



**Light Steel Building Kenya Limited & another v Civicon Company Limited & another; Equity Bank (Kenya) Limited (Objector) (Civil Case 56 of 2015) [2025] KEHC 4054 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4054 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL CASE 56 OF 2015  
EN MAINA, J  
MARCH 27, 2025**

**BETWEEN**

**LIGHT STEEL BUILDING KENYA LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**FITIDIS GROUP OF COMPANIES ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CIVICON COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KAHORO MUNDIA T/A UPSATE KENYA AUCTIONEERS .... 2<sup>ND</sup> DEFENDANT**

**AND**

**EQUITY BANK (KENYA) LIMITED ..... OBJECTOR**

**RULING**

1. By the Notice of Motion dated 19<sup>th</sup> November 2024 the Objector/Applicant seeks to amend its Notice of Motion dated 31<sup>st</sup> October, 2024 so as to substitute it with the Notice of Motion dated 19<sup>th</sup> November 2021.
2. The gravamen of the application which is supported by the Affidavit of Kariuki Kingori, the Legal Officer of the Objector, is that it has become necessary to appoint an independent auditor to confirm the exact amounts in the various accounts from which it was directed that the decretals sums were to be recovered. Those accounts are held by the Objector/Applicant on behalf of the 3<sup>rd</sup> Respondent. It is also contended this court decreed a sum in excess of that decreed by the Deputy Registrar; that despite compliance with the Deputy Registrar’s order issued on 1<sup>st</sup> September 2021 which required the applicant to release to the decree holder all monies held in deposit for the benefit of the 3<sup>rd</sup> Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have instructed the 4<sup>th</sup> Respondent to attach movable property



- owned by the Applicant in alleged realization of Kshs.84,593,536.95. The Applicant contends that the attachment illegally presupposes that the property of the Applicant can be attached to satisfy the debt obligations of the 3<sup>rd</sup> Respondent. It is contended that the order directed the release of monies in the specific accounts which monies amounted to Kshs 2,364,199.17 only.
3. The application was opposed by the Replying Affidavit of Christakis Fitidis dated 19<sup>th</sup> November, 2024 in which he deposed that the garnishee order absolute was made against the Applicant for reason that they did not present correct account statements reflecting the actual position of the accounts belonging to the 3<sup>rd</sup> Respondent and did not provide evidence of why there was a lien on the said amounts. It was contended that the Applicant seeks to force the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to accept cheques forwarded in full settlement of their obligation as garnishees despite not attaching the correct account statements and they have been frustrating execution since 2021. It is deposed that the Applicant is a garnishee and the Garnishee Absolute was issued by the court.
  4. The Application was disposed of by way of written submissions.
  5. Learned Counsel for the Applicant submits that it was unlawful for the decree holder to attach the Garnishees personal property in execution of the decree against the 3<sup>rd</sup> Respondent as it had already complied with Order 23 Rule 4 of the Civil Procedure Rules and the order dated 1<sup>st</sup> September 2021 and remitted the monies in the 3<sup>rd</sup> Respondent's accounts amounting to Kshs 2,364,199.17. Counsel submitted that the garnishee stood discharged from its obligations. Reliance was placed on the case of Petro Sonko & another v H A D B Patel & another [1953] EACA99 and Kenya Electricity Transmission Company Limited v Spedag Interfreight Kenya Limited & 4 others [2024] KECA 542 (KLR).
  6. On this court's power to appoint an independent auditor to examine, access, verify and report on the true position of the accounts held by the Objector for the benefit of the 3<sup>rd</sup> Respondent Counsel relied on the case of Hemant Devji Jethwa v African Boot Company Limited [2020] eKLR and submitted that where there was mistrust, an independent auditor could be appointed and since neither of the parties had raised an objection, the court was urged to appoint one. Counsel also relied on the case of Kwa- Matingi Farmers Co-operative Society Limited v Tropical Farm Management (K) Limited KEHC 5260 (KLR).
  7. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent vehemently opposed the application. On the issue of stay of the warrants dated 14/10/2024 Counsel submitted that the issue was determined in a ruling delivered by Odunga J, as he then was, on 27<sup>th</sup> June 2023. Counsel submitted that the Applicants filed an appeal at the Court of Appeal being Civil Appeal E419 of 2023 and sought an order for stay of execution under Rule 5 (2) (b) of the Court of Appeal Rules which was dismissed. Counsel contended that this application is a veiled attempt at appealing the many orders and rulings of this court on the same subject matter.
  8. Counsel also contended that this court cannot discharge the Objector/Applicant from the said execution and the warrants should not be lifted; that this court is functus officio in light of the ruling of Odunga J, as he then was, dated 27<sup>th</sup> June 2023.
  9. In regard to the appointment of auditors, Counsel stated that this was an attempt at relooking into the accounts as they were filed by the Garnishee and is nothing but an afterthought which issue has in any event already been settled by this court. That moreover the Applicants having appealed the decision of this court is asking the Court of Appeal to relook the entire matter.



