

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)

AT MWANZA

LAND REVISION NO. 08 OF 2022

(Arising from the District Land and Housing Tribunal of Mwanza at Mwanza in Misc. Application No. 190 of 2022 and Misc. Application No. 102 of 2022)

NMB BANK PLC..... APPLICANT

VERSUS

REHEMA MASOUD.....1st RESPONDENT

NICHE CONSULTS.....2nd RESPONDENT

JUDGEMENT

Last Order date: 21/09/2022
Judgement Date: 27/10/2022

M. MNYUKWA, J.

The Applicant through Chamber Summons moved this court under Section 41(1) and section 43(1) and (2) of the Land Dispute Courts Act, Cap. 216 [RE:2019], section 79(1)(a) and (c) and section 95 of the Civil Procedure Code, Cap. 33 [R.E 2019] seeking the following orders;

- (a) *That, the court be pleased to revise and set aside the Ruling in Miscellaneous Application No 190 of 2022 issued by Murirya Chairperson, dated 4th July 2022.*



b) Any other order which the court may deem fit and just to grant under the circumstances of this application.

The application was accompanied with an affidavit sworn by Herrieth Kabyemela, the Team Leader Branch Operation of the Applicant. Responding to the Application, the Respondents herein filed a counter Affidavit, the 1st respondent's affidavit was sworn by Barack Alfred Dishon, the learned counsel who represented him and the 2nd respondent's affidavit was sworn by Lukas Bundala, the legal counsel retained to handle legal issues pertaining the application on his behalf.

The brief facts as available from the court files goes as follows; The 1st respondent herein instituted Application No. 102/2012. As it appears from the copy of the decision dated 31/03/2022 delivered by the District Land and Housing Tribunal for Mwanza at Mwanza (DLHT), the 1st respondent was the judgment creditor and there were three judgment debtors namely; Niche Consult Ltd, Glowide Education Center Ltd and Bostone Auction Mart, while the present applicant in this Revision Application, NMB Bank PLC was the Garnishee. The DLHT made the following Orders *to Garnishee who is the applicant;*

1. *That he should restricts the use of the account No. 20610020332 which belongs to the 1st and 2nd judgement debtor within 14 days.*



2. *The applicant is ordered to appear before the DLHT or to bring report on the status of account including the amount of money which is attached in that account.*
3. *If there is any objection from the applicant on that account the same has to be brought in bank's report.*

Through her letter dated 5th May 2022 addressed to the Chairperson of the DLHT, the applicant acknowledged receipt of the Order dated 31/03/2022 that was received on 5th May 2022. In her letter the applicant signified to have restricted the use of the stated account for fourteen (14) days from 5th May 2022 to 19th May 2022, and that they have also attached the bank report as requested. It is on record that on the same day, that is on 5th May 2022, the applicant wrote a letter to the Director of Niche Consult Ltd informing him about the Order of the DLHT. It seems that Niche Consult notified the applicant that she has erroneously restricted the use of its Account No. 20610020332. This prompted the applicant through her letter dated 25th May 2022, to request the correct account number from the Chairperson of the DLHT as the given account number 20610020332 belongs to *Niche Consult* and not *Niche Consult Ltd*. By the time the applicant wrote the said letter to Chairperson, the Chairperson of the DLHT had already issued Garnishee Order Absolute dated 20th May 2022, ordering the applicant to transfer the funds available in the account



number 20610020332 for the purpose of paying the decretal sum of Tshs. 264,000,000/= to the account of the 1st respondent in this application.

The records further reveal that, on 26th May 2022, the 1st respondent filed Miscellaneous Application No. 190 of 2022, against the NMB Bank PLC and *Niche Consults*. The applicant prayed the DLHT to order the applicant (the then 1st respondent) and the 2nd respondent to appear before the DLHT and show cause why, they should not pay the decretal sum as ordered in Application No. 102/2022, costs of the application and any other order as DHLT deem just to grant. After hearing Application No. 190/2022, the DLHT ordered the applicant to pay the decretal amount of Tshs. 264,000,000/= within 14 days from the date of its decision, failure to do so the Branch Manager of the NMB Bank, Kenyatta Branch be detained as a civil prisoner until when the amount stated in the decree is fully paid or the applicant's properties be attached and sold by way of auction to compensate the decretal sum of Tshs. 264,000,000/=.

