



REPUBLIC OF KENYA



Muthee v X-Plico Insurance Co Ltd; Prime Bank Limited & another (Garnishee) (Employment and Labour Relations Cause 1463 of 2018) [2023] KEELRC 1865 (KLR) (28 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1865 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1463 OF 2018**

**AN MWAURE, J
JULY 28, 2023**

BETWEEN

GEOFFREY MURIITHI MUTHEE CLAIMANT

AND

X-PLICO INSURANCE CO LTD RESPONDENT

AND

PRIME BANK LIMITED GARNISHEE

M ORIENTAL BANK LTD GARNISHEE

RULING

1. The applicant who is the 1st garnishee prime bank limited filed an application dated January 27, 2023. He had made the following prayers.
 - i. That this application be certified urgent and the same be hear ex parte in the first instance.
 - ii. That pending the hearing and determination of the application herein interpartes, there be a stay of execution of the garnishee order absolute dated January 12, 2023 as against the 1st garnishee/applicant.
 - iii. That the proceedings of August 30, 202 and all the consequential orders herein be and are hereby set aside and the claimant's application dated July 7, 2022 be heard de novo with the 1st garnishee being grant leave to respond to the same.
 - iv. In the alternative to prayer 3 above the honourable court be pleased to review and set aside the ruling and order made herein on January 12, 2013 as against the 1st garnishee.
 - v. That the costs of this application be provided for.



2. The court dealt with this application in details are as per the ruling delivered on the March 16, 2023 the court granted the prayers and gave the 1st garnishee opportunity to be heard de novo and to respond to the application dated July 7, 2020.
3. The court having addressed almost all the issues as per the said ruling of March 16, 2023 will now address the matter of confirming the decree nisi as decree absolute in the case of the 1st garnishee.
4. In the courts ruling aforesaid delivered on March 16, 2023 the court delved into great details to the reasons the court agreed to set aside the orders therein since there was no evidence that the 1st garnishee had been served with the applicant's notice of motion dated July 7, 2022 whereupon the orders had been made in the absence of 1st garnishee. The 1st garnishee was given opportunity to present its defence which it did and so cannot claim to have been locked out of their right to be heard.
5. The court considered the submissions of the 1st garnishee dated February 14, 2023 and also the claimant's decree/holder's submissions dated February 17, 2023. Actually the main issue is that the decree nisi order and decree absolute orders issued per this court orders dated January 12, 2023 be set aside and the matter be heard afresh.
6. The court has since it allowed the 1st garnishee to file its pleadings and submissions been seized of information that among others there is the bank account in its Westlands branch has not been operated since there has been wrangles amongst the management of the judgment debtors. The account according to George Mathui the manager legal of prime bank limited 1st garnishee says the accounts remains frozen save for monthly ledger fees and maintenance charges which are system generated and the total amount in the account is kshs 364,08205 as per annexed bank statement hereto.
7. The deponent says there is also an agency notice dated February 14, 2020 and January 16, 2022 by Kenya Revenue Authority amounting to kshs 61,876,052/- and kshs 40,887,828/-.
8. The deponent says there are other myriad court orders issued by various courts in HCCC No E901 of 2021 and insolvency Cause No E030 of 2020 and several other orders.
9. The court has noted the submissions and the affidavit of the 1st garnishee on all the orders on the judgments debtors account with the 1st garnishee. The court is however guided by order 23 rule 1 of *civil procedure rules* which provide:

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.
10. There is no reason to bar a decree nisi on the judgments debtors account and even if there is an avalanche of court orders as the 1st Garnishee claims it is the decree holder's right to have an order if per chance there will be a possibility to get his dues amidst all the others well and good. The court finds after deeply considering the pleadings and submission of the respective parties in relation to the 1st garnishees application the court finds the decree holder's application is still merited and so is granted order 2 and orders 4 as per his application dated July 22, 2022. The orders granted on March 16, 2023 setting aside



those early orders are now overtaken by the events since the application has been heard in its entirety and 1st garnishee had his opportunity to present his case and this court still finds the decree holder's application is still merited. The 1st garnishee is only expected to pay the decree holder what is in their possession and so have nothing to lose from their personal resources. So decree holders application dated July 7, 2022 is granted against 1st garnishee as pertains to prayers 2 and 4 thereof. The costs of this application will be paid by the 1st garnishee.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28TH DAY OF JULY 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

