**Total (Kenya) Limited v Kenya Railways Corporation**

**Division:** High Court of Kenya at Nairobi

**Date of ruling:** 27 January 2004

**Case Number:** 1389/01

**Before:** Ochieng AJ

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Civil Procedure – Execution – Garnishee proceedings – Applicant attaching bank balance of State*

*corporation – Whether permitted by law.*

*[2] State corporation – Execution by attachment – Whether execution by attachment of a debt in the*

*nature of a bank balance of a state corporation proper – Section 88 – Kenya Railways Corporation Act*

*(Chapter 397).*

**Editor’s Summary**

The Plaintiff filed an application seeking to garnish the bank balance of Kenya Railways with a third party bank. Kenya Railways learnt of the garnishee order *nisi* and filed an application seeking leave to be heard in response to the *inter partes* application for garnishee. It was submitted by the Plaintiff that the Respondent corporation could not oppose the proceedings save by showing that the debt being sought had been satisfied. The Respondent argued that the law precluded the Plaintiff from attaching any property of the Respondent in execution of a court decree.

**Held** – The wording of section 67 of the Kenya Ports Authority Act, section 110 of the former KPTC Act and section 88 of the Kenya Railways Corporation Act was drafted in similar language. Each section restricted execution or attachment against the Corporation or any property of the Corporation. The phrase “any property of the Corporation” definitely extended to and included money in the account of the Corporation or any third party who held such money for the said Corporation (*Wambugu and Co Advocates v Managing Director Kenya Railways Corporation* [2001] LLR 4491 (HCK) followed). Garnishee proceedings dismissed.

**Case referred to in ruling** (“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled) *Wambugu and Co Advocates v Managing Director Kenya Railways Corporation* [2001] LLR 4491 (HCK) – **F** P