



Arthur Ingutya & Company Advocates v Kenya Aids NGOS Consortium & another; Sydian Bank & another (Garnishee) (Environment & Land Miscellaneous Case E060 of 2023) [2025] KEELC 3357 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E060 OF 2023**

AA OMOLLO, J

MARCH 6, 2025

BETWEEN

ARTHUR INGUTYA & COMPANY ADVOCATES DECREE HOLDER

AND

KENYA AIDS NGOS CONSORTIUM 1ST JUDGMENT DEBTOR

CHRYSANTHUS MUCHORI GICHERU 2ND JUDGMENT DEBTOR

AND

SYDIAN BANK GARNISHEE

STANDARD CHARTERED BANK KENYA LIMITED GARNISHEE

RULING

1. There are two applications before this court for determination, to wit an execution notice of motion dated 15th October, 2024 by the decree-holder to garnishee the accounts of the Judgement debtor. The second application is dated 28th October 2024 by judgement debtor which seeks to set aside Orders dated 22nd October 2024 entering judgement in favour of the decree-holder on the grounds that they were issued exparte and they have disrupted their operations.
2. The 1st and 2nd JD/Applicants motion dated 28th October 2024 brought under the overriding objectives sections of the [Civil Procedure Act](#) and and order 40 of the [Civil Procedure Rules](#), sought for the following orders;
 1. Spent
 2. Spent
 3. Spent



4. That this Honourable Court do issue Orders setting aside the Orders dated 22nd October 2024.
5. That this Court is free to issue any other orders that it deems fit.
3. The motion was supported by the affidavit of Allan Ragi and on the grounds inter alia;
 - i. that the Applicants were served with a Court Order dated 22nd October 2024, which was granted ex parte, effectively freezing all their accounts without being heard.
 - ii. That this order, attached as AR-1, has severely disrupted their operations, which involve providing medical aid, drugs, and treatment for individuals living with HIV/AIDS, as well as distributing HIV medication across Kenya.
 - iii. That the freezing of their accounts has halted their vital services, including scheduled surgeries, distribution of medication, and transportation of medical supplies, leading to the tragic death of one individual who was due for surgery.
4. The Applicants argue that if these orders remain in effect, they will result in the deaths of many Kenyans and devastate the families who rely on their services. They stated that the matter is currently before the Court of Appeal under Civil Appeal No. E513 of 2024, and the amount demanded from the Applicants is yet to be determined. The Applicants contend that the Respondent failed to inform this Court of the ongoing appeal and its potential consequences, resulting in an unfair ex parte order.
5. In opposition to the application, the DH/Respondent filed grounds of opposition dated 30th October 2024 and Replying affidavit sworn by Arthur Ingutya on 30th October 2024. The grounds were that the application is misconceived since the applicants having no locus standi with respect to the garnishee proceedings. That the application is devoid of any merit there being no proof of execution and the decree holder being entitled to the fruits of judgment.
6. Further that the application is an abuse of due process being calculated to obstruct the execution of a lawful decree, is made in bad faith by a party who has acted in contempt of several determinations of this court including its ruling on the reference filed, the certificate of costs issued by the Deputy Registrar of this court.
7. The Respondents stated they have a decree on record for the amount of Kshs. 20,014,029.35, which has not been disputed. Although the applicant filed an appeal against the court's decision regarding the reference, no order has been issued by either this court or the Court of Appeal to stay the judgment or halt its execution proceedings. Therefore, decree holders are within their rights to pursue execution to recover the decretal sum.
8. That an affidavit by Allan Ragi reveals that the judgment debtor has access to substantial funds in their accounts, which are enough to settle the decretal sum. However, they have not shown any intention to pay voluntarily, thus, execution proceedings are now being pursued to compel payment.

Garnishee proceedings

9. The Notice of motion dated 15th October 2024 and supported by an affidavit sworn by Arthur Ingutya on the same date seeks for the following orders;
 1. Spent
 2. Spent



3. The garnishees do appear before this Honourable court to show cause why the credit balances in the aforesaid accounts should not be paid over to the applicant/decreed holder to satisfy the decree together with the costs of these proceedings.
4. On appearance of the garnishees or otherwise default to appear, a garnishee order absolute be issued to compel the garnishee to forthwith release the attached sums to the judgment creditor's account, that is to say:

Arthur Ingutya & Co. Advocates,
Co-operative Bank, City Hall Branch,
Account Number 01XXX13 48XXX00.
5. Costs of this debtor.
10. The motion was also based on the grounds that Arthur Ingutya & Co. Advocates, based in Nairobi, was instructed by the 1st judgment debtor to act on her behalf, together with the 2nd Respondent, who has been inactive and whom the firm has never met.
11. That there is a judgment on record in favor of the firm against the Respondent/judgment debtors, in the sum of Kshs. 20,014,029.35 which the 1st judgment debtor is aware of but has refused to settle the amount, thus defying the court's orders. They further stated that the 1st judgment debtor has not proposed any plan for the settlement of the decretal sum thus seeks to enforce the judgment and obtain the fruits of the court's ruling. That the 1st judgment debtor holds funds in accounts outlined in the application, which should be applied to settle the decretal sum.

