



**Casucci v Bando Project (K) Limited; Kenya Commercial Bank Limited
& another (Garnishee) (Environment & Land Case 232B of 2020)
[2024] KEELC 13888 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13888 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 232B OF 2020
NA MATHEKA, J
DECEMBER 18, 2024**

BETWEEN

FATUMA KALTHUMA CASUCCI APPLICANT

AND

BANDO PROJECT (K) LIMITED RESPONDENT

AND

KENYA COMMERCIAL BANK LIMITED GARNISHEE

HFC BANK LIMITED GARNISHEE

RULING

1. The application is dated 6th December 2023 and is brought under Order 51 Rule 1, Order 23 Rule 1,2,3 & 10 of the Civil Procedure Rules, 2010 and Article 159(2)d of *the Constitution* of Kenya seeking the following orders;
 1. That this application be certify as urgent and be considered ex-parte in the first instance.
 2. That this Honourable Court be pleased to issue an Order Nisi forthwith attaching the sum of Kenya Shillings Three Million Two Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs. 3,247,926.67) being the decretal sum together with an additional interest at 12% per annum from the date of filing the suit i.e. 16th December 2020 until payment in full, which sum is held to the credit of the Judgment Debtor in account number 1129044521 at Kenya Commercial Bank Limited, Mvita Branch, Mombasa and Account Number 7500000010 at HFC Bank Limited, Rehani Branch, Mombasa.
 3. That this Honourable Court be pleased to order the above-named Garnishees and Judgment Debtor to attend court to show cause why the said Garnishees should not pay to the Decree



Holder the decretal sum herein or so much thereof as may be sufficient to satisfy the said sum of Kenya Shillings Three Million Two Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs. 3,247,926.67) being the decretal together with an additional interest at 12% per annum from the date of filing the suit i.e., 16th December 2020 until payment in full.

4. That upon the inter parties hearing of this Application, this Honourable court be pleased to issue a Garnishee Order Absolute in terms of prayer 2 herein above.
 5. That the costs of this application be provided for and be borne by the Judgment Debtor.
3. It is supported by the annexed affidavit of Fatuma Kalthuma Casucci and other grounds that this Honourable Court issued a judgment on the 23rd day of March 2023 in favour of the Decree Holder and against the Respondent/Judgment Debtor for a sum of Kenya Shillings Two Million Nine Hundred Thousand (Kshs. 2,900,000/=) with interest at court rates from the date of filing this suit until payment in full together with costs of the suit. That on 27th day of September 2023 the Deputy Registrar taxed the Bill of Costs between party and party and allowed against the Respondent/Judgment Debtor in the sum of Kenya Shillings Three Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs. 347,926.67). That the decretal sum is Kenya Shillings Three Million Two Hundred Forty Seven Thousand Nine Hundred Twenty Six and Sixty Seven cents (Kshs. 3,247,926.67) which amount has continued to accrue interest at the rate of 12% per annum from the date of filing the suit i.e., 16th December 2020 until payment in full. That hitherto the decree issued is yet to be satisfied. No plausible reason has been advanced as to why the Respondent/Judgment Debtor has not paid the decretal sum. It is therefore for this reason that the Decree Holder seeks the Honourable Court's assistance in executing the decree. That attempts to engage the Respondent/Judgment Debtor have remained futile as the Respondent/Judgment Debtor has kept ignoring all communication and correspondence from the Decree Holder. That the Applicant/Decree Holder is aware that the Respondent/Judgment Debtor has accounts with the Garnishees who are holding funds to their credit. That unless this application is considered on a priority basis, the Respondent/Judgment Debtor may move quickly and remove the said funds from the account leaving the Applicant/Decree Holder with no recourse. That this application is presented in the interest of justice. It is only mete and just that the decree holder be allowed to reap and enjoy the fruits of litigation by being allowed to execute the judgment. Garnishee proceedings is a form of such execution.
4. The 1st Garnishee as the Manager-Service Quality and Compliance states that the Defendant/Judgment-Debtor herein holds and operates Account No. 1129044521 with the 1st Garnishee herein, KCB Bank Kenya Ltd. That as at 30th September 2024, the Defendant/Judgment-Debtor's account had insufficient funds and was locked with the amount available for this case: Kshs. 78,436.35. That the account therefore holds an available sum of Kshs.78,436.35 in total hence the 1st Garnishee is unable to settle the entire decretal sum of Kshs.3,247,926.67/= as sought by the Plaintiff/Decree-Holder. That the Garnishee is ready to comply with the orders of the Honorable Court as regards to the sums currently available as shown above. That the Garnishee also prays for its costs of these garnishee proceedings of Kshs. 30,000 (Kenya Shillings Thirty Thousand only), which costs should be deducted from the Judgment-Debtor's Account No.1129044521, as its failure to pay the decretal sum is what necessitated the Decree-Holder to file the garnishee proceedings herein.
 5. The 2nd Garnishee's Branch Business Manager states that the Respondent does not operate Account Number 7500000010 with the 2nd Garnishee. The Decree Holder does not provide anything to show that the Respondent operates that account. The 2nd Garnishee further prays that the court exercises



its powers under Order 23 Rule 10 of the Civil Procedure Rules 2010 to order that a sum of Kshs. 25,000.00 be paid to the Garnishee by the Respondent, as costs of these proceedings.

