

IN THE COURT OF APPEAL FOR ZAMBIA

Appeal No. 250/2023

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

C AND C WORLD TRADE LIMITED

APPELLANT

AND

R.B. TECHNICAL SERVICES LIMITED

RESPONDENT

INDO ZAMBIA BANK LIMITED

GARNISHEE

CORAM: SIAVWAPA JP, BANDA-BOBO, PATEL, JJA

On 17th September & 31st October 2024

For the Appellant: Mr. F. Zulu

Messrs. M. Z. Mwandenga & Company

For the 1st Respondent: Mr. M. Chibwe

Messrs. Ilunga & Company

JUDGMENT

Patel, JA, delivered the Judgment of the Court.

Cases referred to:

1. Heppenstall v Jackson & Barclays Bank Limited [1939] 1 K.B 585, CA
2. Breza Engineering Limited v G.M. International Limited and Konkola Copper Mines PLC (2010) 1 ZR 46
3. Searose Limited v Seatrain (UK) Limited (1981) 1 ALL ER 806
4. Hardy Exploration & Production (India) INC v Government of India and India Infrastructure Finance Company (UK) Limited 2018 EWHC 1916 (Comm)
5. Madison General Insurance Company Limited v African Banking Corporation Zambia Limited – CAZ Appeal No. 310/2021
6. Société Eram Shipping Co Ltd v Cie Internationale de Navigation [2003] UKHL 30; [2004] 1 AC 260, at paragraph 24
7. The Attorney General v Marcus Kampumba Achiume (1983) ZR 1
8. Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR 172 (SC)

Legislation & Rules referred to:

1. The Rules of the Supreme Court of England 1965, 1999 Edition (White Book)
2. The High Court Act, Chapter 27 of the Laws of Zambia

1.0 INTRODUCTION

- 1.1 This matter comes before the Court on appeal against the Ruling of **Musona J**, delivered on 31st May 2023, following an *inter-partes* hearing held on 6th February 2023. The appeal challenges the lower Court's decision in its holding that the Garnishee Order targets money lying in the account which cannot be separated from money already in the debtor's account until the debt is fully satisfied.
- 1.2 We will as a necessary consequence of this appeal, interrogate the effect of a garnishee order and how and to what extent, it may be enforced by a Judgment Creditor.
- 1.3 Garnishee proceedings, otherwise known as 'garnishment' is a judicial process of execution or enforcement of monetary judgment wherein money belonging to a judgment debtor, in the hands or possession of a third party known as the 'Garnishee' (usually a bank/employer), is attached or seized by a judgment creditor, the Garnishor, in satisfaction of a judgment sum or debt. It is also referred to as a Third Party Debt Order in some jurisdictions. One of the key factors being that the amounts in question must be actually due and payable.

2.0 BACKGROUND

- 2.1 For the purposes of this section, the parties shall be referred to as they appear before this Court.
- 2.2 On 24th March 2010, the lower Court entered Judgment in default of appearance in favour of the Respondent (the Plaintiff and Judgement Creditor

- in the Court below). (See **Page 19** of the record). Upon receipt of the default judgment, the Appellant (the Defendant and Judgment Debtor below), committed itself through its Managing Director, to liquidate the judgment debt together with the interest accruing, in monthly instalments.
- 2.3 However, the Appellant subsequently defaulted, leading to the issuance of a Writ of fieri facias against the Appellant on 27th July 2010. The writ was executed against the Appellant, who then undertook to resume payment of monthly installments, resulting in suspension of the execution. Despite this undertaking, the judgment debt remained outstanding.
- 2.4 Consequently, the Respondent filed an application for Garnishee Order Nisi on 30th August 2022. There were two applications before the Court, being:
- i. *Inter partes* hearing for a Garnishee Order Nisi by the Respondent
 - ii. Hearing of an application by the Appellant to set aside Garnishee Order Nisi
- 2.5 On 13th January 2023, the learned Judge delivered a Ruling on the application to set aside *ex parte* order for Garnishee *Nisi*, which he dismissed with costs in favour of the Respondent.
- 2.6 By a notice of hearing dated 18th January 2023, the lower Court abridged the hearing date to 6th February 2023, to hear the application on whether the *ex parte* order *nisi* which was granted on 15th September 2022 should be made absolute.