1st and 2nd Garnishee Replying Affidavits

12. The 1st Garnishee filed a replying affidavit sworn on 30th October 2024 by Jackline Ndung'u, its Legal Officer while the 2nd Garnishee filed an affidavit sworn on 29th October 2024 by Anne Omondi, its Senior Relationship Manager, Business Banking.
13. The 1st Garnishee stated that they were served with a garnishee order nisi issued on 22nd October 2024 on even date alongside an accompanying Garnishee application after which the Garnishee inquired into the affairs of the Judgement Debtor's account and confirm that it holds no such account in the name of Kenya AIDS NGOs Consortium. That the Judgement Debtor is not their customer and urged the court to fully discharge the 1st Garnishee from the proceedings and costs be issued.
14. The 2nd Garnishee stated that on 22nd October 2024, they were served with the application dated 15th October 2024, along with a garnishee order nisi issued on 23rd October 2024, which attached funds in the 1st Respondent/ Judgement debtor's account numbers 0102XXXXXX5100 and 0103XXXXXX210. That account number 0103XXXXXX210 does not belong to the 1st Respondent/Judgement debtor, and by law, they are prevented from disclosing the actual owner of this account under Section 31(2) of the *Banking Act*.
15. The affiant stated that the 2nd garnishee is holding Kshs 54,590.40 in account number 0102XXXXXX5100, as confirmed by the attached statement of account marked as "AO1." and is willing to pay the said sum. Further, she deposed that the 2nd Garnishee request for its costs in the sum of Kshs 40,000 for processing the matter.
16. In response, Mr Arthur Ingutya filed a supplementary affidavit sworn on 14th November 2024. He stated that the affidavits by the garnishees lack strong and convincing evidence to support their



- positions because the deponents, who do not typically interact with customer accounts, failed to provide sufficient details on how the information they have availed to court was sourced.
17. For instance, in the case of Standard Chartered Bank, the 2nd Garnishee, the annexed documents only include a single day's entry and do not provide details about the account status on critical days, including the day the court issued the decree nisi and the days following thus raising concern about the reliability and thoroughness of the provided information.
 18. With Sidian Bank, the 1st Garnishee, the decree holder recounts a conversation with a legal officer from the bank, who initially stated that no account was held by the judgment debtor but he shared full documentation with the bank, including an application by the judgment debtor in court admitting that their accounts had been frozen. That the bank did not respond or file any affidavit to dispute the claims made by the judgment debtor's CEO, Allan Ragi.
 19. Moreover, that the information provided by the garnishees is contested by an affidavit sworn by the Chief Executive Officer of the judgment debtor, Allan Ragi, on 28th October 2024 which asserts that the decree nisi issued by the court froze all the funds of the judgment debtor in the subject accounts, halting its operations. That on 31st October 2024, the judgment debtor, through counsel, requested the court to unfreeze the accounts while ensuring that the decretal amount was preserved pending a further hearing on 14th November 202. This suggests that there were sufficient funds available to meet the decretal sum and continue the debtor's operations.
 20. Additionally, the judgment debtor filed an unprocedural application with the Court of Appeal on 29th October 2024, which sought to unfreeze the accounts without informing the Court of Appeal that the matter was already before this court. The deponent argues that the actions of the garnishees and the judgment debtor indicate a conspiracy to conceal the funds and defy the court's orders, thus the court should make the garnishee order absolute and direct the garnishees to pay the decretal sum and should they fail to comply, the court to issue execution orders for the attachment of the garnishees' assets, or even imprisonment of their directors, in order to enforce the court's ruling.