## **Analysis and determination.**

10. I have carefully considered the application, the responses thereto, the rival submissions, the cases cited and the court record and find that the following issues arise for determination;
- a. Whether the warrants of attachment issued on 14<sup>th</sup> October 2024 ought to be stayed.
  - b. Whether the Applicant ought to be discharged.
  - c. Whether the 4<sup>th</sup> Respondent should be precluded from proclaiming and/or attaching or selling the objector/ Applicant's equipment in answer to an order of this court.
  - d. Whether an independent auditor should be appointed to ascertain the amount of funds in the accounts held for the benefit of the 3<sup>rd</sup> Respondent.

### **A. Whether the warrants of attachment dated 14/10/2024 ought to be stayed.**

11. Upon perusing the court record, I noted that this is not the first attempt by the Applicant to stay execution of the warrants of attachment dated 14/10/2024. A similar application was made in a Notice of Motion dated 13/9/2021. That application was dismissed by Odunga J (as he then was) in a ruling dated 27<sup>th</sup> June 2022 where he stated -

“23. In this case the court found that whereas the order nisi was issued on 22<sup>nd</sup> December 2020, the garnishee only attached bank statement illustrating transactions from 24<sup>th</sup> February,2020 up to 27<sup>th</sup> August ,2020 and that the various attached bank statements seemed not to have been up to date. The Court therefore found that the garnishee had not approached the court with clean hands.

24. Unless the said order is reviewed or set aside, the garnishee has no option but to pay the sum in question. The application before me is not seeking any such orders. The Phrase “or such monies as are sufficient to answer the to the decree issued” only applies where the amount held by the garnishee to the credit of the judgment debtor is more than the amount claimed by the decree holder from the judgment debtor. It does not permit the garnishee, after a decree absolute has been issued to claim that it only has part of the sum decreed. That is an issue that ought to be dealt with at the hearing of the proceedings seeking to make decree nisi absolute.”

12. Subsequently to that, the Applicant filed a Notice of Motion seeking to review the said order and also filed another application dated 18/10/2022 seeking stay of execution of the proclamation pending hearing and determination of the application dated 5/7/2022 and citing the Decree holder for contempt. By a ruling delivered on 25/5/2023, Muigai J Granted an Order for Stay But dismissed the application for contempt.

13. Subsequently in a ruling delivered on 19<sup>th</sup> January 2024 Muigai J the Notice of Motion Application for review was dismissed. The court rendered itself thus;

“(i)The Application for review of an error on the face of the record is not upheld, it amounts to this court relooking bank statements and hopefully making a different finding. This will be the 3<sup>rd</sup> Court relooking at the bank statements which amounts to the Court sitting on appeal which jurisdiction it lacks.



(ii)The Applicant shall file an appeal and stay of execution is granted for 90 days on condition the Applicant deposits 1,000,000 in a joint account of both advocates on record for the parties pending appeal in the Court of appeal.”

14. It is not disputed that there is a pending appeal. In my view that is the proper forum to raise the issues raised in this application given that the same have been canvassed and determined by this court several times and to determine them would be tantamount to sitting on appeal against the decisions of courts of the same jurisdiction as mine.

**(B) Whether the Applicant should be discharged form execution of the decree**

15. Similarly, this issue was determined by this court differently constituted and is the subject of the appeal and it would be folly for this court to wade into it. I am in agreement with Counsel for the Respondents that this court is functus officio.

**(C)Whether the 4<sup>th</sup> Respondent should be precluded from proclaiming and/or attaching and selling the Objector’s equipment.**

16. The issue of stay of the proclamation, attachment and sale of the Applicant’s property in execution of the decree against the 3<sup>rd</sup> Respondent would issue were that the position. However, I note that the warrants are issued against the judgment debtor but not the garnishee.

**(D) Whether an independent auditor should be appointed to ascertain the amount of funds in the accounts held for the benefit of the 3<sup>rd</sup> Respondent.**

17. The Applicant has admitted to settling part of the decretal sum amounting to Kshs 2,364,199.17 to which the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have admitted. The Applicant is the custodian of the bank records pertaining to the impugned accounts and nothing stops or has stopped it from printing and supplying the same for perusal by this court so that it can make a determination. Appointment of an auditor would in my view be an unnecessary protraction of these proceedings.

18. In the premises, the Application is found to be without merit and it is dismissed with costs to the Respondents.

Orders accordingly.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Adongo for Respondent (online)

Mr. Obura for Objector/Applicant (online)

Wambua – Court Assistant

