



Achesa v Kenya Equitorial Hotels Limited t/a Mombasa Continental Resort; NCBA Bank Kenya PLC (Garnishee) (Cause 266 of 2018) [2023] KEELRC 1254 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 1254 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 266 OF 2018
M MBARŪ, J
APRIL 27, 2023**

BETWEEN

SHIBED ZEBEDEE ACHESA CLAIMANT

AND

**KENYA EQUITORIAL HOTELS LIMITED T/A MOMBASA CONTINENTAL
RESORT RESPONDENT**

AND

NCBA BANK KENYA PLC GARNISHEE

RULING

1. The claimant filed application dated July 8, 2022 seeking for orders that a Garnishee Order Nisi do issue against the garnishee herein to satisfy the balance of the decretal sum of Ksh 156,214, plus costs of Ksh 83,000 and auctioneer charges Ksh 121,000 from the judgment debtor's account No1817828293 and 1817820288 held by the garnishee and the same be transferred to the claimant.
2. The application is made on the grounds that since the decree was issued in this case, the respondent has failed to satisfy it while the garnishee holds accounts operated by the respondent and the same should be removed and paid to the claimant. Through warrants of attachment and sale, the respondent was issued with the same but when the auctioneers went to the premises to remove the attached goods there was resistance and the respondent opted to issue a cheque of Ksh 733,000 but has since failed to pay the balance of Ksh 156,214.
3. As of July 5, 2022 there are additional costs of Ksh 83,000 and auctioneer costs of Ksh 50,000 all being Ksh 289,014.
4. In support of the application, the claimant filed his Supporting Affidavit and avers that the respondent as the judgment debtor has failed to satisfy the court decree herein and holds accounts with the



garnishee as evidenced by a cheque issued to him and the balance of the decretal sum should be removed and paid to him.

5. In reply, the respondent filed the Replying Affidavit of Crispus Mwamidi the general manager who avers that the application by the claimant is on the basis that he has not been paid the decretal sum in full whereas on June 30, 2022 he was paid the sum of Ksh 733,417 in full satisfaction of the decree and the application should be dismissed. The claim of Ksh 156,000 is not part of the decretal sum of Ksh 733,417 and the alleged costs as calculated by the claimant is not correct since no interests are due. There is no Certificate of Costs served upon the respondent and on the decretal sum, the respondent was bound to withhold the taxes due at Ksh 156,983.
6. The claimant is abusing the court process to unlawfully claim taxes due on his award as an alleged balance which is not due. The costs claimed from application dated July 5, 2022 was not served upon the respondent and no such costs exists in law or in fact. The respondent has acted in good faith and before attachment was willing to pay the claimant but he failed to give his banking details and instead engaged auctioneers and the due fees of Ksh 121,000 cannot be recovered through garnishee proceedings since the respondent has always been willing to pay the claimant his lawful dues.
7. In reply, the claimant filed his Affidavit and avers that the respondent has not provided evidence from the Kenya Revenue Authority (KRA) that taxes have been remitted as alleged. The court issued the warrants of attachment and sale of the respondent's goods on good basis but the respondent has disobeyed the orders leading to the instant application.
8. The claimant has done his computation of what is due being Ksh 122,532.49;
 1. Compensation amount Ksh 650,000 spread in 3 years due Ksh 22,763;
 2. Salary suspension (2016) due Ksh 11,049.90;
 3. Leave pay (2016) and total due Ksh 35,149.80Total PAYE Ksh 35,149
Decretal amount due for costs and interest Ksh 156,214;
Additional interests for 42 days Ksh 1,468.29;
Total PAYE (35,149.80)
Amount payable Ksh 122,532.49
9. In further response, the respondent filed the Further Replying Affidavit of Crispus Mwamidi and avers that on the decretal sum the respondent is bound to withhold and remit all taxes due and the computation by the claimant seeking to be paid the total amount with taxes is wrong. The tax computation stated to be Ksh 49,963 plus interests at Ksh 7,494 were withheld by the respondent lawfully. The claimant has already been paid less withholding tax and cannot claim the same for the period of 15th June to July 26, 2022. On the due PAYE, the sum of Ksh 40,280.25 has been remitted to KRA and cannot be claimed back by the claimant.
10. The claimed amount of Ksh 156,000 less statutory deductions of Ksh 47,774 should translate to Ksh 109,208.70 and not Ksh 122,774.49 as the claimant has alleged.
11. Mr Mwamidi avers that the respondent proposes that the sum of Ksh 109,208.70 claimed be deducted from Ksh 313,000 deposited in court on July 27, 2022 and the balance of Ksh 203,791.30 be returned to the respondent since the claimant has not been awarded any other costs with regard to garnishee proceedings.



