



REPUBLIC OF KENYA



**Simiyu v Nzoia Sugar Company Limited (Cause E005 of 2021)
[2023] KEELRC 1249 (KLR) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1249 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE E005 OF 2021**

**JW KELI, J
MAY 26, 2023**

BETWEEN

STEPHEN BUKHEBI SIMIYU CLAIMANT

AND

NZOIA SUGAR COMPANY LIMITED RESPONDENT

RULING

1. The claimant/ applicant and the Decree Holder in the suit filed instant application dated December 14, 2022 seeking a substantive order that ‘all monies held in or herein after to be held by the Garnishee to the credit of Nzoia Sugar Company Limited in the account 01001054695600 and Account no. 01242054695600 at the National Bank of Kenya be attached and pay the decretal sum of Kshs.7,250,563.66/- together with further accrued interest thereon at court rates and costs of these garnishee proceedings to be assessed by the court to the decree holder in satisfaction of the decree herein.”
2. The application was premised on the grounds that the applicant was a decree holder of decree in this suit that had not be satisfied by the respondent/judgment debtor to the tune of Kshs. 7,250,563.66/-. That the judgment debtor had tight security around its properties hence no attachment could take place for the movable properties. That the monies held by the garnishee on behalf of the respondent / judgment debtor can satisfy the decree herein.

Response by Judgment debtor

3. The judgment debtor opposed the application vide affidavit of Rita Mukhongo sworn on the February 6, 2023. The response was that the application was defective as the applicant had been paid the admitted sum of Kshs. 2,320,786(RM-1 was annexed as evidence of payment). That the applicant had not attempted to proclaim the movable properties of the judgment debtor hence was dishonest and economical with the truth. That the applicant was paid his retirement dues upon retirement



(RM-1). That the judgment debtor had not refused to pay the decretal amount as it had already paid Kshs. 2,320,786 to the applicant a fact said was not disclosed to the court. That all principal amount (loan) owed to the applicant had been paid and what was pending was the issue of interest amount charged by the bank. That the interest amount is overstated and there was need to interrogate the same. That based on disputed interest they wrote to the bank which refused to release statements on basis of bank customer confidentiality(RM-2 was a trail of emails with the banks), that the bank advised they get court order for the statements to be provided and it was only fair for the applicant to avail the same to prove interest charged. That the respondent having paid off the principal sum it was keen to pay the interest sum.

Garnishee response

4. The garnishee filed replying affidavit dated February 6, 2023 sworn by Chrispinus Inyangu who stated he was the branch manager of the garnishee bank. He stated that the judgment debtor was operating a current account No. 01001054695600 which as at January 17, 2023 had a credit balance of Kshs. 96,398.68/- which customer cannot be able to satisfy the decree herein. (CA-1 was the bank statements).

Response to the Garnishee and the judgment debtor by the applicant

5. The applicant filed further affidavit in response to the Garnishee and judgment debtor to effect that as at December 14, 2022 when he filed the application the account had credit of Kshs. 5,276,850.75 which amount he stated was withdrawn by the judgment debtor. That the properties of the judgment debtor had been locked in their compound and they only allowed employees to use private vehicles and that his auctioneers after diligence were unable to access movable properties of the judgment debtor. That it was not true the entire admitted amount had been paid. That he received payment in bank of Kshs. 326,836/ paid on March 17, 2022 at national bank and Kshs. 752,128.32 paid on the December 17, 2022 to family bank after he filed the application leaving outstanding amount of Kshs. 1,173,487.90 of the admitted amount. That on the interest, the judgment was based on his evidence produced in court at trial which the respondent never objected to.

Hearing

6. The court first referred matter to out of court settlement. The parties did not agree and the case was fixed for hearing inter-partes. On the May 2, 2023 when the matter was listed for hearing, the applicant informed the court through his advocate Mr. Onyando that he had served the date and same was acknowledged by the respondent. The hearing of the application proceeded in absence of the respondent on same date and ruling date was issued.