The applicant was also ordered to pay Tshs. 16,000,000/= as general damages for the disturbance he made to the 1st respondent and costs of the suit. It is the above order which prompt the applicant to file the present Revision with the above grounds of Revision as reproduced above.



By the consent of the parties and with the leave of the court, the Revision was argued by way of written submissions. It is only the applicant and the 1st respondent who filed their respective submissions. The 2nd respondent did not file the written submission and there was no reason as to why he did not file his submission and therefore, it is like he did not enter appearance in this court. The applicant filed his submission in chief on 1st September 2022 and the 1st respondent filed his reply to the submission in chief on 5th September 2022. I thank the counsel of the applicant and the 1st respondent for complying with the scheduled order of the court of filing their submissions within the prescribed time.

Arguing in support of the Revision, the counsel for the applicant stated that, the applicant was not a party to Land Application No.170/2018 in which the 1st respondent was an applicant and the 2nd respondent was the 1st respondent who was named as Niche Consult Limited and not Niche Consults. He added that, in the Land Application No. 370/2018, the 1st respondent was awarded a decretal sum of Tshs. 264,000,000/= and that in the process of execution, the 1st respondent sought to attach account number 20610020332 of Niche Consult Ltd which was alleged to be maintained by the applicant.



He further argued that, the order dated 31/03/2022 was received by the applicant on 5th May 2022 and on the same day, the applicant wrote a letter to the Chairperson of the DLHT informing him that, they have restricted the use of the belonged account of Niche Consult Ltd and that they have attached bank report. It is the applicant's counsel's submission that, the bank report referred to in the last sentence of the Order of the Court is the bank statement of account number 20610020332 which is not of *Niche Consult Ltd* or *Niche Consults* but of *Niche Consult*. He said that, as per Garnishee's Order, the account name *Niche Consult Limited* did not match account number 20610020332. He added that, though the 1st respondent maintained that, the names *Niche Consult Ltd*, *Niche Consults* and *Niche Consult* were used interchangeably in Land Application No. 370/2018 but the same cannot be legally used interchangeably. He insisted that, as the applicant was not a party to Land Application No. 370/2018 there is no way he would have known the interchangeability of names.

The counsel for the applicant stated that, the account name and account number must match and that, as per the letter dated 5th May 2022 and its attachment, the applicant inadvertently attached account number 20610020332 which is owned by *Niche Consult* (trade name) and



not *Niche Consult Ltd* which is company or *Niche Consults*. He also remarked that, on 5th May 2022, the balance in the account of *Niche Consult* was Tshs. 4,966,879.44/= and not the decretal sum of Tshs. 264,000,000/=.

He further claimed that, the applicant as a banker has a duty to notify his customer once the account is subject to Garnishee Order, as it was stated in the case of **National Bank of Commerce Ltd v Lake Oil Ltd**, Commercial Case No. 5 of 2014, HCT Commercial Division at Dar es Salaam. That in fulfilling the above duty, the applicant notified *Niche Consult Ltd* about the existence of the Garnishee Order, he received a complaint from *Niche Consult* who is the holder of account No. 20610020332 that he was not *Niche Consult Ltd*.

The applicant's counsel further submitted that, the applicant wrote a letter to the Chairperson of DLHT dated 25th May 2022, requesting the correct account number of *Niche Consults Ltd*. It was this request which triggered the Misc. Application No. 190/2022 between the 1st respondent as the applicant, the applicant herein as the 1st respondent and *Niche Consult* as the 2nd respondent.

The applicant finalized his submission in chief by praying this court to invoke its revisional and supervisory power under sections 41(1) and (2)



of the Land Disputes Court's Act, Cap. 216 R.E 2019 and the provision under the Civil Procedure Code, Cap. 33 RE: 2019 to revise the Order on the basis that, they were unlawfully and irregular. He added that, it was unlawful to order the applicant to pay Tshs. 264,000,000/= while the initial mistake about the account name and account number was that of the 1st respondent, and it was irregular to order the applicant to pay the decretal amount, while at the time of the garnishee order the alleged account has a balance of Tshs. 4,966,879.44/=. He also stated that, it was irregular to order payment of general damages during execution. He prays the costs to be awarded to the applicant.