2.7 On 31st May 2023, the learned Judge delivered a Ruling in favour of the Respondent granting the Order absolute, and now the subject of this appeal.

3.0 DECISION OF THE LOWER COURT

3.1 For clarity within this section, the parties shall be referred to as they appear in these proceedings.

3.2 The learned Judge in the Court below considered the submissions and affidavits presented by the parties. He identified the question for determination as follows:

Whether or not the ex parte order nisi granted on 15th September 2022, should be made absolute as aforementioned.

3.3 The learned Judge pointed out that, of interest in the matter, is the Garnishee's Affidavit in Opposition (seen at page 98 of the record). He noted that according to the records held by the Garnishee, the Appellant was a holder of current account No. 0242040000085 and overdraft account No. 0244040000003. The affidavit showed that as at 8th September 2022, being the date of service of the *ex parte* Garnishee Order *nisi*, there was a credit balance of K100, 171.86 in the current account and a negative balance of K199, 995.66 in the overdraft account which meant that the Appellant was indebted to the Garnishee Bank.

3.4 The learned Judge further noted that paragraph 10 showed that as of 2nd February 2023, the Appellant's current account had a balance of K404, 432.04

- 3.5 The learned Judge raised a further question for determination, which was whether or not the Garnishee order *nisi* issued and served on the Garnishee on 8th September 2022 only affected the amount due in existence in the Appellant's account as at the date of service on 8th September 2022, and not subsequent monies entering the account.
- 3.6 The learned Judge stated that the object of a Garnishee Order is to obligate the Garnishee to hold and to pay the Judgment Creditor any money being held by the Garnishee. The Judge noted that this includes money in possession of the Garnishee at the hour of receipt of the Garnishee Order and which extends to all money accruing or coming in after issuance and receipt of the Garnishee Order.
- 3.7 The learned Judge referred to **Order 49 rule 1** of the Rules of the Supreme Court of England ¹ which reads as follows:

“(1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or an order for the payment of money by some other person (in this Order referred to as “the judgment debtor”) of a sum of money amounting in value to at least £50, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order is referred to as “the garnishee”) is indebted to the judgment debtor the Court may, subject to the provision of this Order and of any enactment, order the Garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, or so much thereof as is

sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.”

- 3.8 The learned Judge emphasized the use of the word “*accruing*”. He noted that when a Garnishee Order is issued, the Garnishee is under obligation to pay to the Judgment Creditor the amount due to the Judgment Debtor or accruing to the Judgment Debtor. The Garnishee order *nisi* covers the date on which it is served on the Garnishee until termination of the Garnishee proceedings.
- 3.9 The learned Judge noted that the Garnishee order targets money lying in the account, and accruing money thereafter, cannot be separated from the money already lying in the debtor’s account unless the debt is fully satisfied.
- 3.10 The learned Judge was satisfied that the Garnishee holds money on behalf of the Appellant and made the Garnishee Order *Nisi* absolute and ordered that the Respondent recover its money from the Garnishee in accordance with the Judgment.

4.0 THE APPEAL

- 4.1 Dissatisfied with the Ruling of the Court below, the Appellant filed a Notice and Memorandum of Appeal on 9th June 2023, advancing **one** (1) ground of appeal, namely;

i. The learned Trial Judge erred in law and fact when he held that the Garnishee order targets money lying in the account and that accruing

money thereafter cannot be separated from money already lying in the debtor's account unless the debt is fully satisfied.

