



Ogechi v LTI Kisii Safari Inn Ltd t/a Kaskazi Beach Hotel; Barclays Bank aka Absa Bank Ltd (Garnishee) (Cause 12 of 2020) [2023] KEELRC 1513 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEELRC 1513 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 12 OF 2020**

**AK NZEI, J
JUNE 15, 2023**

BETWEEN

DANIEL OGECHI CLAIMANT

AND

LTI KISII SAFARI INN LTD T/A KASKAZI BEACH HOTEL RESPONDENT

AND

BARCLAYS BANK AKA ABSA BANK LTD GARNISHEE

RULING

1. The application before me is the Claimant (Decree Holder's) Notice of Motion dated March 29, 2023. The Decree Holder seeks the following orders:-
 - a. that the application be certified urgent, and be considered ex-parte in the first instance.
 - b. that this Court be pleased to issue an Order Nisi forthwith attaching the sum of Ksh 4,064,000 (Four million and sixty four thousand Kenya Shillings) being the decretal sum, together with an additional interest at 14% per annum from the date of judgment (May 19, 2022) until payment in full, which sum is held to the credit of the Judgment Debtor in account number 2024584634, Barclays Bank, Diani Branch.
 - c. that this Court be pleased to order the above mentioned Garnishee and Judgment Debtor to attend Court to show cause why the said Garnishee should not pay the Decree Holder the decretal sum herein or so much thereof as may be sufficient to satisfy the said sum of Ksh 4,064,000 (four million and sixty four thousand Kenya Shillings) being the decretal sum together with an additional interest at 14% per annum from the date of judgment (May 19, 2022) until payment in full.



- d. that upon inter-partes hearing of the application, this Court be pleased to issue a Garnishee Order Absolute in terms of prayer (b) above.
 - e. that costs of the application be provided for, and be borne by the Judgment Debtor.
2. The application sets out on its face the grounds upon which it is based, and is supported by the Decree Holder's supporting affidavit filed together with the application on March 29, 2023. It is deponed in the said supporting affidavit:-
- a. that judgment was delivered in the suit herein on May 19, 2022, whereby the Decree Holder was awarded Ksh 4,064,000, costs of the suit and interest at Court rates.
 - b. that the Judgment, together with a bill of costs, were communicated to the Judgment Debtor.
 - c. that the Court's decree is yet to be satisfied, and no plausible reason has been advanced as to why the judgment Debtor has not satisfied the same.
 - d. that the Decree Holder is aware that the Judgment Debtor has an account with the Garnishee who could be holding funds to their credit. That specifically, the Judgment Debtor is the holder of Account Number 2023584634, Barclays Bank Limited, Diani Branch.
 - e. that the Decree Holder is apprehensive that the Judgment Debtor may move with haste to withdraw and/or move the funds held to its credit by the Garnishee herein, and that no prejudice will be occasioned to the Judgment Debtor if the application herein is allowed.
3. The application was placed before the Court under a certificate of urgency on March 30, 2023 and the Court (Mbaru, J), certified the application as urgent and issued an Order Nisi attaching the sum of Ksh 4,064,000 held in account No 2024584634 at Barclays Bank Diani Branch, being the Garnishee herein, and held to the credit of the Respondent herein.
4. The application is opposed by the Judgment Debtor vide a Replying Affidavit of Dr. Charles Gekonde Otara sworn on May 4, 2023. It is deponed in the said affidavit:-
- a. that the instant Garnishee application dated March 29, 2023 has been made against LTI Kisii Safari Inn where the deponent is a director.
 - b. that the Decree Holder sued Kisii Safari Inns Limited wherein the deponent is also a director.
 - c. that Kisii Safari Inns Limited And Lti Kisii Safari Inns Limited are completely two different companies.
 - d. that Kisii Safari Inns trades as Kaskazi Beach Hotel and not as Kaskazi Beach Resort, and that the party sought to be executed is completely different from the Respondent herein.
5. The Garnishee, who has been represented by an Advocate in the Garnishee application/proceedings herein, did not file any response to the application.
6. Both the Decree Holder and the Judgment Debtor filed written submissions on the application pursuant to the Court's directions in that regard, which I have considered.
7. It has to be noted, right from the onset, that the present application is not the first garnishee application that the Decree Holder has filed in pursuit of execution of the Court's decree herein. On July 20, 2022, the Decree Holder filed a Notice of Motion dated July 19, 2022 seeking attachment of the Judgment Debtor's account No 4770860018 held at NCBA Kenya, and payment to the Decree Holder of Ksh 4,064,000 therefrom, being the decretal sum herein. The Garnishee in that application, NCBA Bank



Limited, filed an affidavit in this Court demonstrating that the Judgment Debtor's said Bank account only held Ksh 148,370.32 which was insufficient to satisfy the decretal amount of Ksh 4,064,000 and the said Garnishee's (NCBA's) costs in the proceedings of Ksh 50,000.