Responding, the counsel for the 1st respondent prayed to adopt the counter affidavit filed in this court to form part of his submission. He categorized his submission on three grounds. On the first ground, he submitted on the issue of the applicant not being a party to Land Case No. 370/2018. He submitted that, as Land Application No. 370/2018 was decided in favour of the 1st respondent, and as the 1st respondent filed Execution No. 102/2022 before the DLHT requesting for attachment of the bank account number 20610020332 the property of the 2nd respondent, and as the application is by way of garnishee order, then



automatically the applicant becomes a party in Execution Application as the garnishee.

He went on by submitting the case of **Rogers v White** (1892) AC 118 as cited in the case of the **National Bank of Commerce Ltd** (supra) that, the effect of the order attaching debt owing to the garnishee to the judgement debtor is to make the garnishee a trustee to the court, of the whole fund attached and that the garnishee was not permitted to part with the fund without the approval of the court. He submitted that, the applicant assured the Chairperson of the DLHT through her letter dated 5th May 2022 that, the claimed amount is attached in the named account 20610020332 the property of the 2nd respondent. He stated that in the above letter, the applicant did not attach the bank statement nor did he show the balance in the account as it was ordered by the DLHT.

The counsel for the respondent submitted that, the claimed bank statement did not form part of the proceedings of the court in any of the proceedings and the same has been printed after the Revision application has been filed, therefore it is an afterthought.

On the second aspect, he submitted on the issue of the mismatch of the account number and account holder. He stated that, the claim by the applicant that, the difference in names was the cause of disobeying



the order is baseless since it was not the duty of the applicant to fight the Garnishee order rather than to inform the judgement debtor who was then to challenge the same in the court procedure and in accordance to the Garnishee Order proceedings. He went on by quoting the article written by Angelo Rumisha titled *Dilemma in the Execution of the Decree by Garnishee Order against the Financial Institutions in Tanzania, Practitioner's Experience Vol 1*, The Tanzania Lawyer Journal, that;

"It is noted that, bank is not a party to the Garnishee Proceedings unless the account attached belongs to the Bank. The bank must not fight the Garnishee Order unless it has a genuine reason to do so. Fighting a Garnishee Order without any reason will expose the bank to unnecessary litigations which may result in incurring unnecessary costs."

On the third issue, the counsel submitted that, the duty of the bank as a Garnishee is to the court and judgement debtor. The duty of the bank, once it receives the Garnishee Order, is to comply with it as he became responsible to the court and to the judgement debtor on the existence of the Garnishee as the matter of the objection of Garnishee is done by the judgement debtor. He went on that, the case of the **National Bank of Commerce** (Supra) cited by the applicant is distinguishable in our case at hand because in that case, the dispute was on the decision on the wrong paid amount due to negligence of the bank to inform the



customer on the existence of the Garnishee Order while in our case at hand, the bank is disputing the Garnishee Order of the Court.

He retires his submission by praying the court to condemn the applicant to pay the whole of the decretal amount of Tsh 264,000,000/= and costs of the Application by upholding the Order of the DLHT and dismiss this Revision Application with costs.

From both side submissions, I formed one issue to determine as to whether the Revision Application before this court is meritorious. In answering the above issue, this court will determine as to whether it was correct for the applicant to be ordered to pay the decretal amount or to be detained as a civil prisoner or her properties to be attached and sold for his failure to execute the garnishee order issued by the DLHT to the person alleged to be his client, that is *Niche Consult Ltd.*

Admittedly, a party to the civil proceedings has the right to enjoy the fruits of the award issued in his favour. It is through the execution application which empowers the judgement creditor to enforce the award. It has to be noted that, the enforcement of the award particularly those involved the payment of money sometimes may be done by involving a third party who is bank, as he is indebted to the judgement debtor as he has custody of his money.



It is my understanding that, the initiative of the judgement creditor, who is required to be paid debt by the judgement debtor resulted the involvement of the Garnishee. It is from there, when the issue of the Garnishee and the Garnishee Order arises which is all about the recovery of the debt owed to him by the judgement debtor.

It follows therefore that, the parties in the Court Order directed to the Garnishee must be the ones in which the Garnishee is indebted to the judgement debtor. In other words, the Court directs a third party, who is garnishee that owes money to the judgement debtor to pay the judgement creditor instead.

