



**Mwangi v Mutanga Investments Limited; Diamond Trust Bank (Garnishee); Mimano (Third party) (Cause 231 of 2015) [2022] KEELRC 13105 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13105 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE 231 OF 2015  
DKN MARETE, J  
OCTOBER 31, 2022**

**BETWEEN**

**JULIUS MACHARIA MWANGI ..... CLAIMANT**

**AND**

**MUTANGA INVESTMENTS LIMITED ..... RESPONDENT**

**AND**

**DIAMOND TRUST BANK ..... GARNISHEE**

**AND**

**ROSE MUMBI MIMANO ..... THIRD PARTY**

**RULING**

1. This is an application dated August 18, 2021 and seeks the following orders of court;
  1. That this Application be certified urgent and service be dispensed with and heard ex parte in the first instance.
  2. That pending the inter parties hearing determination of this application this Honorable court do issue an order Nisi against the Garnishee directing that all monies held in the personal account by one of the Respondents Director, Rose Mimano that is Diamond Trust Bank Koinange Branch USD Account Number xxxxxxxx be attached to satisfy the decretal sum herein of Kshs 2,609,814.31 and costs of Kshs 502,376.00.
  3. That this Honourable court so issued an order absolute against Garnishee directing that all Respondent's monies diverted to and held in the personal Bank account of one of its Director's, Rose Mimano that is Diamond Trust Bank Koinange Branch USD Account



Number xxxxxx be attached to satisfy the decretal sum herein of Kshs 2,609,814.31 and costs of Kshs 502,376.00.

4. That costs of the Garnishee proceedings be borne by the Respondent.
2. It is grounded as follows;
    - a. That the decree issued on May 10, 2021 for the decretal amount of Kshs 2,609,814.31 and costs of Kshs 502,376.00 against the Respondent remains unsatisfied.
    - b. That the claimant has severally attempted to execute the decree but the same has not been successful.
    - c. That the Respondent has monies that have been diverted to and held in the personal Bank account of the Respondent's Director, Rose Mimano that is Diamond Trust Bank Koinange Branch USD Account Number xxxxx which is sufficient to satisfy the decree.
    - d. It is only through the attachment of this account that the decree herein will be satisfied.
  3. The garnishee, the DT Bank in a Replying Affidavit sworn on September 27, 2021 brings out a case of disability of meeting the amount of garnishee as the balance of funds held by herself is not enough after offsetting their costs of this application.
  4. The Claimant/Applicant rubbishes all this and in a further Affidavit and Supplementary Affidavit sworn on November 4, 2021 and February 25, 2022 respectively avers that the account is solid and an amount of USD 18,724.84 is about to be paid into it by the Respondents Coffee Marketers, Oakland Coffee Marketing Limited.
  5. It is the Claimant's averment that this diversion of the funds and proceeds of the Respondents coffee sales is real and is adequate to meet the decretal amount.
  6. The decree holder/ Applicant's further case is that the Respondent is the owner of Kirimara Coffee Estate in Nyeri which is in the business of coffee farming. However, the proceeds from the sale of its coffee have been illegally diverted to and held in the personal bank account of the Respondent's Director, Rose Mimano that is held with the Garnishee, Diamond Trust Bank Koinange Branch USD Account Number xxxxx which is sufficient to satisfy the decree. Thus, there were sufficient reasons to attach the account held by the Garnishee to satisfy the decretal amount.
  7. He seeks to rely on the authority of *International Air Transport Association (IATA) v Akarim Agencies Company Limited & 2 others; Equity Bank Limited (Garnishee) (2021)eKLR*, the court held as follows;

“The object of Garnishee proceedings is to enable a Decree-holder to reach a debt due to the Judgment-debtor from the Garnishee as may be sufficient to satisfy a decree. Garnishee proceedings are in their very nature proceedings where the garnishee is required to prove whether or not it is indebted to the Judgment-debtor. Ordinarily, the Decree-holder only makes allegations of the garnishee's indebtedness based on sound evidence whereupon the burden of proof shifts to the garnishee to prove otherwise. In order to discharge that burden, the garnishee has to produce strong, sufficient and convincing evidence that the funds in its hands or the debt is not due or payable (see *Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co; Co-operative Bank of Kenya (Garnishee) EMBU HC Misc Civil App No 73 of 2018 (2020) eKLR* and *Ngaywa Ngiigi & Kibet Advocates v Invesco Assurance Co Ltd; Diamond Trust Bank Kenya Ltd (Garnishee) MKS HC Misc Civil App No 405 of 2017 (2020) eKLR*)”.



8. The decree holder/Applicant further buttresses his case as follows;

The Applicant/Decree holder has proved that he has a decree against the Respondent that has not been satisfied. He has also proved that the Respondent's funds from the proceeds of coffee are illegally diverted to one of the Respondent's director's personal bank USD account held by the Garnishee. The proceeds from the Respondent coffee paid into this account is sufficient to satisfy the decree and we therefore urge you to grant the Applicants application together with costs as prayed.

9. The Judgment debtor and third person objects to these proceedings.

10. It is their case that the monies now claimed are not owing. On this they seek to rely on the authority of Sir Dinesh Mulla which comes out thus;

“A debt cannot be attached unless it is actually due from the garnishee (judgment debtor's debtor) to the judgment debtor... while an “existing” debt can be attached, a contingent debt can be attached only after the contingency on which the money becomes payable happens. Until then, there is no debt which can be attached.”

11. It is their further case that the judgment debtor is not entitled to a claim onto monies deposited to an account after the issue of a decree nisi. His claim therefore fails in this regard.

12. The Judgment debtor and 3rd person in the penultimate submit that the judgment debtor and third person are separate legal entities and the debt is not owing to the third person but the company. It is their prayer that on these premises, the garnishee order should be discouraged and the application dismissed as the targeted debt is not owing and if at all, is subject of a claim by a third person.

13. The Applicant's case overwhelms that of the Judgment debtor and third person. This is because he comes out clean to demonstrate a case of being owed by the company. Further, the Applicant has ably demonstrated that coffee proceeds for the company are being irregularly diverted to a personal account to which he seeks attachment for the repayment of the debt.

14. The Applicant's case and submissions takes sway in the circumstances. It overwhelms that of the Respondent and garnishee on a preponderance of evidence and balance of probability. It is the likely case of the two.

15. I am therefore inclined to allow the application and order relief as follows;

i. That an Order absolute be and is hereby issued against the Garnishee directing that all Respondent's monies diverted to and held in the personal Bank account of one of its Director's, Rose Mimano that is Diamond Trust Bank Koinange Branch USD Account Number xxxxx be attached to satisfy the decretal sum herein of Kshs 2,609,814.31 and costs of Kshs 502,376.00.

ii. That the costs of the Garnishee proceedings shall be borne by the Respondent.

**DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.**

**D K NJAGI MARETE**

**JUDGE**

Appearances

1. Mr Mbogo instructed by Rajab & Mbogo Co Advocates for the Claimant/Decree Holder/Applicant.



2. Mr Kingori instructed by C M Kingori & Company Advocates for the Judgment Debtor & The Third person.
3. No appearance for the Garnishee.

