



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. E6515 OF 2020

JOSEPH MULILI KITUKU.....CLAIMANT/DECREE HOLDER

VERSUS

JUBILEE PARTY OF KENYA.....RESPONDENT/JUDGMENT DEBTOR

AND

EQUITY BANK KENYA LIMITED.....GARNISHEE

RULING

1. By a notice of motion dated 13th September, 2021, the Claimant/Applicant prays for orders that:-

1. Spent

2. That this Honourable Court be pleased to issue an order Nisi to the Garnishee to show cause why the Respondent's account with them should not be attached in satisfaction of the Applicant's decree.

3. That this Honourable Court be pleased to issue an Order Nisi for the debt of Kshs 1,920,000 owed by the Judgment Debtor to the Decree holder owing and accruing from the Garnishee to the judgment Debtor in the Judgment Debtors Jubilee Party Main Account No. 0180270839949 and Account No. 0180270840141 and it be attached to answer this Honourable Court's decree passed against the Judgment Debtor in favour of the Decree Holder on 11th December, 2020 and it be attached to answer this Honourable Court's decree passed against the Judgment Debtor in favour of the Decree Holder on 11th December, 2020.

4. The application is premised on grounds set out on the face of the Notice of Motion and in the Supporting Affidavit of Joseph Mulili Kituku, the applicant to wit; on 11th December, 2020, an order for a mandatory injunction was issued to compel the respondents to pay the claimant the Decree holder's salary from the month of November, 2020 and subsequent month for as long as the applicant is under employment of the Respondent.

5. That the Judgment Debtor has failed to fulfil the orders by the Court. That the Judgment Debtor holds known bank account with the Garnishee and the Garnishee is indebted to the Judgment Debtor on the said Bank account.

6. That the default by Judgment debtor is willful and deliberate.

7. The respondent filed a notice of Preliminary Objection to the application dated 8th December, 2021 in which it states, the application is misconceived and an abuse of Court process in that the application does not meet the threshold of Order 22 and 23 of the Civil Procedure Rules, 2010 which contemplates the existence of a Judgment, a decree and a Certificate of costs for Garnishee proceedings.

8. That the application is defective *ab initio* and it be dismissed firstly for this omission and secondly for obtaining bank details of the respondent illegally and unethically.

9. Order for the attachment of debts

[Order 23, rule 1.] (1) reads:-

“ 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. It is apparent that an exparte applicant for attachment of debts from a third party must first be issued with a decree that has not been satisfied and to what amount.

11. The applicant herein did not attach any decree to the application and a perusal by the Court of the Court record does not disclose any decree lawfully issued by the Court together with a Certificate for costs.

12. The Court is satisfied that this application violates Order 22 and 23 of the Civil Procedure Act, as was stated by the Court in the case of **(Mengich t/a Mengich Advocates –Vs - Joseph Wambua & 10 Others [2008] eKLR** in which Mativo J. stated the requirements for a Garnishee application to be issued by the Court.

“In my view, this application fails on the following grounds:-

First, the Respondents in the Application are not parties to this suit, yet, they are named as Respondents in the application under consideration. Court orders only bind parties before it. This is a fatal defect which renders the application before me incompetent. Second, being a garnishee application, the only proper party to be garnisheed is the Bank. The rest of the Respondents are improperly enjoined in the application since they are not holding any money capable of being garnisheed nor has it been alleged they hold any funds either individually or jointly. There is nothing to show that they are indebted to a judgment debtor as the law requires. Third, the above rule contemplates the existence of a decree for the amount claimed. There is no decree before me’.

13. The fact that the Order sought to be enforced is a mandatory interim injunction issued before the hearing and determination of the suit does not in itself disentitle the beneficiary of the order from executing the same in any lawful manner. However, the execution proceedings must be preceded by an extraction of a decree for the liquidated amounts awarded by the Court vide the stated interim order.

14. The application has therefore been filed prematurely, is defective and an abuse of the Court process. The application is accordingly dismissed with costs in the cause.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF FEBRUARY, 2022.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 of the Civil 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.

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Kerotich for Claimant/Applicant

Mr. Macharia for Respondent

Ekale – Court Assistant