



**Kenya Universities Staff Union v Kisii University; Kenya Commercial Bank & 2 others  
(Garnishee) (Cause E009 of 2020) [2023] KEELRC 2105 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2105 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E009 OF 2020  
S RADIDO, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**KENYA UNIVERSITIES STAFF UNION ..... CLAIMANT**

**AND**

**KISII UNIVERSITY ..... RESPONDENT**

**AND**

**KENYA COMMERCIAL BANK ..... GARNISHEE**

**NATIONAL BANK OF KENYA LTD ..... GARNISHEE**

**COOPERATIVE BANK LTD ..... GARNISHEE**

**RULING**

1. For determination is a Chamber Summons by the Kenya Universities Staff Union (the Union) seeking orders:
  - (1) ...
  - (2) That this Honourable Court be pleased to reinstate the Garnishee decree nisi issued on September 28, 2022 for the attachment of the judgments debtors accounts.
  - (3) That the garnishees be ordered to appear before this Honourable Court to show cause why it should not pay to the decree holder the funds sufficient to satisfy the remaining balance of the undisputed decretal sum amounting to Kshs 92,474,490/-.
  - (4) That the Court do issue garnishee order absolute attaching the remaining balance of the undisputed decretal sum from the Respondents accounts as mentioned above and the same be remitted to Onyony & Co Advocates, account number xxxx at Family Bank Cargen House Harambee Avenue Branch.



- (5) That the aforesaid garnishee orders remain in force until the remaining balance of the undisputed decretal sum amounting to Kshs 92,474,490/- has been paid in full.
  - (6) That any other account operated or to be operated by the Respondent/decreed debtor remain attached until the remaining sums owed as per the consent are fully paid.
  - (7) That this Court do issue orders as it may deem fit and just to meet the ends of justice.
  - (8) That the costs of this application be paid out of the aforesaid accounts held by the Garnishee.
2. The National Bank of Kenya Ltd (the 2<sup>nd</sup> Garnishee) filed its replying affidavit to the application on May 8, 2023. The Kenya Commercial Bank Ltd (1<sup>st</sup> Garnishee) and the Cooperative Bank of Ltd (3<sup>rd</sup> Garnishee) filed their replying affidavits on June 5, 2023.
  3. When the application came up for hearing on June 8, 2023, the University informed the Court that the parties were negotiating. The Court was also informed that the replying affidavits had not been served on all the parties.
  4. The Court directed that the affidavits be served and further that submissions be exchanged.
  5. The 2<sup>nd</sup> Garnishee filed its submissions on June 19, 2023 whilst the Union filed its submissions on June 30, 2023.
  6. The Respondent filed its submissions on September 11, 2023 and an affidavit in reply on September 12, 2023.
  7. The 1<sup>st</sup> and 3<sup>rd</sup> Garnishees filed submissions on September 18, 2023 (the late filing was explained that the Respondent had not served them with its affidavits and submissions).

### **Some background**

8. In a judgment delivered on May 4, 2022, the Court entered judgment for the Union and directed the parties to compute the decretal amounts owing to members of the Union who had been retrenched by the University.
9. The amounts were computed but the University failed to settle. On August 25, 2022, the Union, therefore launched garnishee proceedings against the University. The Court gave directions on the application on the same day.
10. The University, on its part filed an application seeking stay of execution of the judgment pending appeal on September 8, 2022. On September 28, 2022, the Court directed the parties to attempt to reach a compromise on the garnishee application with a rider that the decree nisi would come into operation without any further orders if there was no agreement.
11. The parties held negotiations culminating in a consent order adopted by the Court on November 24, 2022, under which the University agreed to pay the terminal benefits amounting to Kshs 169,796,018/- to its members who had been retrenched in instalments.
12. The consent also had 2 conditions that are material in respect to the instant proceedings.
13. These were:
  - (8) That upon adoption of this consent by the parties herein, the decree nisi order on Kisii University accounts will be forthwith lifted and/or set aside and the garnished accounts be forthwith operated normally.



- (9) That failure to honour any instalments then all the accounts of Kisii University will automatically be frozen and the Kenya Universities Staff Union will be at liberty to continue with the execution process to realize the remaining part of the judgment amount and any costs incurred as a result thereof.