Submissions

21. The Decree holder filed submissions dated 13th November 2024 while the 1st and 2nd Garnishee filed submissions dated 19th December 2024 and 27th December 2024 respectively.
22. The decree holder submitted that the decree nisi issued by this Court is valid and should not be set aside, as it was properly granted in accordance with Order 23, Rules 1, 2, 3, and 4 of the *Civil Procedure Rules*. That the court had the jurisdiction to issue the decree nisi ex parte thus judgment debtor's argument that it should be set aside because it was granted ex parte has no legal basis.
23. In support of their argument, they cite the case of *Ngaywa Ngugi & Kibet Advocates v Invesco Assurance Co. Ltd and Diamond Trust Bank(garnishee)* which held that the judgment debtor does not have the locus to seek the dismissal of a garnishee order, as garnishee proceedings are separate from the judgment debtor's proceedings, and the order nisi is not subject to review at this stage.
24. Additionally, they state that execution proceedings should be stayed until the appeal before the court of appeal is determined is legally incorrect because, an appeal does not automatically stay execution proceedings, and any party seeking such a stay must apply separately under Order 42 of the *Civil Procedure Rules*. The decree holder cited the case of *Mulekyo and Company Advocates v Athi Water Works Development Agency, (garnishee)* (2024) eKLR where Justice Wabwoto emphasized that execution proceedings are lawful and should not be deprived of a party who has obtained a valid decree unless there are compelling reasons.



25. Further, the judgment debtor argues that the decree nisi should be set aside because the frozen funds are needed to purchase medication and pay for hospital fees for patients living with HIV/AIDS is not a valid reason to set aside the decree. That the judgment and decree issued by the court take precedence over the judgment debtor's corporate obligations, and execution must follow.
26. The decree holder submitted that the garnishee order nisi should be made absolute as the garnishees have failed to meet their legal duty in this matter stating that the primary duty of a garnishee is to show cause why the funds in the judgment debtor's account should not be paid to the judgment creditor, which must be done through strong, convincing evidence, including affidavits and relevant documents and in support cited the case of [*Lesinko Ni orogre & Gathogo Advocates v Invesco Assurance Co. and Cooperative Bank of Kenya\(Garnishee\)*](#)(2020)eKLR.
27. The decree holder stated that the response by the Garnishee was inadequate and relied in the holding of Justice P.J Otieno in [*Diamond Trust Bank Kenya Limited v Invesco Assurance Company Limited & another*](#) (2020) eKLR in which he said that it would not be sufficient to merely say that as a bank it was a stranger to the account number given to it. That to the court, that was no more than a bare denial and not a sufficient traverse, thus failed in that duty and found that the averment was just an evasion.
28. The decree holder submitted that the document provided by the 2nd garnishee, which is labelled as a "statement of account," fails to meet the necessary legal requirements for such a statement, as it lacks key entries such as debits, credits, and bank charges, and it does not cover the period from the freezing order to the date of the affidavit.
29. That the bank was obligated to provide full disclosure of the account status during the period the freeze was in effect, but instead, it withheld crucial information. In support they cited the case of *Diamond Trust Bank Kenya Limited supra*, where the failure to provide a full statement for the period following a garnishee order was deemed as withholding crucial information, implying untruthfulness on the part of the bank.
30. That in this case, given the circumstances, including the continued presence of funds in the the decree nisi should be made absolute and the garnishees held liable for the full decretal amount, including accrued interest and costs, as they have failed to show sufficient cause to prevent the decree from being enforced.
31. The 1st Garnishee outlined the issues for determination in this case as; whether the Judgment Debtor maintains an account at Sidian Bank Limited, whether the averments in the Garnishee's Replying Affidavit amount to concealment of facts, whether Sidian Bank Limited should be discharged from the proceedings, and the costs of the suit.
32. They stated that the Judgment Debtor is being accused of maintaining an account with them, but the bank, 1st Garnishee, has provided an affidavit stating that the Judgment Debtor does not have any account at the bank, nor any account associated with the name Kenya National Aids NGO's Consortium.
33. That after conducting a name search through its database, they found no account under that name or any similar variations, with the account numbers beginning with a different prefix.
34. They submitted that the Decree Holder argues that the 1st Garnishee has failed to present sound evidence to disprove the claim that the Judgment Debtor maintains an account with them, but the Garnishee's affidavit was sworn by a practicing advocate, Jackline Ndung'u, who is duty-bound to the court, and she has provided a legitimate and clear explanation and in support cited the case of [*Lesinko*](#)



Njoroge & Gathogo Advocates v Invesco Assurance Co; Co-operative Bank of Kenya (Garnishee) [2020] KEHC 8931 (KLR).

35. Additionally, the 1st Garnishee asserts that no such account exists under the Judgment Debtor's name or with the referenced account number, therefore, the Garnishee order Nisi should be confirmed as invalid and they should be discharged from the proceedings as the claim lacks sufficient factual basis.
36. In reliance to the case of *James Aggrey Mwamu t/a Mwamu and Company Advocates v African Merchant Assurance Company Limited; Garnishee Diamond Trust Bank Kenya Limited* [2019] eKLR, where Cherere J ordered the judgement debtor to bear the costs of the garnishee proceedings that had resulted in a garnishee order absolute, the 2nd Garnishee submitted that the cost of garnishee application be borne by the judgement debtor.

