



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 375 of 2013

(Before Hon. Justice Hellen S. Wasilwa on 2nd March, 2016)

JAMES KIMANTHI MUMOCLAIMANT/DECREE HOLDER

VERSUS

SAFARI PLAZA LIMITEDRESPONDENT/JUDGMENT DEBTOR

FIRST COMMUNITY BANK.....GARNISHEE

RULING

1. The Applications before Court is one dated 12.8.2015 by the Claimant and Notice of Motion dated 22.9.2015 by the Respondent.
2. In the application dated 12.8.2015, the Applicants seek orders as follows:
 1. *That this application be certified as urgent and the same be heard ex-parte in the first instance.*
 2. *That this Honorable Court be pleased to order that all debts accruing due from the Garnishee to the Judgment Debtor be attached forthwith to answer the decree herein for Kshs.140,363/- which remains due and unpaid together with the costs of this application.*
 3. *That this Honourable Court be please to order the Garnishee to appear before it on a date convenient to the Court to answer to this application.*
3. The application is based on the following grounds:
 - i. *That on 7th November, 2014 this Honourable Court entered judgment in favour of the Plaintiff for the sum of Kshs.140,383/=.*
 - ii. *That to date the decree is unsatisfied despite the Judgment Debtor being given ample time.*
 - iii. *That the Applicant has given several notices and requests for payment to the judgment Debtor but the notices have been ignored.*
 - iv. *That it has now come to the attention of the Applicant that the Garnishee herein holds funds on account of the judgment Debtor which funds are potentially sufficient to satisfy the decree herein.*
 - v. *That the Applicant is apprehensive that the said funds being held by the Garnishee are likely to*

be transferred anytime now by the Judgment Debtor to defeat justice and to the detriment of the Applicant.

- vi. ***That it is therefore in the interest of justice that the order being sought by the Decree Holder/applicant be granted as prayed herein.***
4. The application is supported by the supporting affidavit of James Kimanthi Mumo herein the Decree Holder/Applicant deponed to on 12/8/2015. The Applicant Decree Holder has deponed that he obtained Judgment in this matter on 7/11/2014 in his favour for the sum of 140,383/=all inclusive. This decree remains unpaid todate but that the Judgment Debtor has acknowledged their indebtedness to the Decree Holder.
 5. The Applicant also had averred that the garnishee has funds due to the Judgment Debtor which are adequate to satisfy the decree herein hence the prayer sought.
 6. In the Interim this court gave orders on 21/8/2015 that the funds held by the Garnishee to the tune of Kshs.140,363 due to the Judgment Debtor be attached to answer to the decree herein.
 7. The Applicants - Judgment Debtor opposed the application in court. They rely on the Judgment Debtor replying affidavit sworn by one Mohamed Hiliye dated 26.10.2015. He deponed that he is the Judgment Debtor's Manager and therefore competent to swear this affidavit on its behalf. They acknowledge receiving the Chamber Summons application dated 12.8.2015.
 8. That when the instant matter was filed, they instructed the firm of Ahmednasri, Abdikadir & Company to act for them in particular Nasra Sheikh Ahmed (Advocate). That soon thereafter they lost contact with the said Advocate only to later hear that she had left the firm of Ahmednasir, Abdikadir and Company Advocates and proceeded abroad to pursue her matters in law degree without advising any or her colleagues on the current status of the file.
 9. That due to the breakdown in communication with the said Advocate, they only learnt recently that the Advocate had not filed any defence in the matter.
 10. That due to this omission, the matter proceeded exparte and judgment was entered herein on 7.11.2014 and a decree in the sum of Kshs.140,383/= made. Thereafter the Garnishee called them on or about 21st August 2015 to inform them that the Decree Holder had obtained exparte orders attaching the decretal amount in their account. It is then that they discovered that no defence had been entered in the case and this was inadvertent by virtue of mistakes of their Counsel and there should not be visited upon an innocent Litigant.
 11. They aver that they are willing to deposit the entire decretal sum into the Court so that they can be given an opportunity to ventilate their case. It is for this reasons that they want this application denied.
 12. As to the application dated 22.9.2015, the Applicant Judgment Debtor seek orders as follows:
 1. ***That this application herein be certified as urgent and heard ex-parte in the first instance.***
 2. ***That this Honourable Court be pleased to order a stay of execution of the Decree dated 2nd March 2015 for the sum of Kshs.140,363/=.***
 3. ***That this Honourable Court be pleased to order a stay of execution of the ex-parte orders issued herein on the 21st August 2015 pending the hearing and determination of this application.***
 4. ***That this Honourable Court be pleased to grant the Judgment Debtor leave to defend the instant suit.***
 5. ***That the costs of this Application be provided for.***
 13. The application is supported by the annexed affidavit of Mohamed Hiliye Esmail and on the

following grounds:

1. ***That the Advocate who had the personal conduct of this matter on behalf of the Respondent, one Nasra Sheikh Ahmed, left the firm of Ahmednasir, Abdikadir & Company Advocates and failed to inform neither the firm nor the Client on the progress of the instant matter.***
2. ***That consequently on the 7th November 2014, this Honourable court entered default judgment as against the Respondent for the cumulative sum of Kshs.140,363/=.***
3. ***That consequently the Decree Holder obtained a Decree on the 2nd March 2015 for the sum of Kshs.140,363/=.***
4. ***That further, the Decree Holder consequently filed a notice of Motion application dated 12th August 2015 seeking to attach the Respondent's account at First Community Bank Limited, the Garnishee herein in satisfaction of the Decree dated 2nd March 2015.***
5. ***That the Judgment Debtor only became aware of the instant matter when the Decree Holder filed a garnishee application on the 12th August 2015.***
6. ***That at all material times, the Judgment Debtor reasonably believed that it was adequately represented in the instant matter when in fact it's Advocate on record had left the firm of Ahmednasir, Abdikadir & company Advocates and had even relocated abroad.***
7. ***That it is without doubt that the Judgment Debtor has an arguable case and should be granted leave to defend the instant suit.***
8. ***That it is trite that the mistakes of an advocate should not be visited on an innocent client.***
9. ***That the Judgment Debtor is able and willing to immediately deposit into this Honourable Court, the entire decretal sum of Kshs.140,363/= as a precondition for stay of execution and leave to defend the instant suit.***
10. ***That it is in the interest of justice that the prayers sought herein are granted.***
14. The deponent has deponed in the same manner as to their affidavit in opposition to the Decree Holder's application dated 12.8.2015.
15. Having considered the averments of both parties, the issues for determination are whether the Applicants in either applications have established their case to warrant issuance of the orders sought.
16. To start with this case was filed in Court on 12/3/2013. The Respondents were served accordingly on 27/3/2013. On 26/6/2013, the Respondents entered appearance through the firm of Ahmednasir Abdikadir and Company Advocates. On 15/7/2013, the Respondents also filed their defence through the same firm.
17. The Claimants filed Reply to Memorandum of Response on 12.9.2013 though denying the pleadings.
18. A hearing date was set for 16/7/2015. Though the Respondents were served, they failed to appear and this is when the Court proceeded *ex parte* and delivered its judgment on 7/11/2014.
19. In all instances, the Respondents firm was notified but they failed to attend court. Judgment was delivered on notice on 7/11/2014 and the Respondents were duly served too with that notice but Counsel failed to appeal in all stages even in the drafting of the decree, the Respondents were

aware but they ignored or totally refused to participate.

20.The Respondents contention that they only learnt of the conclusion of this case when they were served with the current application is therefore false. There is proof there were always served and stamped copies of the documents are on the court file.

21.Even after being served with a draft decree on 13.1.2015 for their approval, they didn't choose to move Court for any orders until they were served with the application for garnishee proceedings. It is then that they filed their application on 22.9.2015.

22.It is this Court's finding that the Respondent's Counsel totally neglected their duty to their client on this case and further ignored all summons and notices served upon them in this respect. I therefore find that the application by the Respondent dated 22.9.2015 is not warranted. It is basically meant to delay the Claimant realizing the fruits of his judgment. I reject the application. I allow the application by the Claimant and make the garnishee order absolute. I direct that money held in the garnishee account in respect of the Judgment Debtor be released forthwith to the Degree Holder.

Read in open Court this 2nd day of March, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Tebino for Judgment Debtor

Orego holding brief for Kimuli for Claimant – Present for Claimant Respondent – Present