5.0 APPELLANT'S HEADS OF ARGUMENT

- 5.1 We have duly considered and appreciated the Appellant's Heads of Argument filed on 8th August 2023.
- 5.2 The Appellant's main contention is that the learned trial Judge appears to have found that the Garnishee order affected not only monies that were sitting in the Appellant's account as of 8th September 2022 but also, monies that came into the Appellant's account after the aforementioned date on which the Garnishee Order was made.
- 5.3 It is the dramatic argument of the Appellant that *"the approach taken by the learned trial Judge suggests that a Garnishee Order once issued is an order that has a continuing open mouth that will capture or close in on any money that drops into the debtors account until the debt is satisfied regardless of when the order was made"*.
- 5.4 The Appellant placed heavy reliance on the English case of **Heppenstall v Jackson & Barclays Bank Limited**¹ in which the Court of Appeal unanimously held that the Garnishee Order *Nisi* affected only **debts in existence** at the date of the service of the order, and monies subsequently paid in could not be subject of the order.

5.5 It was therefore the Appellant's submission that a Garnishee Order is an attaching order that attaches monies that stand to the credit of the debtor's account when the Garnishee Order *Nisi* is made and will not or cannot attach any other monies paid into the debtor's account thereafter regardless of whether or not the debt is fully satisfied.

6.0 THE RESPONDENT'S HEADS OF ARGUMENT

6.1 We have equally considered and appreciated the Respondent's Heads of Argument filed on 8th September 2023.

6.2 In its arguments, the Respondent referred to the decision of the Supreme Court in the case of **Breza Engineering Limited v G.M International Limited and Konkola Copper Mines PLC**² in which the Court held as follows:

"The test whether a debt is attachable is that there must be a debt of which the Judgment Debtor can enforce payment if he so desires to."

6.3 The Respondent further relied on the case of **Searose Limited v Seatrain (UK) Limited**³ in which the Court held as follows:

"If the claimant is able to identify bank accounts maintained he should do so with so much precision as is reasonably practicable."

It is the Respondent's submission that the Judgment Creditor fulfilled this requirement when he availed the Court with the account number **0242040000085** which the Judgment Debtor held with the Garnishee as demonstrated in the affidavit in reply found at **page 102** of the Record, in

which the Judgment Debtor held the sum of ZMW 404, 432.04 under the said account.

6.4 The Respondent referred to **Order 49 Rule 1** of the White Book ¹ which provides as follows:

“...the Court may, subject to the provisions of this Order and of any enactment order the garnishee to pay the Judgment Creditor the amount of any debt due... so much as thereof as is sufficient to satisfy that Judgment or order and the costs of the garnishee proceedings...”

6.5 Following the above, the Respondent submitted that at the date when the Order *nisi* was made absolute, the Appellant’s bank account was and is able to satisfy the judgment debtor.

6.6 The Respondent, in response to the Appellant’s reliance on the **Happenstall** case¹, argued that it was misapplied in *casu*. It was the submission that the Court below was on firm ground when it held that the Garnishee Order targets money lying in the account, accruing money thereafter cannot be separated from the money lying in the debtor’s account unless the debt is fully satisfied. It was ultimately the submission that the appeal lacks merit and ought to be dismissed with costs to the Respondent.

7.0 THE HEARING

7.1 At the hearing, Counsel placed reliance on the respective heads of argument and made oral submissions to augment their arguments.

8.0 ANALYSIS AND DECISION OF THE COURT

8.1 We have carefully considered the single ground of appeal reproduced in **paragraph 4** above, the impugned Ruling and the arguments and submissions of both parties.

8.2 We are of the considered view that the question for consideration is as follows:

- i. Whether the garnishee order served on 8th September 2022 was limited to the funds existing in the Appellant's account as at that date, or whether it extended to any funds deposited into the account thereafter.*

8.3 In addressing our minds to the above issue, we note the submissions of the Appellant. Firstly, our attention has been drawn to the decision in the case of **Heppenstall v Jackson & Barclays Bank Limited**¹. It is the submission at **paragraph 3.1.3** of the arguments, that in this case, Barclays Bank had a garnishee order served on them attaching any debt owing by the Bank on the date of service of the Order to the judgment debtor. On receipt of the said Garnishee Order, the Bank, in accordance with its usual practice, opened a new account for the customer and new credits due to payments appeared in their books in that new account. It was contended that the money in that new account was a debt due or accruing to the Judgment Debtor. The trial Judge **His Honour Hargreaves**, sitting at St Albans County Court, held that the Judgment Creditor was entitled to receive, not only the amount standing to the credit of the Judgment Debtor at the date of the service of the garnishee order but also monies paid into the account between that date and the date

of the hearing of the summons. On appeal, *their Lordships in the Court of Appeal unanimously held that the garnishee order nisi affected only debts in existence at the date of the service of the order, and monies subsequently paid in could not be subject of the order.*