In our case at hand, the Order directed to the applicant who is a Garnishee dated 31/03/2022, ordered the applicant to restrict the use of account number 20610020332 of *Niche Consult Ltd* who is the judgement debtor. It is on record that, upon receiving that Order on 05/05/2022, on the same day without any delay, the applicant did inform the Chairman of the DLHT that they have restricted the use of the account number for 14 days from 05.05.2022 to 19.05.2022. On fulfilling her duty to notify the customer on the existence of the said Order, on the same day also that is on 05/05/2022, the applicant wrote a letter to the Director of *Niche Consult Ltd* about the restriction of the use of account number



20610020332. As it appears, upon receiving that information, *Niche Consult* notified the applicant that it has erroneously withheld and restricted the use of his account number. It is from that response, when the applicant requested the correct account number for *Niche Consult Ltd* to the Chairperson of the DLHT through his letter dated 25/05/2022 when the Garnishee Order Absolute has already been issued.

In the circumstances of our case at hand, it is undisputed that, the judgement debtor as per the Order of the DLHT is *Niche Consult Ltd*. As I have earlier on noted, under the banker customer relationship, the Garnishee must be indebted by the judgement debtor so as to pay its debt to his creditor. In the persuasive decision of the **Republic of Kenya of the High Court of Nairobi (Mlimani Commercial Courts Commercial and Tax Division)**, Civil Suit No. 329 of 2003 between **Awo Shariff Mohammed t/a Mohammed Investment v Abdulkadir Shariff Abdirahim and 5 Others**, [2007] EKLK, the Court observed that,

*"The purpose of garnishee proceedings is to attach sums owed to the judgement debtor by the garnishee for the purpose of paying the same to the decree holder. **If the garnishee does not owe the judgement debtor any sums nothing can be attached to pay the decree holder.** It is irrelevant*



that as between the garnishee and the judgement debtor there are arrangement whereby the garnishee may honour certain liabilities of the judgement debtor. Those arrangements cannot translate into sums owed by the garnishee to the judgement debtor."

Persuaded by the above decision, it is clear that the garnishee must owe the judgement debtor any sum of money for it to be attached, that's why in our case at hand, when the applicant realized that, he withheld and restricted the bank account of the person to whom he does not owe the money, he informed the Chairperson of the DLHT so as to avail the correct name of the judgement debtor.

As per the court records, it has been all along stated that, the judgement debtor used its name interchangeably, that is *Niche Consult Ltd, Niche Consults* and *Niche Consult*. All in all, even if that was the case, the applicant who was not a party to the case could not be in a position to know that and unfortunately enough, it is the Niche Consult who owed the garnishee and neither *Niche Consult Ltd* or *Niche Consults* that have been used interchangeably the records of Miscellaneous Application No. 190 of 2022 bears the testimony.

As stated above, when the applicant noted that he wrongly attached and restricted the bank account which was different to the order



given, he promptly rectified the mistakes and notified the DLHT for the proper bank account.

Thus, it goes without say that a garnishee is a debtor to the judgement debtor. As a judgement debtor's debtor, a garnishee under the banker customer relationship, a banker is a debtor while a customer is a creditor. If the customer is a judgment debtor in a case, then his banker is his debtor, hence the name judgement debtor's debtor.

Now, if the name of the judgement debtor is at variance with that of the account holder, then the garnishee order is unimplementable, and it cannot be said that, the court order has been defied, and for sure there can never be any semblance of blemishes which can justify an action for civil imprisonment or otherwise. It is simply that, the banker, who is the applicant in our case at hand, was not a garnishee in the proper sense of the term.

The banker may be accused of giving a misleading statement on who the account holder is, and the DLHT may have acted on this misleading statement but that would not change the fact that no account exists in the name appearing in the decree and order issued to him. I can say that this is simply a case of mistaken identity.



In the upshot, the garnishee can neither be liable to pay the decretal sum of Tshs. 264, 000,000/= to the 1st respondent, nor can he be detained as the civil prisoner or his properties be attached and sold. Consequently, the Revision is hereby allowed, I hereby revise by setting aside, the Orders of the DLHT issued in the Miscellaneous Application No. 190/2022. I make no order as to costs.

It is so ordered.



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M.MNYUKWA
JUDGE
27/10/2022

Right of appeal explained to the parties.

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M.MNYUKWA
JUDGE
27/10/2022

Court: Judgement delivered today this 27th day of October, 2022, in presence of parties' counsel.

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M.MNYUKWA
JUDGE
27/10/2022