on belief that the Applicant accepted their proposed payment plan ("SO1").
7. The court directed the application be canvassed by way of written submissions. The decree holder written submissions drawn by Wambua Kigamwa & Company Advocates were dated 26<sup>th</sup> January and received in court on even date.
8. The Judgement Debtor submissions drawn by Deborah Were Senior State Counsel for the Hon. Attorney General were dated 6<sup>th</sup> February 2023 and received in court on the 7<sup>th</sup> February, 2023.
9. The Garnishee written submission drawn by Aluvale & Company Advocates were dated 2<sup>nd</sup> February 2023 and received in court on 6<sup>th</sup> February, 2023.

## **Determination**

### **Issue for Determination**

10. The Applicant addressed merit of their application.
11. The Garnishee addressed the duty of the garnishee in the proceedings.
12. The Respondent/Debtor identified and addressed two issues in their submissions.
  - a. Whether the Claimant decree holder will be prejudiced should the prayers he is seeking not be granted.
  - b. Whether the institution is subject of garnishee proceedings.
13. The Court having read the pleadings and the submission was of the opinion that issues placed before the court for determination was whether the application was merited.

### **Applicant's Submissions**

14. The law governing garnishee proceedings is provided under Order 23 of the [Civil procedure Rules](#) 2010. Rule 1 provides:- '(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.'
15. That the above Oder 23 Rule1 of the [Civil Procedure Rules](#) advances three essential requirements that the decree holder has to satisfy in the instant motion being the existence of a decree, the decree having not been satisfied and another person is indebted to the Judgment Debtor and is within the jurisdiction of the court. That it was not in dispute there was a decree of court which had been paid partially by Kes.129,909.24/- leaving balance of sum of Kes.519,637 unsatisfied.



16. That in partially settling the debt the Judgement Debtor had issued Cheque No 01\*\*\*\*\*00 held at Cooperative Bank Malaba Branch. That the Garnishee in their response confirm the amount was held by the Judgement Debtor and the account has a credit balance.
17. That the Judgement Debtor has indicated in its response it expects money to be deposited in the said account.
18. That as a successful litigant they are entitled to enjoy fruits of their decision and relies on decision in *Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation ; Kenya Commercial Bank Group Limited ( Garnishee)* 2021 eKLR where it was stated that:- ‘13. A litigant is entitled to reap the fruits of his successful litigation. As a result, where a Judgment-Debtor fails to comply with the terms of a judgment, the Judgment-Creditor is entitled to enforce such judgment by adopting a suitable procedure provided under the law. By the process of garnishee, the court has power to order the garnishee to pay directly the sums it owes the Judgment-Debtor to the garnishor or so much of it as may be sufficient to satisfy the amount of the judgment and the cost of the garnishee proceedings. In this regard, the provisions of Order 23 Rule 4 provide with sufficient clarity what this court should do where the Garnishee admits the debt as in this case.’”

[Order 23, rule 4.] Execution against garnishee.

4. If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings; and the order absolute shall be in Form No 17 or 18 of Appendix A, as the case may require.
19. That the statement of account by the Garnishee was not current being of 5<sup>th</sup> December 2022. That insufficient balance to fully satisfy the decree is not impediment to grant of orders sought as held in *Nyagwa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd. NCBA Bank Kenya PLC & Another ) Garnishee)* 2021 eKLR.

### **Garnishee submissions**

20. The Garnishee submits that it had complied with its primary duty as set out in *Citizens International Bank Limited v SCOA Nigeria Ltd & another* as quoted in *Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Company Limited ; Diamond Trust Bank (Tom Mboya & Koinange Street Branches) (Garnishee)* 2020 eKLR where the court held that:-

“..... the primary duty of a garnishee in garnishee proceedings is for the garnishee to appear in court upon receipt of the order Nisi, and show cause why the funds in the judgment debtor’s account should not be paid over to the Judgement Creditor in satisfaction of the judgment debt. This is done by filing an affidavit to show cause with all the relevant documents, disclosing the true picture, status or standing of the judgment debtor’s accounts at the time of the service of the Garnishee Order Nisi on it...”
21. That in discharge of the primary duty Obed Mogaka swore a replying affidavit and deponed the Judgment Debtor account at Malaba Branch as at the 5<sup>th</sup> December 2022 had balance of Kes.7507.65/- and produced the bank statement.



22. That Section 176 of the *Evidence Act* creates a presumption in favour of the garnishee as to the correctness of the bank statement of account. That the account with Kes.7507.65/- could not satisfy the decretal amount entirely as well as costs of the application assessed at Kes.20,000/- if the Garnishee Order is issued as held in *International Air Transport Association (IATA) & another v Akarim Agencies Company Limited & 2 others ; Equity Bank Limited ( Garnishee)* (2021) eKLR where the court declined to grant application as balances held by the Garnishee were insufficient to satisfy the decree therein.

