



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1804 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 14th March, 2016)

SERAH MUTHONI MUTUACLAIMANT

VERSUS

AMURT INTERNATIONALRESPONDENT

RULING

1. The Application before Court is the one dated 9.10.2015. The Application is brought through a Notice of Motion dated 8.10.2015 and brought under Order 23, Rules 1, 2, 3, 4, and 10 of the Civil Procedure Rules, Section 12 (3) of the Industrial Court Act 2011 and Section 16 of the Industrial Court (Procedure) Rules 2010.
2. The Application seeks orders as follows:
 1. ***That this application be certified urgent, service thereof dispensed with and be heard ex-parte in the first instance.***
 2. ***That all debts, monies or credit owing, belonging, accruing and or due and payable to the Respondent being held by the Garnishee in the Respondent's Account with the Garnishee being Kenya Shillings Account Number 1107489059, Euro Account Number 1112767010, United States Dollars Account Number 1101673680 being held at its Moi Avenue Branch, Nairobi and South Sudan Pounds Account Number 5500131257 and United States Dollars Account Number 5500163450 being held at Kenya Commercial Bank Limited South Sudan be and is hereby attached in satisfaction of the Decree dated 21st April 2015 together with the costs of the suit and the garnishee proceedings herein.***
 3. ***That the Garnishee do inform this Honourable Court within seven (7) days of service of this Order the actual sums of money held in Kenya Shillings Account Number 1107489059, Euro Account Number 1112767010, United States Dollars Account Number 1101673680 being held at its Moi Avenue Branch, Nairobi and South Sudan Pounds Account Number 5500131257 and United States Dollars Account Number 5500163450 being held at Kenya Commercial Bank Limited South Sudan belonging to the Respondent/Judgment –debtor.***
 4. ***That the Garnishee do appear before the Judge on such date as this Honourable Court may direct to show cause why it should not pay to the Claimant/Decree-holder the amount in Kenya shillings Account Number 1107489059, Euro Account Number 1112767010, United States Dollars Account Number 1101673680 being held at its Moi Avenue Branch, Nairobi and South Sudan Pounds Account Number 5500131257 and United States Dollars Account Number 5500163450 in part or whole satisfaction of the***

Decree or so much thereof as may be sufficient to satisfy the decree together with the costs of the suit and or Garnishee proceedings herein.

5. That the costs of this Application be borne by the Respondent.

3. The Application is based on the following grounds:

- ***The Claimant holds a decree against the Respondent in the sum of Kshs.308,329/=.***
- ***The Respondent has to date failed, refused and/or neglected to satisfy the decree.***
- ***The Claimant's efforts to apply for execution against the Respondent through attachment and sale of its movable assets have not borne any fruits.***
- ***The Garnishee herein is holding a substantial sum of money belonging to the Respondent/Judgment Debtor herein in the bank account stated herein.***
- ***It is fair and just that the said amounts belonging to the Judgment Debtor be attached to answer or satisfy the decree herein.***
- ***The Judgment Debtor is not disputing its indebtedness to the Decree Holder.***

4. The Garnishee, Kenya Commercial Bank Limited filed, their replying affidavit to the Decree Holder's Application dated 24.8.2014.

5. The affidavit was sworn by one Emily J. Bett the Manager SQC based at the Garnishee's Moi Avenue Branch who deponed that she has instructions from the Garnishee's Board of Directors and is competent to swear the affidavit on behalf of the Garnishee.

6. She deponed that it is true that the Judgment Debtor operates the following accounts at Kenya Commercial Bank Moi Avenue Branch:

- a. ***Account Number 1107489059 – Kshs.12,742.26***
- b. ***Account Number 11016773680 – USD 92.17***
- c. ***Account Number 1112767010 – EUR – Account closed)***

7. The true statements of the said Accounts were exhibited in Court as Exhibit EJB – 1(a) & EJB – 1(b), Exhibit EJB 2.

8. The Garnishee has also deponed that they have no claim to any such funds belonging to Judgment Debtor in Account Number 1107489059 and 11016773680 at all.

9. As to funds in the South Sudan Account Number 5500131257 and 5500163450, the Garnishee states that Kenya Commercial Bank Limited in Kenya is separate and distinct entity from Kenya Commercial Bank South Sudan and as such service on one cannot be deemed to be service on the other.

10. They aver that they have no control over the foreign Accounts held in Kenya Commercial Bank South Sudan and so service on the said banks should be channeled and authenticated through the diplomatic channels.

11. They also seek costs of this Application as the Decree Holder did not seek information from the bank prior to commencing Garnishee proceedings.

12. The Garnishee further depones that the 2 Accounts held at Kenya Commercial Bank Moi Avenue do not have sufficient funds to satisfy the decretal amount at all and therefore they are not in a position to honour any Garnishee order in respect of the decretal amount as far as the same relates to the Judgment Debtors aforesaid account.

13. Having considered the submissions of both the Decree Holder and the Garnishee, it is not in dispute that there are some funds being held by the Garnishee on account of the Judgment Debtor in the Accounts at Moi Avenue but which are not sufficient to satisfy the decree. The question is

whether this Court can however consider Kenya Commercial Bank south Sudan as a foreign bank for which the Garnishee has no control over?.

14.I have looked at the official website of Kenya Commercial Bank south Sudan and in terms of ownership, it is indicated that Kenya Commercial Bank South Sudan is a subsidiary owned 100% by Kenya Commercial Bank Group based in Nairobi, Kenya who also own the Respondent herein. It emerges that the 2 entities are distinct but owned by the same Group. The Garnishee cannot therefore direct another entity to do certain acts in relation to the orders sought by the Applicants in their garnishee proceedings.

15.I will therefore make absolute orders issued by Hon. Justice Wa Makau in respect of the Account at Kenya Commercial Bank Moi Avenue and direct that the funds therein be released to the Decree Holder in partial satisfaction of the decree.

16.The orders against the Kenya Commercial Bank South Sudan are vacated forthwith and I urge the Decree Holder to pursue other ways of reaching Kenya Commercial Bank South Sudan if they wish to pursue that line of action.

17.Costs of this Application be borne by each party.

Dated and delivered in open court this 14th day of March, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent

Miss Mathenge for Garnishee