### **The arguments by the Union**

14. In support of the application, the Union primarily contended that the University had failed to comply with the terms of the consent despite having sufficient monies in its bank accounts to satisfy the debt and that this left it with no option but to invoke the Court's jurisdiction to compel payment.
15. The Union cited the decision in *Lily K Musinga & 2 Ors v Municipal Council of Mombasa* (2014) eKLR to submit that reinstatement of a decree nisi was not a unique proposition.

### **The position of the University**

16. On April 20, 2023, the University requested for 7 days to file a response to the Union's application. The Court directed it to file and serve a response on or before April 27, 2023 with hearing set for May 9, 2023.
17. The affidavit was only filed on September 12, 2023.

### **Assertions by the Garnishees**

#### **1st and 3rd Garnishees**

18. The 1<sup>st</sup> and 3<sup>rd</sup> Garnishees took the position that the Court had not issued any garnishee order nisi on August 25, 2022, and that it was only on September 22, 2023 that the orders were issued that if the Union and the University failed to reach a compromise by October 14, 2022, the order would crystallise, and that the garnishee order nisi was lifted by virtue of the consent adopted by the Court on November 24, 2022.
19. The garnishees, therefore, asserted that the orders sought in the application under consideration could not be granted until the granting of fresh garnishee order nisi.

#### **2nd Garnishee**

20. The 2<sup>nd</sup> Garnishee contended that it had no active role to play in the instant proceedings.
21. The Court has considered the application, affidavits, submissions and the record.
22. The Respondent was directed to file and serve submissions on or before July 20, 2023. The submissions were only filed on September 11, 2023, and without leave. The Respondent purported to file an affidavit on September 12, 2023, again without leave (the Respondent had informed the Court on June 8, 2023 that the affidavit had already been filed but not served).
23. A perusal of the record shows that the Respondent has severally failed to comply with court orders/timelines. It has not explained the failure to comply with the orders of June 8, 2023.
24. The Court, therefore, expunges from the record the submissions and affidavit in reply.
25. Through an application filed in Court on August 25, 2022, the Union sought a garnishee order nisi against the University's bank accounts. The University and Garnishees were directed to file and serve responses.



26. On September 22, 2022, the Court gave the parties an option to attempt to compromise the application. In default of a compromise, the Court ordered that the garnishee order nisi come into effect from October 14, 2022.
27. The Union and the University did not reach a compromise and, therefore, the garnishee order issued on September 22, 2022 became effective from October 14, 2022.
28. With its accounts frozen, the University and the Union reached a consent which was adopted by the Court on November 24, 2022.
29. Part of the consent was to lift/set aside the garnishee order nisi.
30. However, in their own wisdom, the parties agreed that the University's accounts would stand frozen upon the failure by the University to satisfy/pay any of the agreed monthly instalments.
31. It is clear to the Court that the lifting/setting aside of the garnishee order nisi was conditional upon the University meeting its part of the bargain.
32. The Union has now demonstrated that the University did not satisfy the terms of the consent it voluntarily entered into.
33. The effect of the failure is that clause 9 of the consent orders on reinstatement of the garnishee order nisi automatically came into effect. The orders were reinstated as a result of the parties consent and was not conditional on the application of the *Civil Procedure Act* or Rules.

### **Conclusion and Orders**

34. In light of the above the Court issues the following orders:
  - i. The garnishee order nisi granted on September 22, 2022 is reinstated in terms of clauses 8 and 9 of the parties' consent adopted by the Court on November 24, 2022.
  - ii. The parties to address the Court on a date to be agreed herein on why a garnishee order absolute should not issue.
35. The Union to have costs of the application.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 20TH DAY OF SEPTEMBER 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

### **Appearances**

For Claimant Onyony & Co. Advocates

For Respondents Nyamurongi & Co. Advocates

For 1<sup>st</sup> Garnishee Owiti, Otieno & Ragot Advocates

For 2<sup>nd</sup> Garnishee Otieno, Yogo, Ojuro & Co. Advocates

For 3<sup>rd</sup> Garnishee Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura

