



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Civil Suit 108 of 2008**

**ANTONY WASWA T/ATOMUPEX ENTERPRISES .....**  
**PLAINTIFF**

*Versus*

**NGERA MUTHAMI T/A ROZINA TRANSPORTERS .....**  
**DEFENDANT**

**And**

**CO-OPERATIVE BANK OF KENYA LIMITED.....**  
**GARNISHEE**

**RULING**

The plaintiff filed the chamber summons dated 8<sup>th</sup> October 2008. By that application the plaintiff seeks that the Garnishee the co-operative bank of Kenya Ltd be ordered to pay the amount it holding on behalf of the defendant in account no. 0110070011300. A garnishee nisi was issued by the court on 8<sup>th</sup> October 2008. The matter came for hearing on 16<sup>th</sup> October 2008. On that date the garnishee had sworn an affidavit and stated therein that the funds held in that account had been the subject of police investigations because it is alleged that it belongs to Mununga Tea Factory. On that basis the Garnishee requested the court to allow that tea factory to come before court with a view to informing the court their claim over the said money. Although the plaintiff was of the view that orders should be granted the court needs to consider the mischief addressed by order XXII. The principle behind that order is that the garnishee should be holding funds on behalf of the judgment debtor which the judgment creditor would be entitled to claim. Paragraph 13 of the Garnishee's replying affidavit clearly shows that there is a claim made by Mununga tea factory over the funds held by the garnishee on behalf of the judgment debtor. I am of the view that the interest of justice require that Mununga Tea Factory be given an opportunity to come before court to inform the court of the claim if any they have over the judgment debtors money. For that reason the court will reserve the delivery of the ruling in respect of the application dated 8<sup>th</sup> October 2008. The court orders the Deputy Registrar of this court do serve a notice upon Mununga Tea Factory requesting them to file an affidavit explaining their claim if any over the judgement debtors funds held in account no. 0110070011300. This matter shall be mentioned on 2<sup>nd</sup> December 2008 with a view to the court giving a date for final ruling over the application dated 8<sup>th</sup> October 2008. Mununga Tea Factory should be informed of that date by the Deputy Registrar. In the meanwhile the court directs that a Garnishee nisi do issue in respect of account No. 0110070011300 until further orders of this court.

DATED AND DELIVERED THIS 22<sup>ND</sup> DAY OF OCTOBER 2008

**MARY KASANGO**

**JUDGE**