



**Abdi (Suing as the legal representative of the Estate of Aden Rashid Abdi) v Kenya Wildlife Services & another; Kenya Commercial Bank Limited (Garnishee) (Civil Miscellaneous E012 of 2021) [2024] KEHC 4509 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4509 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CIVIL MISCELLANEOUS E012 OF 2021  
JN ONYIEGO, J  
MARCH 20, 2024**

**BETWEEN**

**FARAH RASHID ABDI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ADEN RASHID ABDI) ..... APPLICANT**

**AND**

**KENYA COMMERCIAL BANK LIMITED ..... GARNISHEE**

**AND**

**KENYA WILDLIFE SERVICES ..... RESPONDENT**

**AND**

**KENYA COMMERCIAL BANK LIMITED ..... GARNISHEE**

**RULING**

1. Before me is a notice of motion dated 20.02.2024 filed by the applicant through the Firm of Chege Kibathi & Co. Advocates seeking orders as follows:
  - i. Spent.
  - ii. Spent.
  - iii. That this Honourable Court be pleased to issue an Order for the attachment of the Defendant/Judgment Debtor's bank account held with the Garnishee being Account No. 1107169712 at Kenya Commercial Bank Nairobi Branch Kencom Branch Moi Avenue to answer and /or satisfy the decree issued on 07.02.2024.
  - iv. That the Honourable Court be pleased to issue an order to the Garnishee to pay the amount of Kenya shillings Six Hundred and Thirty-Six Thousand, Five hundred and Fifty and Fifty



Cents (636,550.50/-) plus interest at 12% p.a. accruing from the date of judgment to the date of payment in full to the applicant/decree holder herein to satisfy the decree.

- v. That the Honourable Court be pleased to order that the monies held by the Garnishee Kenya Commercial Bank, Nairobi Branch Kencom Branch Moi Avenue be and is hereby attached and released to answer the decree herein plus costs of the garnishee proceedings.
  - vi. The costs of this application.
2. The application is supported by the affidavit of Farah Rashid Abdi sworn on 28.02.2024 in which he averred that owing to willful neglect and/or refusal of the judgment-debtor to satisfy the decree herein, it is only fair and just to allow the application.
  3. The applicant's case is anchored on the judgment entered against the respondent on 29.07.2022 for a decretal sum of Kenya Shillings Six Hundred and Thirty-Six thousand, five hundred and Fifty and Fifty Cents (636,550.50/-) which amount the respondent has failed, neglected and/or refused to settle. That despite persistent demands for the respondent to honour the claim, they have been adamant thus necessitating the instant application to satisfy the decree.
  4. The respondent did not file any response to the application. On their part, the Garnishee, vide a replying affidavit sworn on 06.03.2024 by Joseph Mwangi Wambugu, the Garnishee Corporate Service Manager, deposed that the judgment debtor maintains Bank Account No. 1107169712 with Kenya Commercial Bank Limited herein, the Garnishee. That at the time of receipt of the order by the Garnishee, the judgment debtor's account had a ledger balance of Kes. Seven hundred and Ninety-Six Million, Nine hundred and Seventy Thousand, Four hundred and Twenty – Two and Sixty-Seven Cents Only (796,979,422.67/-). Additionally, that the Garnishee does not object to the attachment of the judgment debtor's Bank Account No. 1107169712 to clear any outstanding decretal amount.
  5. It was deposed that the Honourable Court did not issue a garnishee order nisi over the subject account and therefore, the funds in the account are not frozen and the account holder can operate the account at any time. That the judgment debtor's Bank Account No. 1107169712 is also subject to the deduction of the legal costs of Kes. 40,000 incurred by the Garnishee as well as the bank charges for the transaction and the net amount should be available for attachment in partial satisfaction of the decree.
  6. The application was argued orally wherein the applicant in support of the application urged that the application be allowed as it was not opposed by the respondents and the Garnishee. That there is no dispute that there is a decree in their favour which has not been settled or set aside or execution thereof stayed. Further, that he has established to the court that there is a sum of money held by the Garnishee which is recoverable and that the applicant has sufficient reason to believe that the accounts sought to be garnished indeed hold funds which may be sufficient to satisfy the decree. M/s Mwangi for the Garnishee on the other hand submitted that the said account to be attached had money that could partially satisfy the decree and that they were not opposed to the same being attached.
  7. I have considered the application, the replying affidavits and oral submissions by the applicant and garnishee. As earlier noted, the instant application seeks garnishee orders to satisfy the outstanding decree. Order 23 Rule 1 of the *Civil Procedure Rules* provides that:-

“A court may, upon the ex parte application of the decree-holder, and either before or after an oral examination of the judgment- 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 judgment-debtor and is within the jurisdiction, order that all debts ( other than salary or allowances coming within



the provisions of Order 22 rule 42 owing from such third person (hereinafter called the “garnishee”) to the judgment- debtor shall be attached to answer the decree together with costs of the garnishee proceedings; and by the same or subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay the decree-holder the debt due from him to the judgement-debtor or so much thereof as may be sufficient to satisfy the decree together with costs aforesaid.”