6. This court has considered the application and the submissions therein. In the Black's Law Dictionary 5th Edition it defines garnishee proceedings as;

a statutory proceeding whereby a person's property, or credit in possession or under control of, or owing by, another are applied to payment of former debt to third person by proper statutory process against debtor and garnishee."

7. Garnishee proceedings serve to facilitate the satisfaction of judgment debts. Garnishees, in this regard, often have no objections to garnishee orders being made final, so long as there is a discernible debt due and owing to the judgment debtor; once such indebtedness is established, it is inconsequential to the garnishee who the debt is paid to. However, garnishee orders are premised on indebtedness – without such indebtedness to the judgment debtor, it would be plainly unjust to order a party to pay a sum to the judgment creditor.
8. The law governing garnishee proceedings is Order 23 Rule 1(1) of the Civil Procedure Rules which provides;

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.

9. Order 23 Rule 4 of the Civil Procedure Rules provides;

If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with costs of the garnishee proceedings; and the order absolute shall be in Form 17 or 18 of Appendix A, as the case may require.

10. In *Mengich t/a Mengich & Co. Advocates & Another vs Joseph Mabwai & 10 Others* (2018)eKLR the court laid out the procedure in garnishee proceedings as follows:-

Garnishee proceedings is done in two different stages. The first stage is for the garnishee order nisi, while the second stage is for the garnishee order absolute. At the first stage, the judgment creditor makes an application ex parte to the court that the judgment debt in the hands of the third party, the garnishee, be paid directly to the judgment creditor unless there is an explanation from the garnishee why the order nisi should not be made absolute. If the judgment creditor satisfies the court on the existence of the garnishee who is holding money due to the judgment debtor, such third party (garnishee) will be called upon to show cause why the judgment debtor's money in its hands should not be paid over to the judgment



creditor, and if the court is satisfied that the judgment creditor is entitled to attach the debt, the court will make a garnishee order nisi attaching the debt.

The essence of the order nisi is to direct the garnishee to appear in court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order nisi must be served on the garnishee and judgment debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the garnishee fails to attend court or show good cause why the order nisi attaching the debt should not be made absolute, the court may subject to certain limitations make the garnishee order absolute. The garnishee, where necessary also have an option of disputing liability to pay the debt.

The primary object of a garnishee order is to make the debt due by the judgment debtor available to the decree holder in execution without driving him to the suit.”

11. It is not in dispute that the applicant obtained judgement against the respondent which total sum of Kshs.3,247,926.67/= to which has not been settled to date. The 1st garnishee in his Replying Affidavit acknowledged that the judgment debtor had an account with them. But it stated that the account had insufficient funds. In my view, I find that the 1st garnishee have tendered sufficient documentary evidence to the effect that they do not have sufficient amount of money held in favour of the judgment debtor which could be attached to satisfy the debt. This was done by way of exhibiting the statements of account of the judgment debtor which disclosed the true status of the said account.
12. The 2nd garnishee stated in the grounds of opposition that the Respondent does not operate Account Number 7500000010 with the 2nd garnishee. The Decree Holder did not provide anything to show that the Respondent operates that account. The applicant furnished a letter dated August 2019 in the 1st garnishees letterhead quoting the said account number. I find that this is insufficient evidence to prove the existence of the said account.
13. As for the 1st garnishee, they has proved through documentary evidence that the accounts held by them in favour of the judgment debtor has sufficient funds of Kshs.3,247,926.67/= owed to the applicant by the judgment debtor. As for the 2nd garnishee, the nisi orders were issued against the wrong account no. 7500000010. The 2nd garnishee's Branch Business Manager s tates that the Respondent does not operate Account Number 7500000010 with the 2nd Garnishee. As such, the applicant has failed to establish any basis for confirming the nisi orders issued on 21st January 2020 against the 1st and 2nd garnishees. The claim against the 1st and 2nd garnishees in this application is dismissed with costs to the said garnishees.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.

N.A. MATHEKA

JUDGE

