



**Zakhem International Construction Limited v Kenya Pipeline Company Limited;  
Standard Chartered Bank (Garnishee) (Miscellaneous Application E395 of 2025)  
[2025] KEHC 7520 (KLR) (Commercial and Tax) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7520 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E395 OF 2025**

**JWW MONG'ARE, J**

**MAY 29, 2025**

**BETWEEN**

**ZAKHEM INTERNATIONAL CONSTRUCTION LIMITED ..... APPLICANT**

**AND**

**KENYA PIPELINE COMPANY LIMITED ..... RESPONDENT**

**AND**

**STANDARD CHARTERED BANK ..... GARNISHEE**

**RULING**

**Introduction and Background**

1. It is common ground that the Applicant (“Zakhem”) filed a suit, HCCOMM E322 of 2019; Zakhem International Construction Limited vs Kenya Pipeline Company Limited against the Respondent (“KPC”) for recovery of USD126,255,812.62 being unpaid sums under contract No. SU/QT/032/13; construction, testing and commissioning of Line 1 Replacement Project, together with interest. On 16<sup>th</sup> June 2020, the court (Nzioka J.,) entered a partial summary judgment in favour of Zakhem for the sum of USD44,019,024.64 after Zakhem made an application for the striking off of KPC’s defence and judgment as per its plaint of 26<sup>th</sup> September 2019.
2. Following the issuance of the partial decree, the Kenya Revenue Authority (“KRA”) issued various Agency Notices dated 25<sup>th</sup> August 2020 and 3<sup>rd</sup> September 2020 on KPC and its bankers, Standard Chartered Bank, the Garnishee herein (“the Bank”) for payment of taxes in the sums of Kshs.6,219,348,389.00/= and Kshs.6,199,943,07.00/= respectively owing from Zakhem, which



Agency Notices precipitated KPC filing an application in HCCOMM No. E322 of 2019 for the court to determine the competing demands between Zakhem and KRA.

3. On 6<sup>th</sup> January 2021, the court (Ngenye-Macharia J., as she was then), ordered KPC to within 10 days release to KRA the principal balance in the sum of Ksh.915,316,830.00/= and that the balance from Kshs.4,041,288,368.00/= of about Kshs.485,000,000.00/= (after deducting both Kshs.3,099,971,539.00/= and Kshs.915,316,830.00/= being principal tax) be released to Zakhem. That if the waiver of interests and penalties was not granted to Zakhem, then KRA was at liberty to demand the same and that the disbursements of any monies was to be in US Dollars unless the parties otherwise agree. The court also directed that the parties were at liberty to confirm currency exchange rates from Central Bank if a dispute on the same arises (see *Zhakeem International Construction Limited v Kenya Pipeline Company; Attorney General (Intended Interested Party)* [2021] KEHC 9733 (KLR)).
4. Through the present application dated 14<sup>th</sup> April 2025, Zakhem claims that after payment of Kshs.3,099,971,539.00/= and Kshs.915,316,830.00/= to KRA, the balance from the decretal sum of USD 44,019,024.64 that remains unpaid to it is USD 7,157,824.77. As such, Zakhem seeks a Garnishee Order against the Bank for this sum and that if it disputes holding any sums on behalf of KPC, then they appear before the court to show cause why they should not pay the said sum to Zakhem. The application is supported by grounds on its face and the affidavits of IBRAHIM ZAKHEM sworn on 14<sup>th</sup> April 2025, 12<sup>th</sup> May 2025 and 15<sup>th</sup> May 2025. It is opposed by KPC through the replying affidavit of its Ag. Chief Legal Officer, NELSON NYADUWA sworn on 6<sup>th</sup> May 2025 and by the Bank through the Notice of Objection to Attachment dated 6<sup>th</sup> May 2025 and the replying affidavit of its Senior Relationship Manager, PSDO, DIANA ROSE OKUMU sworn on 8<sup>th</sup> May 2025.
5. As the court, on 18<sup>th</sup> April 2025 issued a temporary Garnishee Order Nisi against the Bank pending the hearing and determination of this application, KPC, through the application dated 25<sup>th</sup> April 2025 seeks to discharge the said orders. This application was opposed by Zakhem through the Grounds of Opposition dated 14<sup>th</sup> May 2025. However, during the hearing of oral submissions the Application by KPC dated 25<sup>th</sup> April 2025 was withdrawn and therefore the court will not make any reference to it in this ruling.
6. The court directed that the application be canvassed by way of written and oral submissions by the parties' respective counsel, which submissions together with the pleadings I have considered and I will be making relevant references to in my analysis and determination below.