- 8.4 We have examined the said decision, which was also considered in the case of **Hardy Exploration & Production (India) INC v Government of India and India Infrastructure Finance Company (UK) Limited**⁴ in arriving at an understanding of the expression “*is the debt due or accruing due*”? Although a decision of the High Court of Justice, we find it pertinent to address the argument advanced by the Appellants.
- 8.5 In the **Hardy** case, Honourable Justice Peter M. Eggers QC, guided that it is a jurisdictional requirement that the relevant debt must be ‘*due or accruing due*’. It was common ground in the **Heppenstall** case, that the debt must be due or accruing due when the interim Third-Party Debt Order (Garnishee Order) was made or was served; it was not sufficient if the debt was due or accruing when the final Third-Party Debt Order was made or at the time of the hearing of any application for such order.
- 8.6 It is clear that the Appellant has misapprehended the decision in the **Heppenstall** case by arguing that the garnishee order *nisi* could only attach to funds that were in the account at the date of the Order. It is clear and without doubt that in *casu*, there was a judgment which remained unsatisfied and was a debt properly defined, quantified and accrued.

8.7 We have observed that the Appellant's entire appeal hinges on the **Happenstall** case¹. As we have noted above, the Appellant has belabored under the misapprehension that the Garnishee Order only attached to funds in the account at the time of the Order. On the contrary, the Order would attach to the debt due or accruing, as defined above. Furthermore, in the **Heppenstall** case, a new account was opened after the service of the Garnishee Order, effectively making it a different account from the one initially subject of the Garnishee Order. The facts before us, however, do not present such a scenario. In the present case, we have noted from the record that there is only one account at issue in this appeal, specifically account number **0242040000085**. This account is referenced in the correspondence on **pages 43 and 26** of the record, which includes a true copy of an application form from the Garnishee confirming the Appellant's account number.

8.8 Further and of consideration is the fact that the Honourable Justices of the Court of Appeal in the **Heppenstall case**, referred to *debts in existence* at the date of the service of the Order. It is noted that the judgment debt in *casu* was a known debt and was a *debt in existence* at the time of the Garnishee Order nisi.

8.9 Moving on, we refer to what appears to be the most contested part of the learned Judge's Ruling at **page 10** of the record which reads as follows:

“Although primarily, the Garnishee order targets money lying in the account, accruing money thereafter cannot be separated from the money already lying in the debtor's account unless the debt is fully

satisfied. The principle object of the Garnishee Order is to satisfy the debt, so, where the money in the debtor's account is not sufficient to satisfy the debt and provided the Garnishee Order is not discharged, all accruing money in the debtor's account will go towards satisfying the debt."

8.10 **Order 49 Rule 1** of the White Book¹ reads as follows:

*"(1) Where a person (in this order referred to as "the Judgment Creditor") has obtained a judgment or an order for the payment of money by some other person (in this order referred to as "the judgment debtor") of a sum of money amounting in value to at least £50, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provision of this order and of any enactment, order the Garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, **or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.** (emphasis added).*

8.11 We note **paragraph 2.11** of the Respondent's argument in which it was submitted that at the date when the decree *nisi* was made absolute, the Appellant's bank account was able to satisfy the debt.