8. From the above provision, it is clear that a decree holder has a right to move the court vide an *ex parte* application seeking orders that a debt owing from a third person (“garnishee”) to the judgment-debtor be attached to answer the decree together with costs of the garnishee proceedings. However, the applicant in such an application has a duty to prove/ demonstrate by affidavit that; -

- i. There is a decree which has been issued and is still unsatisfied to a certain amount.
- ii. The Garnishee owes or is holding funds in favour of the Judgment Debtor capable of being attached to answer the decree.

9. Once the applicant has satisfied the above, the burden of proof then shifts to the garnishee to prove whether or not he/she is indebted to the judgment-debtor. Therefore, the onus placed on a Garnishee would only be discharged where it successfully establishes that the account or accounts covered by the Garnishee Order nisi do not exist in its system or if it exists, it is in debt and not in credit or that it has a right of set off or lien which are due against the customer. [See [Diamond Trust Bank Kenya Ltd \(Garnishee\)](#) MKS HC Misc. Civil App. No. 405 of 2017 [2020] eKLR].

10. Lord Denning M.R in *Choice Investments Ltd vs Jeromnimon (Midland Bank Ltd, Garnishee)* [1981] 1 All ER 225 at page 227 held thus;

“There are two steps in the process. The first is a garnishee order nisi. Nisi is Norman-French. It means ‘unless’. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so.

Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors: see *Pritchard v Westminster Bank Ltd* [1969] 1 All ER 999, [1969] 1 WLR 547 and *Rainbow v Moorgate Properties Ltd* [1975] 2 All ER 821, [1975] 1 WLR 788. If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate...”

11. Ordinarily, in garnishee proceedings, the judgment-creditor has a duty to prove the garnishee’s indebtedness based on sound evidence. The Court of Appeal in [James G. K. Njoroge t/a Baraka Tools & Hardware vs APA Insurance Company Limited & 3 others](#) [2018] eKLR, held; -

“... [28] With regard to the garnishee order, the appellant did not demonstrate or establish that the 1st respondent owed the 2nd respondent any debt upon which the order of garnishee could be pegged. It may well be that, there was some money due to the 2nd respondent from the 1st respondent on account of the Bond being discharged. However, this was neither alleged nor demonstrated.

[29] As regards the Garnishee order, the provisions of Order XX11 Rule 1(1) reproduced above, shows that the order is for an attachment of a debt.



Therefore, for the court to issue a garnishee order, the appellant had to satisfy the court that the 1st respondent was holding money belonging to or due to the judgment-debtor which monies should be attached to meet the decree or part of the decree that had been issued in favour of the appellant.

The Bond relied on by the appellant, merely demonstrated that the 1st respondent had guaranteed payment of the decretal sum during the pendency of the application for stay of execution only. That guarantee did not amount to a debt that could be attached. The 1st respondent having specifically denied being indebted to the 2nd respondent, and there being no evidence to contradict the 1st respondent's denial, there was no basis upon which the court could issue a garnishee order. As was stated in *Petro Sonko & another v H. A. D. B. Patel & another* 20 EACA 99, the onus is on the Judgment Creditor to establish that there is a debt due and recoverable from the Garnishee to the Judgment Debtor."

12. The question which needs to be answered, therefore, is whether the applicant has satisfied the above conditions to enable the court to make the garnishee order.
13. As to there being a decree which has been issued and is still unsatisfied, it was the applicant's case that he obtained a judgment against the judgment debtor for a decretal sum of Kenya Shillings Six Hundred and Thirty-Six Thousand, Five hundred and Fifty and Fifty Cents (636,550.50/-) which amount has not been satisfied. A copy of the said decree was annexed to the Application (Annexure "FRA 1"). Further, that the respondent's money was held with the Garnishee under Bank Account No. 1107169712.
14. These depositions were not opposed by the Respondent herein nor the Garnishee save for the Garnishee in their replying affidavit deponing that the Bank Account No. 1107169712 is also subject to the deduction of the legal costs of Kes. 40,000 incurred by the Garnishee as well as the bank charges for the transaction and thereafter, the net amount should be available for attachment in partial satisfaction of the decree.
15. Order 23 Rule 2 of the [Civil Procedure Rules](#) provides that; -  

"A credit in a deposit account with a bank or other financial institution shall for the purposes of this Order be a sum due or accruing and shall be attachable accordingly..."
16. Having held as above, it is my finding that the prayers sought in the application herein are merited and ought not to be denied in the circumstances hence the same is allowed as prayed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF MARCH 2024**

**J.N.ONYIEGO**  
**JUDGE**