### **Analysis and Determination**

7. From the pleadings and submissions, the parties urge the court to determine whether the Garnishee Order nisi issued on 18<sup>th</sup> April 2025 should be made absolute or whether the same should be set aside.
8. As submitted by the parties, Order 23 of the Civil Procedure Rules deals with attachment of debts commonly referred to as garnishee proceedings. The Nigerian Supreme Court in *C.B.N. v Auto Import Export* [2013] 2 NWLR (Pt. 1337) 80 p. 126 paras. E cited with approval in *Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)* [2021] KEHC 13342 (KLR) gave a concise definition of garnishee proceedings as follows:-

Garnishee proceedings are special specie of process by which a judgment creditor may attach (or garnishee) debts due in satisfaction of the judgment debt. The debt owed by the third party to the judgment debtor, on being attached, shall ultimately be paid by him



to the judgment creditor on the order of court. Thus, Garnishee proceedings involve the attachment of debt due from a third party to the judgment debtor, and the use of the amount of that debt in liquidating the judgment debt. In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand, is referred to as the Garnishor.”

9. From the above, the object of Garnishee Proceedings is to enable a Decree Holder to reach a debt due to the Judgment Debtor from the Garnishee as may be sufficient to satisfy a Decree. Crucial thereof is that the Garnishee is indebted to the Judgment Debtor. Garnishee proceedings are in their very nature proceedings whereby the garnishee is required to prove whether or not the garnishee is indebted to the judgment-debtor. Ordinarily, the judgment-creditor only makes allegations of the garnishee’s indebtedness based on sound evidence whereby the burden of proof shifts to the garnishee to prove otherwise. In this regard, to discharge that burden, the garnishee has to produce strong, sufficient and convincing evidence that the funds in its hands or the debt is not due or payable( Also see *Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co. Ltd; Co-operative Bank of Kenya (Garnishee/ Applicant) [2020] KEHC 7808 (KLR)*]
10. Both the Bank and KPC have objected to the garnishee proceedings. It is the position by KPC that there is no judgment, ruling, decree or any other evidence pointing to the fact that KPC owes Zakhem the sum of USD7,157,824.77 and that Zakhem’s efforts to have the court declare that this sum was owed to it was thwarted by the court (Ngenye-Macharia J., as she was then) in HCCOMM No. E322 of 2019 in the ruling of 23<sup>rd</sup> September 2021.
11. On its part, the Bank has contended that KPC’s subject account sought to be garnished is a collection account and the funds therein were charged to secure credit facilities advanced to KPC under a Syndicated Facility Agreement. As such, the funds in the said account are not a debt owed to KPC by the Bank but are a security that it is holding for the lenders in the Facility Agreement and that the said funds are not available to settle the amount claimed by Zakhem. The Bank asserts that it is not holding any funds that can be used to settle the decretal sum and it prays that the garnishee order nisi attaching the account be lifted and that the Bank be discharged from these proceedings.
12. It is not disputed and it is indeed a matter of record that this is not the first time that the issue of whether KPC still owes Zakhem the sum of USD 7,157,824.77 has been raised. I note that in *Zakhem International Construction Limited v Kenya Pipeline Company Limited; Attorney General (Interested party) [2021] KEHC 12862 (KLR)*, this issue was first raised and the court, in its ruling of 8<sup>th</sup> April 2021 found that the money payable to Zakhem from the partial decree was conclusively adjudicated upon and a determination in respect thereof made in the earlier ruling of 6<sup>th</sup> January 2021, “[t]hat the balance from Kshs.4,041,288,368/- of about Kshs.485,000,000/ (after deducting both Kshs.3,099,971,539/- and Kshs.915,316,830/ being principal tax) shall be released to the Plaintiff.”. The court noted that the Warrants of Attachment of in execution of a decree for a sum of USD 7,157,824.77 and Kshs.4,300.000/= dated 27<sup>th</sup> January, 2021 was in no doubt in excess of the amount pronounced by the court and even if it equated to this sum, it was not demonstrated that it relied on an agreed exchange rate or an exchange rate given by the Central Bank. That unequivocally, Zakhem should only execute for the sum it is entitled to out of the partial decree.
13. Zakhem attempted to review the aforementioned order in *Zakhem International Construction Limited v Kenya Pipeline Company Ltd; Kenya Revenue Authority (Interested Party) [2021] KEHC 65 (KLR)* by insisting that there remains an unpaid a balance of USD. 7,157,824.77 . It stated that the CBK’s mean rate as at 22<sup>nd</sup> October 2020 when the sum of Kshs.3,099,971,539/= was paid was Kshs.108.7482/= to the dollar which translates to USD.28,505,957.24. Further, it was



