

IN THE HIGH COURT OF KIRIBATI

MISCELLANEOUS APPLICATION NO. 121 OF 2015
(Arising from High Court Civil Case No. 78 of 2011)

	[KIRIBATI PROVIDENT FUND	APPLICANT
	[
BETWEEN	[AND	
	[
	[TERIBAURI TEWERA T/A GRAIN STORE	
	[BETERO TAREMON	RESPONDENT

Before: The Hon Chief Justice Sir John Muria

2 December 2015

Ms Ateti Tekawa for Applicant
Mr Banuera Berina for Respondent

Office of the Attorney General
P.O.Box 62, Bairiki, Tarawa
DATE

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REASONS FOR DECISION

Muria, CJ: The Order Absolute attaching the Judgment debtor's KPF contribution dated 22 September 2015 is set aside for the following reasons.

Despite the powerful argument advanced by Mr Berina on behalf of the Judgment creditor, I feel the law is very much on the side of the Garnishee, Kiribati Provident Fund.

Unbeknown to Counsel for the Garnishee at the hearing to attach the Judgment debtor's KPF contribution on 22 September 2015 was the Pledge made by the

Judgment debtor to DBK over his KPF contribution. The Court was not told then of the existence of such a Pledge. Consequently an Order Absolute was made, directed to the Garnishee, KPF to attach the Judgment debtor's KPF contribution in favour of the Judgment creditor.

Subsequently, it was discovered that a Pledge in favour of the DBK is in existence against the Judgment debtor's KPF contribution. The Garnishee, KPF, seeks to set aside the Garnishee Order having realized that its hands are tied. It is not able to comply with the Order of the Court because of the Pledge over the Judgment debtor's contribution in favour of the DBK.

Mr Berina of Counsel for the Judgment creditor strongly argued the judgment creditor's case that the order of the Court must be enforced and an application is in fact before the Court for leave to commit the Chief Executive Officer of the Garnishee, KPF, for contempt of Court order and committed for disobeying Court order.

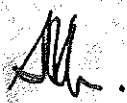
The law as stated in *DBK -v- Bank of Kiribati* (26 August 2009) [2009] KICA 13, clearly supports the Garnishee' case. A Court order cannot defeat a contractual right held by another party. In the present case, a contract by way of a Pledge, exists between the judgment debtor and DBK whose contractual right under the Pledge cannot be defeated by the attachment order made in this case. Thus, the Garnishee, KPF, is lawfully bound to respect the contractual relationship between the KPF member contributor (Judgment debtor) and DBK and would be entitled not to pay out the Member's contribution to the judgment creditor. An attachment order in the circumstances would be ineffective against the Garnishee.

For the above reasons, the application by the Garnishee to set aside the order absolute attaching the judgment debtor's KPF contributions is bound to succeed and it is granted.

ORDER: The Order Nisi dated 12 August 2015 and the Order Absolute dated 22 September 2015 directed at the KPF, the Garnishee, in this case are hereby set aside.

No order as to costs.

Dated the 2nd day of December 2015



SIR JOHN MURIA
Chief Justice