



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISCELLANEOUS APPLICATION NO. 36 OF 2018

(Before Hon. Justice Mathews N. Nduma)

SIGANGA AND COMPANY ADVOCATES.....DECREE HOLDER/RESPONDENT

VERSUS

GREAT LAKES UNIVERSITY KISUMU.....JUDGMENT DEBTOR/RESPONDENT

AND

EQUITY BANK (KENYA) LIMITED.....1ST GARNISHEE

KCB BANK LIMITED.....2ND GARNISHEE

RULING

1. Application dated 17th January 2020 sought an order in the following terms:

(a) That Honourable court be pleased to make a Garnishee Order Nisi against KCB BANK LIMITED the Garnishee held in bank account Number 1117142876 at their Kisumu Branch, Ordering that all monies deposited, lying and being held in deposit by the Garnishees to the credit of GREAT LAKES UNIVERSITY OF KISUMU, the judgment debtor herein be attached to answer the Decree for the sum of Kshs. 2,469,808/= being the amount in respect of which costs were awarded together with interest at Court Rates from October 25, 2018 until payment in full being Kshs. 432,216.40.

(b) That the Honourable court be pleased to order that the sum due to the decree holder is Kshs. 2,902,024.40.

(c) That an order Nisi upon the Garnishee do issue and the same be served on the garnishee before being served on the defendant/judgment debtor.

(d) That the Garnishees do appear before this court on an appointed date and time to show cause why it should not pay the Decree holder Kshs. 2,902,024.40 being the Decretal sum in favour of the Decree holder herein.

(e) That the Honourable Court be pleased to order the Garnishee to show cause why it should not pay the Decree Holder further costs of these Garnishee proceedings.

(f) That the decree Holder be at liberty to apply for any such further orders/or directions as the honourable court may deem fit and just to grant.

(g) That the Garnishees settle the sums claimed to the credit of SIGANGA and COMPANY CLIENT ACCOUNT, NCBA BANK, KISUMU BRANCH A/C NO. 100230959.

(h) That the costs of this application be assessed by the Honourable Court and be borne by the Garnishees jointly and severally.

2. The application is supported by grounds set out on the face of the Notice of Motion and in particular the Decree holder has demonstrated the existence of a lawful decree of Employment and Labour Relations Court capable of execution. That the judgment Debtor was indebted to the Decree holder in the sum of Kshs. 2,902,024.40 as at January 17th 2020.

3. That the Garnishee holds an account/accounts of the judgment Debtor with sums sufficient to settle the decretal amount, costs of the suit as well as costs of the Garnishee proceedings herein.

4. That the judgment Debtor maintains an account Number 1117142876 with the Garnishee at Kisumu Branch.
5. That the application be granted as prayed.
6. The Garnishee filed a replying affidavit dated 5th February 2020 in which one Calisto Orwa Deposits that the judgment debtors account held with the Garnishee at Kisumu Branch held Kshs. 3,762,625.55 as at 21st January 2020 and the garnishee is willing if ordered to release the said sum to the applicant subject to deducting any applicable bank charges and the legal costs relating to this litigation and others in this series of suits.
7. The judgment debtor filed a preliminary objection that the application violates *Section 1(A), 3 (A) of the Civil Procedure Act, Order 23 Rule 1 of the Civil Procedure Rules Cap 2, Laws of Kenya and Article 50 and 159 of the constitution of Kenya 2010* and it be dismissed with costs.
8. The objector argues that as at 20th January 2020 when decree nisi was issued by the court, the decree had not been extracted and so, the application lacks merit and it be dismissed with costs.
9. The undeniable fact is that there is unsatisfied decree in existence in favour of the applicant against the judgment debtor. The Garnishee has demonstrated that it holds sufficient funds to settle the judgment debt including the costs of the application and the Garnishee in these proceedings.
10. The court has considered the objection by the judgment debtor and finds the same to be without merit. The same is only aimed at delaying the settlement of the judgment debt in favour of the applicant, the decree holder.
11. Accordingly the application is granted confirming the decree nisi in terms of the application dated 17th January 2020 and filed on 20th January 2020. In addition the Garnishee to defray its own costs of these proceedings and release the funds to the applicant, Decree holder as prayed.

Ruling Dated, Signed and delivered this 9th day of March, 2020

Mathews N. Nduma

Judge

Appearances

Dave Siganga for the Applicant/Decree Holder

M/S Onsongo for the Garnishee

Mr. Kago for Judgment debtor

Chrispo – Court Clerk