averred that the CBK's mean rate as at 8<sup>th</sup> January 2021 when the sum of Kshs.915,316,830/= was paid, was Kshs.109.550/= to the dollar which translates to USD.8,355,242.63 and that when the total of the above sums being, USD.36,861,199.86, is deducted from the partial decretal sum of USD44,019,024.64, the unpaid balance remained USD.7,157,824.77. In the ruling of 23<sup>rd</sup> September 2021, the court(Ngenye-Macharia J., as he was then) declined to review its earlier orders and stated that it cannot now go back into tabulating the balance payable to Zakhem by KPC especially in view of the order of the ruling which clearly guided the parties on how to proceed with the payments.

14. I note that in its present application, Zakhem is making the same arguments and tabulations that it made before the court in HCCOMM No. E322 of 2019. Zakhem cannot expect this court to make a dissimilar finding to that in HCCOMM No. E322 of 2019 as this would be akin to sitting as an appellate court on the findings of a court of concurrent jurisdiction which the law frowns upon. As the court in HCCOMM No. E322 of 2019 was emphatic that the sums to be paid by KPC to Zakhem has already been adjudicated upon and that this sum is not USD.7,157,824.77 as tabulated and calculated by Zakhem, this determination is final and this court cannot revisit the issue (see *Wakhungu & 2 others v Republic* [2024] KECA 1426 (KLR)). I therefore decline the entreaty to make a determination as to whether the sum of USD7,157,824.77 remains due and payable to Zakhem as a court of concurrent jurisdiction has already made a finding on this issue.
15. Based on the aforementioned findings, it is clear that Zakhem is incapable of garnisheeing against the Bank for the sum of USD7,157,824.77. Other than the above, I note that it has not been substantially disputed that KPC's account with the Bank is encumbered and it is probable that the sums therein could not be available to satisfy Zakhem's debt if I had found that the debt was due and payable by KPC. It is for these reasons that I agree with the Garnishee and KPC that there is no debt in the sum of USD 7,157,824.77 owed by KPC to Zakhem and that funds held in the subject account are incapable of being attached to answer the aforementioned alleged debt.

### **Conclusion and Disposition**

16. In the upshot, the Applicant's application dated 14<sup>th</sup> April 2025 fails and it is dismissed with costs. The net effect of the said finding is that the Garnishee Order Nisi issued by the court on 18<sup>th</sup> April 2025 is hereby discharged. The Respondent and the Garnishee shall have costs of this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29<sup>TH</sup> DAY OF MAY 2025**

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**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

Ms. Asli for the Applicant.

Mr. Kihara and Mr. Kimathi for the Respondent.

Mr. Lawson Ondieki for the Garnishee.

Amos- Court Assistant