- 8.12 We have had occasion to peruse the record and have observed the Appellant's argument in which it was argued that the garnishee order served on 8th September 2022, only affected the amount that stood to the Appellants account on the material date, being K100.171.86, and not any other monies that were paid into the Appellant's account.
- 8.13 However, we are of the view that the above submission is misplaced. We note **page 108** of the record which demonstrates an Account Statement of account number **0242040000085** from 8th September 2022 (the material date) to 2nd February 2023. We have observed that the statement reflects a closing balance of ZMW 404, 432.00
- 8.14 In addressing our minds to the above issues, we note the Appellant's submission in which it was argued that the learned Judge's approach suggests, in its words, *that a Garnishee Order once issued, has a continuing open mouth that will close in on any money that will drop into the debtors account until the debt is satisfied regardless of when the order was made.*
- 8.15 It is our considered view that **Order 49 Rule 1** of the White Book¹ is clear. We find that, so long as the debt remains unsatisfied, any sums credited into the account are subject to the garnishee order until the debt is fully discharged.
- 8.16 We therefore see no reason to depart from the learned Judge's decision when he emphasized that **Order 49 Rule 1**¹ used the word "*accruing*". We agree with the learned Judge who took the view that the principal object of the Garnishee Order is to satisfy the debt, so that where the money in the debtor's account is not sufficient to satisfy the debt and provided the Garnishee Order

is not discharged, all accruing money in the debtor's account will go towards satisfying the debt.

8.17 We are also alive to a Judgment of this Court delivered in the case of **Madison General Insurance Company Limited v African Banking Corporation Zambia Limited**⁵ wherein we had occasion to consider and pronounce upon several issues, but of relevance to this appeal, issues pertaining to garnishee proceedings, culminating in a Garnishee Order absolute. In that Judgment, we stated on **page J 27** as follows:

"We therefore arrive at the inescapable conclusion that no cause was shown as to why the monies held by the Garnishees should not be made absolute. The conditions subject to granting a Garnishee Order Absolute were met. There was a judgment obtained for payment of money by the Judgment Creditor against the Judgment Debtor.... 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."

8.18 We accept the position that guides that the Order (Garnishee Order) operates to freeze the sum to be paid to the Judgment debtor in the hands of the third party (the Bank). The House of Lords, per Lord Bingham, in the case of **Société Eram Shipping Co Ltd v Cie Internationale de Navigation**⁶, described the nature of relief in the following terms:

"A garnishee or third-party debt order is a proprietary remedy which operates by way of attachment against the property of the judgment

debtor. The property of the judgment debtor so attached is the chose in action represented by the debt of the third party or garnishee to the judgment debtor. On the making of the interim or nisi order that chose in action is (as it has been variously put) bound, frozen, attached or charged in the hands of the third party or garnishee. Subject to any monetary limit which may be specified in the order, the third party is not entitled to deal with that chose in action by making payment to the judgment debtor or any other party at his request. When a final or absolute order is made the third party or garnishee is obliged (subject to any specified monetary limit) to make payment to the judgment creditor and not to the judgment debtor, but the debt of the third party to the judgment debtor is discharged pro tanto". The Third Party Debt Order operates as a species of enforcement of the relevant judgment debt."

8.19 In *casu*, we find the essential ingredients to have been proved. There was a judgment debt, there was execution which had failed and the identified and named bank account of the Judgment debtor, in the hands of the Garnishee, had funds which were sufficient to satisfy the judgment debt which warranted the granting of the Garnishee Order Absolute by the lower Court.

8.20 We are alive to the limited circumstances in which findings of facts made by a trial Court may be set aside. The noted cases of **The Attorney General v Marcus Kampumba Achiume**⁷ and **Wilson Masauso Zulu v Avondale Housing Project Limited**⁸ refer. In those decisions, the Supreme Court guided as follows:

"Before this court can reverse findings of fact made by a trial judge, we would have to be satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial court acting correctly could reasonably make."

8.21 We believe that the learned Judge was on firm ground in arriving at his decision and see no reason to reverse the findings of the lower Court.

9.0 CONCLUSION

9.1 The appeal being unsuccessful, we dismiss it with costs to the Respondent. Same to be taxed in default of agreement.



**M. J. SIAVWAPA
JUDGE PRESIDENT**



**A.M. BANDA-BOBO
COURT OF APPEAL JUDGE**



**A.N. PATEL S.C.
COURT OF APPEAL JUDGE**