



**BM Logistics Limited v Kenya National Bureau of Statistics & another (Civil Suit 79 of 2010) [2024] KEHC 2479 (KLR) (Commercial and Tax) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 2479 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 79 OF 2010  
MN MWANGI, J  
JANUARY 26, 2024**

**BETWEEN**

**BM LOGISTICS LIMITED ..... DECREE HOLDER**

**AND**

**KENYA NATIONAL BUREAU OF STATISTICS ..... JUDGMENT DEBTOR**

**AND**

**KCB BANK KENYA LIMITED ..... GARNISHEE**

**RULING**

1. For determination is the decree holder's Notice of Motion application dated 16<sup>th</sup> October, 2023 filed under Order 23 Rules 1, 2, 8 and 9, as well as Order 50 Rule 1 of the [Civil Procedure Rules](#), 2010.
2. The decree holder seeks a garnishee order absolute against the garnishee regarding account Nos. 1107086183 and 1116027593 held by the decree holder at the garnishee's Moi Avenue Branch, ordering all the monies held to the credit of the judgment debtor to be attached to settle or satisfy the decree and costs of Kshs.32,528,145.70, being the amount in respect of which judgment was entered in favour of the decree holder together with interest and costs.
3. The basis of the application is that there is an unsatisfied decree of this Court issued on 21<sup>st</sup> April, 2022 for the total sum of Kshs.20,746,800.00 plus interest from the date of judgment and costs of the suit. The applicant states that the decree and costs as certified by the Court amount to Ksh.32,528,145.70.
4. The decree holder's case is that the garnishee herein is holding funds to the credit of the judgment debtor in the aforementioned accounts.



5. The decree holder asserts that the instant application is merited in order to get the fruits of the judgment issued in its favour.
6. In response to the instant application, the garnishee filed a replying affidavit sworn on 28<sup>th</sup> October, 2023 by Gordon Winani, its Corporate Services Manager.
7. He confirmed that account Nos. 1107086183 and 1116027593 are held with the garnishee bank and that the bank is ready and willing to abide by any orders and directions of this Court. The bank prays for an order that the costs of the garnishee proceedings amounting to Ksh.50,000/- to be recovered from the judgment debtor's main account.
8. The judgment debtor opposed the subject application vide a replying affidavit sworn on 6<sup>th</sup> November, 2023, by Macdonald Obudho, its Director General.
9. He averred that the mode of execution elected by the decree holder is illegitimate as it seeks to garnish public funds contrary to the Constitution of Kenya and legislation. He also averred that the judgment debtor is a government entity and that under the Government Proceedings Act, Cap 40 Laws of Kenya, garnishee proceedings are not available to the decree holder as a mode of execution against the judgment debtor.
10. It was further averred that judgment in this matter was entered on 29<sup>th</sup> April, 2020 and two appeals had been lodged against the said judgment, and as such, if execution would proceed at this stage, the said appeals would be rendered nugatory.
11. Based on the foregoing, the judgment debtor prays to have the instant application dismissed.

#### **Analysis and Determination.**

12. The parties' Counsel filed their written submissions which this Court has duly considered.
13. This is an application for a garnishee order absolute regarding bank accounts held on behalf of the judgment debtor. Judgment was entered in favour of the decree holder on 28<sup>th</sup> April, 2020 and a decree dated 21<sup>st</sup> April, 2022 was extracted from it. The decree holder filed its party and party bill of costs which was taxed and certified at Ksh.1,700,000/-.
14. The decree holder applied for execution, and warrants of attachment were issued certifying the decretal amount, interest on the decretal amount and costs at Ksh.32,528,145.70.
15. The judgment debtor contended that garnishee proceedings cannot proceed against it as it is a government agency and is protected from execution under the Government Proceedings Act.
16. I note that the issue of whether the judgment debtor is protected from execution under Section 21(4) of the Government Proceedings Act was considered and determined in the ruling delivered by the Court on 26<sup>th</sup> May, 2023. The Court found that the judgment debtor is a body corporate with perpetual succession and a common seal established under the Statistics Act, 2006 and is not subject to the Government Proceedings Act. The Court held that the judgement debtor is not protected from execution by dint of Section 21(4) of the said Act.
17. The judgment debtor further opposed the instant application on grounds that two appeals have been lodged against the judgment that was entered on 29<sup>th</sup> April, 2020 and if execution proceeds at this stage, the said appeals would be rendered nugatory.
18. It is undisputed that both parties herein filed appeals in the Court of Appeal against the judgment delivered on 29<sup>th</sup> April, 2020. The decree holder only challenged the interest awarded by the Court.



There is however no subsisting stay of execution order that has been granted pending the hearing and determination of the appeals as the judgment debtor's application seeking to obtain stay of execution orders pending the hearing and determination of the appeal was dismissed by the Court on 29<sup>th</sup> March, 2022. It is trite that the existence of an appeal does not automatically operate as a stay of execution.

19. This Court notes that the issue of whether the appeal would be rendered nugatory if execution against the judgment debtor proceeds, was adequately addressed in the ruling that dismissed the stay of execution application.
20. Having made the observations above, there is no reason why this Court should not grant the garnishee order absolute as sought in the instant application as provided for under Order 23 Rule 1 of the Civil Procedure Rules, 2010 which states:

“(1) A court may, upon the *ex parte* application of a decree-holder, and either before or after an oral examination of the judgement-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 judgement-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 judgement-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 to him to the judgement debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.”

21. Judgment in this matter was entered almost four (4) years ago and the decree holder is entitled to reap the fruits of its judgment.
22. The decree holder is hereby granted a garnishee order absolute against the monies held to the credit of the judgment debtor in account numbers 1107086183 and 1116027593 at Kenya Commercial Bank Limited (the Garnishee), at Moi Avenue Branch.
23. As costs follow the event, the costs of the garnishee proceedings are awarded to the decree holder and the garnishee. The said costs are to be recovered from the garnished accounts.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF JANUARY, 2024.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Gitonga for the plaintiff/decree holder/applicant

Mr. Nthigah for the defendant/judgement debtor/respondent

Ms Mathenge for the Garnishee

Ms B. Wokabi – Court Assistant.