8. On January 19, 2023, I delivered a Ruling on the said Garnishee application dated July 19, 2022, and allowed the same in the following terms:-

- “(a) a Garnishee order absolute is hereby issued attaching a sum of Kenya Shilling Four Million and Sixty Four thousand (Ksh 4,064,000) being the judgment sum herein, together with an additional interest at 14% per annum from the date of judgment i.e. May 19, 2022 until payment in full, which sum is held to the credit of the Respondent/Judgment Debtor in account No 4770860018 NCBA Bank Kenya.
- (b) the sum held in the said bank account, or so much thereof as may be sufficient to satisfy the decree herein of Kenya Shillings Four million and Sixty Four Thousand (Ksh 4,064,000) together with an additional interest at 14% per annum from the date of judgment i.e. May 19, 2022 until payment in full, shall be paid to the Claimant/Decree Holder and/or his advocates herein by the Garnishee.
- (c) the Claimant/Decree Holder will be at liberty to take out further execution proceedings in the event of insufficiency of funds in the Respondent/Judgment Debtors attached bank account.
- (d) Costs of this application shall be paid by the Respondent/Judgment Debtor.”

9. The Claimant/Decree Holder appears to have taken liberty to take out further execution proceedings, hence the present Garnishee application dated March 29, 2023 and filed herein. Back to that application, which is the application before me for determination.

10. The Decree Holder/Applicant has asserted in the present application that the Judgment Debtor holds Account No 2024584634 in the Garnishee Bank, which account was attached by this Court on March 30, 2023 as stated in paragraph 3 of this Ruling. The suit herein was on 27/2/2020 filed by the Claimant/Decree Holder against LTI Kisii Safari Inn Ltd T/a Kaskazi Beach Hotel. The Decree Holder has attached to the application herein a proforma invoice issued by Kaskazi Beach Hotel to a third Party on November 24, 2022 bearing the attached account number. I have also noted from the proceedings herein that the Claimant/Decree Holder's letter of appointment dated 30/10/2018 and summary dismissal letter dated 2/7/2019 are both printed by the Respondent on letter heads of/emblemated Kaskazi Beach Hotel. The Respondent never denied, at any given time in these proceedings, having employed the Claimant/Decree Holder herein.

11. It is, therefore, not legally and logically tenable for the Respondent/Judgment Debtor to allege that the attached bank account No 2024584634 held at Barclays Bank (aka Absa Bank) Limited, Diani Branch, does not belong to the Judgment Debtor but to a different company in which the Judgment Debtor's director, Dr Charles Gekonde Otara, is also a director.

12. I have taken note of the fact that no objector proceedings have been filed herein by any person and/or entity, though the attached bank account herein has been so attached since March 30, 2023. Further, the Garnishee Bank has not filed any documents to show and /or demonstrate that the attached bank account belongs to a person and/or entity other than the Respondent/Judgment Debtor.



13. I am satisfied that the Notice of Motion dated March 29, 2023 is merited, and I hereby allow the same in the following terms:-

- a. a Garnishee Order Absolute is hereby issued attaching a sum of Ksh 4,064,000 (Four Million and Sixty Four Thousand Kenya shillings) being the Judgment sum herein, together with interest at 14% per annum from the date of judgment (May 19, 2022) until payment in full, which amount is held to the credit of the Respondent/Judgment Debtor in account No 2024584634, Barclays Bank (aka Absa Bank) Limited, Diani Branch.
- b. the attached sum held in the said bank account, Ksh 4,064,000 (Four Million and Sixty Four Thousand), together with interest at 14% per annum from the date of judgment (May 19, 2022) until payment in full, less any amount that may be shown to have been paid to the Decree Holder since the passing of the decree herein, shall be paid to the Claimant/Decree Holder and/or his Advocates herein by the Garnishee forthwith.
- c. costs of this application are awarded to the Claimant/Decree Holder, and shall be paid by the Respondent/Judgment Debtor.

14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 15TH JUNE 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the

applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

N/A. for Claimant

Mr. Otara for Respondent

Mr. Odera for Garnishee

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