Decision

7. The claimant following inter-partes hearing of the suit, was awarded a judgment in his favour against the respondent dated May 12, 2022 wherein he was awarded gratuity and final dues of Kshs. 56,836/-, payment of unremitted national bank loan deductions and accrued interest of Kshs. 1,412,614/-, payment of unremitted Family Bank deductions plus interest accrued on the bank loan for the sum of Kshs. 4,350,000/- and unremitted CBO deduction of Kshs. 119,100/- and interest at court rate until payment in full and costs of the suit(see amended decree dated December 13, 2022). It is important to note that at the hearing the defence witness Geoffrey Wafula Juma admitted in evidence in chief that the company owes the claimant Kshs 2,320,786/-.



8. The response was that the entire admitted amount of Kshs. 2,320,786 had been paid to the applicant hence material non- disclosure by the applicant to the court. Annexure RM-1 by Rita Bukhungu for the respondent was the evidence of the payments. RM-1 was a bank advice slip dated December 17, 2022 10.04.30 hours to the claimant's account for loan repayment at family bank for Kshs 752,128.32 and a further advice slip of Kshs 326,836.06 processed on March 17, 2022 at 16.10.23 hours to the claimant for his loan repayment with national bank. The total sum paid as per RM1 was Kshs 1,078,964.38 out of the admitted amount of Kshs. 2,320,786/-. The court holds that the reasons given for non-payment based on the interest are irrelevant at execution as the court cannot sit on appeal against its decision. The decree had not been stayed or set aside.
9. The court then found that the decree in the suit had not been fully satisfied. The only requirement under Order 23 Rule 1 of the Civil Procedure Rules is the existence of an unsatisfied decree, the amount and another person is indebted to the Judgment-Debtor. '1. Order for the attachment of debts [Order 23, rule 1.] (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.'" There is no argument before me suggesting that the procedures laid down in Order 23 have been not been followed. The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with. The decree must be allowed to be executed.
10. In the instant case the respondent had not satisfied even the admitted amount of Kshs. 2,320,786 contrary to averments by Rita Makhungu evidence attached amounting to Kshs. 1,078,964.38 (RM-1) which the claimant admitted was paid. The defence on the dispute on interest is an issue for appeal the court having considered the claim on merit. There is no valid challenge on the garnishee proceedings .
11. The garnishee filed replying affidavit dated February 6, 2023 sworn by Chrispinus Inyangu who stated he was the branch manager of the garnishee bank. He stated that the judgment debtor was operating a current account No. 01001054695600 at their bank which as at January 17, 2023 had a credit balance of Kshs. 96,398.68/- which customer cannot be able to satisfy the decree herein, (CA-1 was the bank statement). That was true but the amount of Kshs. 6,267,675.70 was withdrawn on the January 12, 2023 while the application was pending in court. The garnishee further attached bank statement of account 01242054695600. The court examined the said statement and found that as at January 20, 2023 the book balance of the account was Kshs. 3,096,264.48 credit.
12. In view of the foregoing the court was satisfied that the applicant had made its case and allows the application in the following terms:-
 - a. All monies held in or herein after to be held by the Garnishee to the credit of Nzoia Sugar Company Limited in the account 01001054695600 and Account no. 01242054695600 at the National Bank of Kenya be attached and pay the decretal sum of Kshs. 7,250,563.66/- less the sum of Ksh. 1,078,964.38 already paid together with further accrued interest thereon at court



rates to the decree holder in full satisfaction of the decree herein and costs of these garnishee proceedings assessed by the court at Kshs. 20,000/- .

b. Costs of the application to the applicant payable by the respondent

b. An order absolute is hereby issued.

13. It is so ordered

DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 26TH DAY OF MAY 2023.

JEMIMAH KELI,

JUDGE.

In the presence of :-

Court Assistant: Lucy Macheso

Applicant:- Onyando. I served the respondents.

Garnishee:- Absent

Respondent:- Absent

