NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL

MOTION NO. 4/2000

BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.
THE HON. MR. JUSTICE PANTON, J.A.

BETWEEN	COLLIN WILLOCKS	APPELLANT/PLAINTIFF
A N D	VERLENE WILLOCKS	RESPONDENT
A N D	AKOM LIMITED	RESPONDENT/INTERVENER

Georgia Gibson-Henlin and Ruel Woolcock, instructed by Henlin Gibson & Henlin, for the appellant

Michael Hylton, Q.C., and David Noel, instructed by Myers Fletcher & Gordon, for the respondents

March 27, 29 and October 23, 2000

HARRISON, J.A.:

This is an appeal from an order of Pitter, J., made on January 27, 2000, in which he joined in suit No. E 439/1999, the respondent Akom Limited as intervener. On March 29, 2000, we dismissed the appeal, in part. We ordered that Akom Limited may intervene in respect of the joint bank accounts only. These are our reasons in writing.

The said suit was filed by the appellant/husband Collin Willocks against Verlene Willocks, his wife, seeking a determination by the court of their proportionate rights in property, as provided by section 16 of the Married Women's Property Act. Section 16 reads:

> "**16.** In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society, as aforesaid in whose books any stocks, funds or shares of either party are standing, may apply by summons or otherwise in a summary way to a Judge of the Supreme Court or (at the option of the applicant irrespectively of the value of the property in dispute) to the Resident Magistrate of the parish in which either party resides; and the Judge of the Supreme Court or the Resident Magistrate, as the case may be, may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit:
>
> Provided always that any order of a Judge of the Supreme Court to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same Judge in a suit pending, or on an equitable proceeding in the said Court, would be; and any order of a Resident Magistrate under the provisions of this section shall be subject to appeal in the same way as any other order made by the same Resident Magistrate would be:
>
> Provided also that the Judge of the Supreme Court or the Resident Magistrate, if either party so require, may hear any such application in Chambers:
>
> Provided also that any such bank, corporation, company, public body or society as aforesaid, shall, in the matter of any such application, for the purposes of costs or otherwise be treated as a stakeholder only."

Section 100 of the Judicature (Civil Procedure Code) Law permits such a joinder if it is necessary to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. Section 100 reads:

> "**100.** No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties; and the Court may in every cause or matter, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
>
> The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.
>
> No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto.
>
> Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings, as against such party, shall be deemed to have begun only on the service of such writ or notice."

Akom Limited, a former employer of the wife/respondent in suit No. C.L. 1997/A228, obtained a judgment against the said respondent, on June 11, 1999, in the sum of $32,581,000 with interest at 40% per annum from September 1, 1997, to

judgment and costs $160,000. A mareva injunction granted prior to judgment was continued. That judgment is still unsatisfied.

The said respondent/wife is a joint holder of bank accounts with the appellant/husband at the National Commercial Bank (N.C.B.)(two accounts) and the Bank of Nova Scotia (B.N.S.) (four accounts).

Writs of attachments were issued in the said suit No. C.L. 1997/A228 on December 9, 1999, and served on the said banks, N.C.B. and B.N.S., making them garnishees of the monies in the said accounts.

The monies in the joint account prima facie may be withdrawn in its entirety by the wife/respondent, for her own use. That is because, in law, she may be held entitled, prima facie, to at least 50% of such sums (***National Provincial Bank vs. Bishop*** [1965] 1 All E.R. 249). The headnote to the case reads, inter alia:

> "**Held:** (i) where spouses opened a joint account on terms that cheques might be drawn by either, in the absence of indications that the account was kept for a specific or limited purpose, each spouse could draw on it for his or her own benefit and did so with the authority of the other, and any chattel or investment that was purchased belonged to the person in whose name it was purchased; there was no equity in the other spouse to displace this legal ownership of the one in whose name the investment was purchased, and so also, if one spouse made a purchase in their joint names, there was no equity to displace the joint legal ownership."

The savings account at N.C.B. is in their joint names, but the appellant claims a mere 30% in that account.

The wife/respondent is, therefore, currently the legal owner of the said joint accounts in the said banks along with the appellant.

She has not entered an appearance to the originating summons in suit E. 439/1999, in which the appellant is claiming to be entitled to the entirety of the amounts in each of the said accounts, namely, 100%. Her current rights and entitlement may, on adjudication, cease to exist. There is a risk that a court may declare, based on the evidence tendered, that the property in the said accounts belongs to the applicant solely.

As a judgment creditor simpliciter, however, the respondent Akom Limited has no legal right nor interest in the said accounts.

Neither does section 16 of the Married Women's Property Act contemplate or recognize the said Akom Limited as a party in such a suit to determine the rights in matrimonial property. Akom Limited is not "(a) ...a company... in whose books any... funds... of either party are standing..."

The court will allow a third party to intervene if its presence:

> "...is deemed necessary for the Court to effectually and completely adjudicate and settle all questions involved in the cause or matter. ...and the determination of that dispute will affect a Third Party in his legal right or in his pocket,..." (***Jamaica Citizens Bank Ltd. vs. Dyoll Insurance Co. Ltd. & anor.*** [1991] 28 J.L.R. 415).

The effect of the service of garnishee order gives to the judgment creditor a right over the assets of the debtor. ***Halsbury's Laws of England***, 4th Edition, Vol. 17 paragraph 535 reads:

> "As from the service of the garnishee order nisi upon the garnishee, the order operates to bind in his hands any debt specified in the order, or so much of the debt as may be so specified, but it must, of course, be a debt capable of being attached at that date. Where, by the order nisi, all debts owing or accruing from the garnishee to the judgment debtor are attached, all the funds in the garnishee's hands belonging to the

> judgment debtor are attached even if their amount is largely in excess of the amount of the judgment debt, unless the order is restricted in its operation to such amount as will satisfy the judgment debt.
>
> The service of the garnishee order nisi does not have the effect of making the judgment creditor a creditor of the garnishee in respect of the debts specified in the order, but he at once acquires a right over them, entitling him to prevent the garnishee from paying his creditor, although he cannot, until the order is made absolute, insist on payment to himself."

The adjudication of the claim in suit No. E. 439/99 by the appellant/husband claiming one hundred percent of the assets in the various joint accounts will directly affect the rights of the judgment creditor in such assets. Consequently, Akom Limited's ability to have the judgment debt satisfied by execution against the current assets of the wife/respondent could be substantially affected, in the circumstances of this case.

Accordingly, the learned trial judge was correct to join Akom Limited in the said suit even though it is a "mere creditor". The appeal was accordingly dismissed. Intervention by Akom Limited was restricted to the joint bank accounts only.

LANGRIN, J.A.:

I agree.

PANTON, J.A.:

I agree.