



**South Nyanza Teachers Savings & Credit Co-operative Society Ltd v Maseno University  
(Civil Appeal E105 of 2021) [2022] KEHC 15820 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15820 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E105 OF 2021  
KW KIARIE, J  
NOVEMBER 30, 2022**

**BETWEEN**

**SOUTH NYANZA TEACHERS SAVINGS & CREDIT CO-OPERATIVE  
SOCIETY LTD ..... APPELLANT**

**AND**

**MASENO UNIVERSITY ..... RESPONDENT**

**RULING**

1. On June 16, 2022 this court delivered a ruling in this matter with the following orders:
  6. From the foregoing, I make the following order:

The applicant to deposit the decretal amount together with the agreed cost in an interest earning bank account in the names of both counsel on record for the parties within 15 days of this ruling. Failure to comply, then the respondent will be at liberty to commence execution.
2. The appellant/applicant on July 12, 2022 moved the court by way of notice of motion pursuant to order 22 rule 18 (1), order 40 rules 1 & 2, order 50 rules 1 & 2 as read with sections 1A & 3A of the [Civil Procedure Act](#).
3. The following orders are being sought:
  - a. That this application be certified urgent and prayers 1& 2 be granted. [Spent]
  - b. That this court to order the respondent to immediately return to the applicant all the items that were attached unlawfully.
  - c. That the court to declare that the attachment levied by M/S Odongo Investment Auctioneer was done illegally and therefore is null and void.



- d. That the court to make a finding that the attachment levied against the applicant on July 12, 2022 by M/S Odongo Investment Auctioneer was based on erroneous records as the bill of costs was never taxed at Kshs 196,409.20
  - e. That the court further make a finding that the interest and further costs charged on the warrants are null and void.
4. The application was based on the following grounds:
- a. That the applicant complied with the order of the court and put in motion the process to open a joint account.
  - b. That the respondent frustrated the said process by refusing to provide the bank with the necessary details to operationalize the joint account.
  - c. That the amount of money claimed was not authorized by the court.
  - d. That there ought to have been a fresh proclamation before the attachment.
5. The respondent opposed the application and contended that it was the applicant/appellant who failed to comply with the orders of the court.
6. I have seen a letter dated July 12, 2022 addressed to the firm of Owiti Otieno & Ragot Advocates. The letter is seeking to be supplied with audited books to enable them open an account as requested. I therefore find that the applicant complied with the court order except that the account opening was not concluded due to noncooperation by the firm of Owiti Otieno & Ragot Advocates.
7. This therefore means that the subsequent attachment was illegal and the under hand tactics employed by the respondent ought to be deprecated strongly. This erodes the faith in court system.
8. The attached goods are ordered to be released unconditionally to the applicant. Costs of this application to the applicant.

**DELIVERED AND SIGNED AT HOMA BAY THIS 30TH DAY OF NOVEMBER, 2022**

**KIARIE WAWERU KIARIE**

**JUDGE**