Analysis and determination:

37. I opted to determine the Judgement debtor's application first because its outcome has a bearing on the garnishee proceedings. The JD/Applicants urged the court to set aside the order entering judgement in favour of the decree-holder because the decree holder failed to inform the court that there was an appeal lodged against the taxed costs. The second reason for seeking to set aside the said order was on account of the sensitivity of their operations.
38. The JD/Applicants do not deny being served with the application 15th July 2024 and the date of 24th September 2024 when the application was coming up for hearing. Secondly, they did not plead that they have applied for and obtained orders of stay of execution. Consequently, nothing stopped the decree-holder from proceeding to execute for his costs.
39. Has a basis been laid why the orders of 22nd October 2024 should be set aside? The grounds for setting aside ex parte orders was discussed in the case of *Shah v Mbogo & another* [1967]6. A U7, the Court of Appeal for Eastern Africa held that:-

“Applying the principle that the court's discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice, the motion should be refused”.
40. The decree holder states that this motion is calculated to obstruct the execution of a lawful decree stating that they hold a decree which has not been disputed and no order has been issued by either this court or the Court of Appeal to stay the judgment or halt execution proceedings. The court entering the judgement on taxed costs was only performing an administrative duty. The only variation that can be given is in a scenario where the appeal on costs is successful and which is not obtaining herein.
41. The sensitivity of the operations of the judgement debtors is not a bar from meeting their legal obligations. They have not offered any security taking into consideration that this is a monetary decree. Neither do they plead that the decree-holder is not in a position to refund in the event their appeal succeed. The totality of the foregoing is that I find no merit in the application dated 28th October, 2024 and proceed to dismiss it.
42. Now on the Notice of motion dated 15th October 2024 which sought orders inter alia for the garnishees to appear before this court to show cause why the credit balances in the subject accounts should not be paid over to the decree holder to satisfy the decree together with the costs of the proceedings; and



a garnishee order absolute be issued to compel the garnishee to forthwith release the attached sums to the judgment creditor's account given.

43. The 1st Garnishee pleaded that the Judgement debtor does not have an account with them while the 2nd Garnishee stated that the Judgement debtor's account given hold only the sum of Kshs 54,590.40 which they do not object to remit. The Garnishees sought for the cost of the proceedings. In response, the decree holder argued that the explanation given by the 1st and 2nd Garnishee was evasive and there is concealment of information. Thus a garnishee decree absolute should be issued to proceed with the execution.

44. Order 23 Rule 1 of the *Civil Procedure Rules*, 2010 provides that:-

“1. A court may, upon the ex parte application of a decree-holder, and either before or after an oral examination of the judgement-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgement-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22 Rule 42 owing from such third person (hereinafter called the “Garnishee”) to the Judgement-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay the decree-holder the debt due from him to the judgement-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.”

45. In this case, the 1st garnishee objected to the garnishee proceedings stating that the Judgement debtor does not have an account with them and that the account number submitted by the decree holder belongs to a different owner whose name they could not disclose by dint of Section 31(2) of the *Banking Act*. In contrast, the Applicant averred that the judgement debtor's CEO, Allan Ragi swore an affidavit filed in this court admitting that their accounts had been frozen.

46. I have perused the affidavit of Mr Allan Ragi in support of their application of 28.10.2024 and noted that it did not specify the bank or account number where the funds were frozen. The duty to establish the accounts in which the funds are held rest upon the Applicant and the 1st garnishee has sworn under oath that the judgement debtor does not hold an account with them. Therefore, I shall not make any orders for their compliance in the circumstances. They asked for costs of these proceedings which I hereby grant and the costs so incurred shall be met by the judgement debtor.

47. The 2nd Garnishee on the other hand has not objected to the proceedings and has indicated willingness to comply with court orders, disclosing the amount in the account no 0102XXXXX5100 as Kshs 54,590. It relies on a document referenced as statement of account which the decree-holder critiqued and rightly so because the document does not bear any date of entry of the stated amount. The 2nd garnishee will therefore have to show cause by presenting the status of that account as at 22nd October, 2024 when the order was served on them.

48. In conclusion, I confirm that the application dated 28.10.2024 is dismissed while the motion dated 15th October, 2024 is allowed in the following terms;

a. The 2nd Garnishee shall supply to the court and the decree-holder a full statement showing entries as at 22.10.2024 – 6.03.2025 in the 1st Judgement debtor's account number



0102XXXXXX5100 held at Standard Bank Ltd, Yaya Centre Branch. Whatever sums held in the stated account within this period shall be paid to the Decree-holder/Applicants in the account provided in the application.

- b. Costs of both applications and those of the garnishees to be borne by the Judgement debtors.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH, 2025

A. OMOLLO

JUDGE