12. The claimant filed his Supplementary Affidavit and avers that he filed his application after the respondent failed to pay the balance of the decretal sum of Ksh 156,214 being costs and interests as ordered by the court. The claim by the respondent that the amount was withheld for statutory deduction is meant to mislead the court and has failed to provide evidence of any amounts paid to the KRA.
13. The claimant avers that this court confirmed the respondent deposited the sum of Ksh 313,000 which should be applied to pay the dues owed to the claimant.
14. On 18th March, 2021 the court entered judgment for the claimant against the respondent for the total sum of Ksh 733,417 and that *this amount will attract interests at court rates from the date of judgment until payment in full*. the claimant was also awarded costs.
15. Upon the judgment of the court, the claimant filed his Bill of Costs dated August 27, 2021 and in a ruling dated June 3, 2022 the taxing officer awarded him Ksh 46,520 in costs since he was acting in person.
16. The Certificate of Costs dated June 8, 2022 is the lawful record of the costs due to the claimant all at Ksh 46,520 together with the decretal sum of Ksh 733,417. The claimant cannot claim for any further costs or interests on the suit herein unless and until another Certificate of Costs is issued.
17. On the judgment sum of Ksh 733,417 before the respondent could pay, they are bound by the mandatory requirements of Section 49(2) of the [Employment Act, 2007](#) which is in tandem with the [Kenya Revenue Authority Act](#) read together with the [Income Tax Act](#) that;
 - (2) Any payments made by the employer under this section shall be subject to statutory deductions.
18. The total award of the court is therefore subject to statutory deduction from source, that is before the employer can pay the claimant. The payment of such statutory deductions is by the respondent as the employer and is accountable to the statutory body.
19. The claimant can therefore make his own tabulations, assessment of costs and interests outside the judgment amount and Certificate of Costs less statutory deductions and claim the same directly from the respondent. Such would negate the due process and proper administration of justice.
20. The claimant moved court in garnishee proceedings on July 8, 2022. The Order Nisi was lifted on July 29, 2022 upon the respondent depositing the sum of Ksh 313,000 in court.
21. The claimant has acknowledged receipt of the sum of Ksh 733,417 through cheque No015531 on June 30, 2022. This being the decretal sum, it ought and should have factored the Certificate of Costs awarding the claimant Ksh 46,520, the interests thereof at court rates and total dues less the statutory deductions.
22. Any additional costs or interests from the payment made on June 30, 2022 should be taxed and a Certificate of Costs issued.

The decretal sum is Ksh 733,417

Certificate of costs Ksh 46,520

Interests at court rates Ksh 183,640

Total Ksh 963,577

Less PAYE Ksh 212,408.45



Due Ksh 751,168.55

Total received Ksh 733,417

Owing amount Ksh 18,021.55

Total deposit in court Ksh 313,000

Difference Ksh 294,979.

23. Accordingly, the Funds deposited in court at Ksh 313,000 shall be refunded to the respondent less what the claimant is entitled to at Ksh 18,021.55 the difference being Ksh 294,979.
24. Each party shall bear own costs of these proceedings.

DELIVERED IN OPEN COURT AT MOMBASA THIS 27TH DAY OF APRIL, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... **and**

