



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 154 OF 2015

BETWEEN

YEZIEL MATHUFALI DADDAH.....DECREE HOLDER

VERSUS

CHAIRMAN [B.O.G.] TARASAA YOUTH POLYTECHNIC.....APPLICANT

Rika J

Court Assistant: Benjamin Kombe

Claimant in person

Mr. Bwire Advocate for the Respondent

Ms. Mburu Advocate for Garnishee

RULING

1. The Decree-Holder obtained Judgment against the Judgment-Debtor, for a total sum of Kshs. 1,038,770, comprising terminal benefits and compensation for unfair termination. Judgment was delivered on 27th July 2016.
2. The amount remains unpaid.
3. The Decree-Holder has attempted all manner of execution, but to no avail.
4. The record indicates he has applied for attachment and sale of the Judgment Debtor's movables. He applied to have Respondent's Officers arrested and committed to civil jail, without success.
5. His last bid was an application filed on 8th October 2018, seeking attachment through garnishee orders, of Respondent's Account Nos. 1149671599, 1160104565 and 1236319362 at Kenya Commercial Bank Garsen.
6. The Court granted him *ex-parte* order on 31st October 2018, freezing the Accounts.
7. He seeks to have *ex parte* order confirmed, and the frozen funds released to him, to satisfy his decree.
8. The Court heard him *ex-parte*, and scheduled the Ruling for 12th February 2019.
9. On 1st February 2019, the Judgment Debtor approached the Court under Certificate of Urgency seeking that Ruling scheduled for 12th February 2019 is deferred; the order made on 31st October 2018 is stayed; and the same order is reviewed and set aside.

10. The Decree-Holder swore an Affidavit in support of his Application, and a Replying Affidavit objecting to Judgment-Debtor's Application. The Affidavits in Support of the Judgment-Debtor's Application, and in reply to the Decree-Holder's Application, were sworn by James Ooko Opiyo, Manager/Secretary of the Judgment-Debtor.

11. It was ordered on 29th October 2019, that the two Applications are considered on the strength of Affidavits and Submissions of the Parties. Parties confirmed filing of Submissions on 28th November 2019.

The Court Finds:-

12. The Judgment-Debtor has shown that the frozen Accounts hold money allocated by the National Government to the County Government of Tana River, as part of a conditional grant, for the construction of a computer lab at the Respondent Youth Polytechnic.

13. The Decree-Holder did not disclose this, on applying for garnishment.

14. It is doubtful whether the Decree-Holder effected proper service of his Application on the Attorney-General, on record for the Judgment-Debtor.

15. Conditional grants cannot be the subject of garnishment under Section 138(5) of the Public Finance Management Act, 2012, and Order 29 of the Civil Procedure Rules, read with Rule 32(2) of the E&LRC (Procedure) Rules, 2016.

16. The Decree-Holder does not contest that the Judgment-Debtor is presently an Institution falling within the mandate of the County Government of Tana River. It may have been a different entity at the time it employed the Decree-Holder. Presently, it is an Institution of the County Government of Tana River. Its Bank Accounts cannot be attached to satisfy a civil debt. The ***High Court, in Republic v. Attorney-General & another, ex parte Stephen Wanyee Roki (2016) e-KLR***, held that immunity granted under Section 21(4) of the Government Proceedings Act, Cap 40 of the Laws of Kenya, must necessarily extend to the County Governments. This immunity extends to the Respondent herein, as an Institution of the County Government of Tana River.

17. It is not without sympathy to the Decree-Holder, that the Court must decline to confirm *ex-parte* orders issued in his favour and accede to Judgment-Debtor's Application, completely setting aside those orders. The Decree-Holder must keep exploring legal means, to recover what the Court awarded him.

IT IS ORDERED: -

a. The Application dated 1st February 2019 filed by the Judgment-Debtor is allowed.

b. Ex-parte order made on 31st October 2018 in favour of the Decree-Holder, freezing Judgment-Debtor's KCB Garsen Account Nos. 1149671599, 1160104565 and 1236319362, is set aside.

c. No order on the costs.

Dated and delivered at Mombasa this 26th day of March 2020.

James Rika

Judge