### **The Respondent's Submissions**

23. The Judgment Debtor submitted in admission of Kes.519,637/- as outstanding decretal amount to be paid. That by letter of 30<sup>th</sup> September 2022 the Judgment Debtor proposed payment schedule and paid 1<sup>st</sup> instalment in belief that the Decree Holder had accepted the proposed payment plan.
24. That the Judgment Debtor only manages the institution on behalf of National Government. It is a public school offering basic education under the state department of Basic Education in the Ministry of Education pursuant to *Basic Education Act* No 14 of 2013.
25. That Section 43 of the *Basic Education Act* provides for categories of school that is; Basic Educational Institutions shall be categorized as (a) Public Schools which are schools established, owned or operated by the government and includes sponsored schools.
26. That the institution(judgment debtor) was not independent for being funded by Government under Section 86 of the *Basic Education Act*.
27. That no prejudice will be suffered if the proposed payment plan is allowed but the school will suffer if order is allowed.
28. Secondly, the Judgment Debtor submits that the Application seeks to execute against government institutio which is not subject to Garnishee proceedings.
29. That Section 53 of the *Basic Education Act* provides that the Cabinet Secretary of the Ministry of Education is entrusted with the governance and management of the institution/judgment debtor hence the management of the Judgment Debtor is under the Cabinet Secretary.
30. That the school is a government institution under the State department of Basic Education. That Section 21 (4) of the *Government Proceedings Act* is clear “(4) save as aforesaid, No execution or attachment or process in the name thereof shall be issued out of my court for enforcing payment by the government of any such money or cost as aforesaid, and no persons shall be individually liable under any order for the payment by the Government or any Government department or any officer of the Government as such of any money or costs”.
31. The Respondent to buttress argument relied on decision of High Court in *Kennedy Wainaina Njenga v County Government of Nairobi & Cooperative Bank of Kenya ( Garnishee)* 2019 eKLR. Where the court held that the execution process under the *Civil Procedure Act* and Rules exempts government.
32. The Respondent also relied in decision in *Takaful Insurance of Africa Limited (Kenya) v County Government of Garissa & 2 Others ;Governor Central Bank of Kenya ( Garnishee)* (2021) eKLR where the court held that the 1<sup>st</sup> Judgement Debtor being government no garnishee proceedings could be brought against it.



## Decision

33. There was no dispute that there was a valid unsettled decree of the court partially settled with outstanding decretal amount of Kes.519,637/-.
34. The Court considered whether the order of Garnishee could be issued to attach moneys under the said account. The Respondent submitted that the order sought to garnishee the amount could not be issued as the Respondent were managers of a government institution under the [Basic Education Act](#) and Garnishee proceedings were not available against government under the [Government proceedings Act](#) and the [Civil Procedure Act](#).
35. Section 21(4) of the [Government Proceedings Act](#) provides that no execution or attachment of proceeds in nature thereof shall be issued out of any court for enforcing payment by the Government of any such money or costs. That no person shall be individually liable under any order for payment by the Government.
36. Under paragraph 2 of the statement of claim the Decree Holder identified the Judgment Debtor as the Board of Management Father Okodoi Secondary School as duly constituted under the [Basic Education Act](#) 2013.
37. The Court finds that the decree holder was aware that the Judgment Debtor was established under the [Basic Education Act](#) qualifying to be a government institution.
38. In the circumstances Section 21 (4) of the [Government Proceedings Act](#) shields the Judgement Debtor from execution proceedings such as the instant garnishee application. The Court finds and determines that garnishee proceedings are not available against the Judgment Debtor by fact of being a government institution and or managers of a government institution.
39. The court upholds the decision [Kennedy Wainaina Njenga v County Government of Nairobi & Cooperative Bank of Kenya \( Garnishee\)](#) 2019 eKLR and [Takaful Insurance of Africa Limited \(Kenya\) v County Government of Garissa & 2 Others ;Governor Central Bank of Kenya \( Garnishee\)](#) (2021) eKLR to hold that the judgment debtor being government institution no garnishee proceedings could be brought against it.
40. The Application dated 14<sup>th</sup> November 2022 is held to be bad in law as it seeks to attach government institution bank account contrary to provisions of Section 21(4) of the [Government Proceedings Act](#).
41. The Application dated, 14<sup>th</sup> November, 2022 is dismissed with costs to the Garnishee to be paid by the Applicant.
42. The debt still remains outstanding for settlement.
43. The court finds costs are justified against the Applicant as the Judgment Debtor had already issued a payment plan and paid 1<sup>st</sup> Instalment.
44. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 2<sup>ND</sup> DAY OF MARCH, 2023.**

**J. W KELI,  
JUDGE.**

In the presence of:-



Court Assistant: Brenda Wesonga

For Judgement Holder:- Makori h/b Wambua Kigamwa

For Judgment Debtor :-absent

