



Kinyua Maingi & Co Advocates v Trident Insurance Company Limited; Safaricom Plc (Garnishee) (Miscellaneous Application E214 of 2023) [2024] KEHC 16361 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E214 OF 2023
DO CHEPKWONY, J
DECEMBER 20, 2024**

BETWEEN

KINYUA MAINGI & CO ADVOCATES APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

AND

SAFARICOM PLC GARNISHEE

RULING

1. The Applicant filed Notice of Motion application dated 18th November, 2024 pursuant to Section 1A, 1B, 3A all of the *Civil Procedure Act* and Order 22 (1), 23 Rules (1) and (3), and 10 of the Civil Procedure Rules. It seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the Garnishee, Safaricom Limited, shall upon being served with the Garnishee Order Nisi issued by this Honourable court notify the court in writing of what sum is held in the said Mpesa Paybill Number 985850 and due to the Judgment Debtor, Trident Insurance Co Ltd and if the Garnishee does not dispute the debt, it shall pay to MS Kinyua & Maingi Advocates the said sum of Kshs.263,852.04 plus costs of this garnishee application amounting to Kshs 30,000=.



- e. That the Garnishee Orders Nisi be made absolute.
 - f. That the costs be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Njoki Kinyua sworn on the instant date. According to the Applicant the Decree Holder, it obtained Judgment against the Respondent on 4th November, 2024 for a decretal sum of Kshs.263,852.04 which the Respondent has failed and/or refused to pay. The Applicant holds that the Respondent operates a Safaricom Paybill No. 985850 which is held by the garnishee and it is apprehensive that the Respondent may withdraw funds from the said Paybill account hence make it impossible for the Decree Holder to execute the decree.
 3. The Applicant/Decree Holder served the application upon both the Respondent and the Garnishee as evidenced by the Affidavit of Service filed on 18th November, 2024. The Respondent has not filed a response or attended court.
 4. The Garnishee filed Replying Affidavit which was sworn by Cerere Kihoro, its legal Counsel, sworn on 2nd December, 2024. The Garnishee confirms that the Respondent holds and operates Paybill Number 985850 with them and upon being served with the Garnishee Order Nisi, it set aside the sum of Kshs.263,852.04 from the Respondent's account and deposited it in special utility account as is required of its role. The Garnishee holds that it is ready, able and willing to remit the said decretal sum and its costs of the garnishee application of Kshs. 30,000 together with the applicable transaction costs which the court may award.
 5. When the matter came before the court on 17th December, 2024, Ms. Kinyua Counsel for the Applicant indicated that the Garnishee Order Nisi was served upon all parties but only the Garnishee had filed a Replying Affidavit indicating that it has sufficient sums to settle the decretal sum in question. She thus urged the court to render the Garnishee Order Nisi Absolute and sought to be awarded costs of the garnishee proceedings in the sum of Kshs. 30,000=.
 6. Ms Matata, Counsel for Garnishee confirmed to court that the Garnishee has sufficient funds to satisfy the decretal sum and is thus not opposed to the Garnishee Nisi being made absolute. She equally prayed for costs of Kshs.263,852.04 to be awarded to the Garnishee.

Analysis and determination

7. Having listened to the oral submissions by counsel for the Applicant and the Garnishee, I have also read through the grounds in support of the application in the Supporting Affidavit and Replying Affidavit filed by the Applicant and Garnishee respectively.
8. Given that the Respondent/Judgment Debtor has not filed any response to the application and the Garnishee is not opposed to settling the decretal sum owing to the fact that the Respondent's Paybill Number 985850 held by them has sufficient funds, the Court allows the application and orders the Garnishee Order Nisi to be made Absolute.
9. The other issue for determination is with regard to costs, where Counsel for the Applicant has sought to be awarded costs of Kshs. 30,000= while the Garnishee has sought for cost of Kshs.263,852.04 each. The issue of costs is enshrined under Section 27 of the *Civil Procedure Act* which provides as follows:-



27 (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.”

10. In regard to the above cited provision, it is trite that the issue of costs is usually in the discretion of a court and it is meant to compensate a successful party in a case following the basic principle that costs must follow the event. However, courts have recognized that this principle should not be used to penalise the losing party in the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant –vs- Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No.6 of 2014 the Court held as follows in this regard:-

“The issue of costs is the discretion of the court as provided under the above Section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.

11. Paragraph 14(b) of part A of the sixth Schedule of the Advocates Remuneration Order, provides that instructions fees to Institute or Defend garnishee proceedings shall not be less than Kshs 14,000-

12. In the instant case, the Applicant Judgment Creditor instituted the Garnishee proceedings while the Garnishee instructed a Firm of Advocates to defend it, who then filed a Notice of Appointment of Advocates and Replying Affidavit. Having done this, these parties require compensation. However, the Court finds the sum of Kshs.30,000= sought for as costs by the Applicant and the Kshs.263,852.04 as submitted by counsel for the Garnishee excessive which would be detrimental to the Respondent, amounting to unjust enrichment on the part of the Applicant and Garnishee who have not ascertained how they arrived at the figures they have each sought to be awarded as costs.

13. In exercise of its discretion and in the interest of justice, this Court finds a figure of Kshs.20,000= each for the Applicant and garnishee respectively reasonable and proceeds to order that they each be paid the said sum so as to avoid the filing of multiple applications and put this matter to rest.

14. The court therefore makes the following orders:-

- a. Garnishee Order Nisi be and is hereby made absolute for the Garnishee to settle the outstanding decretal sum of Kshs. Kshs.263,852.04 being the decretal sum herein to the Firm of MS Kinyua Maingi Advocates, Decree Holder.
- b. The Applicant is awarded costs of Kenya Shillings, Twenty Thousand and equally a further Kenya shillings Twenty Thousand as costs of the Garnishee proceedings.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 2 DIVISION - T
DIVISION - DAY OF DECEMBER, 2024.**



D. O. CHEPKWONY

JUDGE

In the presence of:

MS Kinyua counsel for the Applicant

Court Assistant - Martin

