



Joe Ngigi & Company Advocates LLP v Trident Insurance Company Ltd; KCB Bank Kenya Ltd (KCB Nairobi High Court Branch) (Garnishee) (Civil Miscellaneous Application E617 of 2022) [2024] KEHC 6382 (KLR) (Civ) (31 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6382 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION E617 OF 2022
AN ONGERI, J
MAY 31, 2024

BETWEEN

JOE NGIGI & COMPANY ADVOCATES LLP APPLICANT

AND

TRIDENT INSURANCE COMPANY LTD RESPONDENT

AND

KCB BANK KENYA LTD (KCB NAIROBI HIGH COURT BRANCH) GARNISHEE

RULING

1. The advocate/applicant filed garnishee proceedings against KCB Nairobi High Court branch dated 2/10/2023 seeking the following orders;
 - i. That service of this application be dispensed with in the first instance.
 - ii. That Garnishee orders nisi do issue against the Garnishee to attach any monies held by them in favour of the respondent's account number 1121577032 held at the Garnishee KCB Bank Ltd Nairobi High Court Branch and any other account by the aforesaid held at the Garnishee bank in satisfaction of the decretal amount of ksh.194,114.00 in this matter.
 - iii. That Garnishee do appear before the court to show cause why they should not pay to the decree holder kshs.194,114.00 plus costs from the amount held by the respondent/judgment debtor at their account number 1121577032 at the Garnishee bank and/or any other account held by the aforesaid.



- iv. That the Garnishee orders nisi be made absolute.
 - v. That costs be provided for.
2. The garnishee application is based on the following grounds;
 - i. That judgment exists against the respondent/ judgment debtor.
 - ii. That the respondent has failed to settle the resultant decree.
 - iii. That the judgment debtor having ignored/refused to state the decree herein, there is need to attach its account held by the Garnishee.
 - iv. That unless Garnishee orders nisi are issued forthwith, the respondent shall withdraw any money held in its accounts aforesaid to defeat the ends of justice.
3. The Bank Manager of the Garnishee filed a replying affidavit sworn on 16/10/2023 as follows;
 - i. “That I am the Branch Manager at the Garnishee’s Nairobi High Court Branch, duly authorized and hence competent to swear this affidavit.
 - ii. That I have read and had explained to me by our advocates on record herein, the contents of the Decree Holder’s Notice of Motion dated 2nd October, 2023 and the subsequent Order Nisi given by the Honourable Court on 16th October 2023, which I have understood and in response to which I wish to state as herein under.
 - iii. That the Order Nisi given on 16.10.2023 attaches any monies held by the Garnishee in favour of the Judgment Debtor in account No. 1121577032 held at the Garnishee’s High Court Branch and any other account in satisfaction of the decretal amount of Ksh.194,114.00.
 - iv. That as at 13th October 2023, the Judgment Debtor’s number 1121577032 held a credit balance of Kenya Shillings Three Million, Six Hundred and Thirty Thousand and Ninety Three and Twenty Nine Cents (Ksh.3,630,093.29
 - v. That however, the Judgment Debtor has an overdraft loan facility with the Garnishee of Kenya Shillings Seven Million and Five Hundred Thousand (Ksh.7,500,000.00) which remains due and owing.
 - vi. That the Judgment Debtor is therefore indebted to the Garnishee and the Garnishee is not in a position to attach the Judgment Debtor’s account as sought by the Decree Holder.
 - vii. That again, the Entire credit balance of Ksh.3,630,093.29 has been locked or attached, pursuant to other Garnishee orders which were previously issued by various other Courts.
 - viii. That therefore, there is no remaining balance available for attachment, in the Judgment Debtor’s account which can be termed as the debt owing from the Garnishee to the Judgment Debtor to satisfy the decretal sum sought to be attached.
 - ix. That the Garnishee does not hold any other account on behalf of the Judgment Debtor.
 - x. That be that as it may, the Garnishee will require to pay her advocates costs of the garnishee proceedings of Ksh.35,000/= and prays that the same be borne by the Judgment Debtor and recovered from the subject account.”



4. The parties filed submissions as follows; the applicant submitted that from the law it is clear that the judgement debtor has no role to play in garnishee proceedings. In *Otieno Ragot & Co Advocates V City Council of Nairobi* [2015] eKLR it was observed that,

“Garnishee proceedings are in their 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 are not due or payable.”

5. The applicant submitted that the claim that account No. 1121577032 has an overdraft facility with the garnishee of Kshs. 7,500,000 which remains due and owing is an allegation that ought to be disregarded. The applicant indicated that from the attached documents under the Garnishee’s replying affidavit confirms that the alleged loan contract states that the facility term was for 12 months. The garnishee has not attached any proof of payment as from January when the same should have commenced.

6. That the Garnishee further attached a Form of Acceptance whose guarantors are one Mr. Diamond Lalji and Mr. Shahid Lalji respectively and they both happen to be the directors of the Respondent. It can be inferred that the respondent is in position and capable of settling the decretal sum if hard pressed as this is what they seek after entering into a consent with the garnishee who tends to have the respondent’s interest at heart.

7. The applicant submitted further that they have been receiving payments from the same account in settling other matters that the respondent has been indebted to them, one being last week and therefore the garnishee holds more resources for the respondent accounts than that which she has attached in their replying affidavit.

8. It was the applicant’s submission that it has established to the court by way of attaching a copy of the judgement debtor’s bank account statement that there is a sum of money held by the garnishee that is due to and recoverable by the judgement debtor that would constitute a debt for the purpose of garnishee proceedings.

9. Further, that the garnishee has given no valid explanation for failing to effect the garnishee order nisi.

10. The garnishee alternatively submitted that there is no remaining balance for attachment in the judgement debtors account which can be termed as owing from the garnishee to the judgement debtor to satisfy the decretal sum. Order 23 Rule 2 of the Civil Procedure Rules, 2010, provides that only credits in a deposit account with a bank or other financial institution shall be a sum due or accruing and shall be attachable. As at 13/10/2023, there was a credit balance of Ksh.3,630,093.29.

11. That the Garnishee has clearly shown, on the required balance of probabilities which the Decree Holder’s suspicions do not suffice to rebut, that the entire credit balance, as at 13/10/2023, has been locked or attached pursuant to other garnishee orders which were previously issued by other courts, as detailed in the lock statement. As stated in Pageat’s Law of Banking, 6th edition at p. 115;

If at the date of the service of the order, the banker has any lien on or set off against the moneys attached; this should be represented to the Court and would certainly prevail against the garnishee order.

12. The sole issue for determination is whether the Garnishee should settle the claim.



13. I find that there is no dispute that there are no funds belonging to the judgment debtor in their account at the Garnishee bank.
14. The garnishee submitted that there is no remaining balance for attachment in the judgement debtors account which can be termed as owing from the garnishee to the judgement debtor to satisfy the decretal sum.
15. Order 23 Rule 2 of the Civil Procedure Rules, 2010, provides that only credits in a deposit account with a bank or other financial institution shall be a sum due or accruing and shall be attachable.
16. The Garnishee is accordingly discharged from liability.
17. The application dated 2/10/2023 is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31ST DAY OF MAY, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

..... for the Garnishee

