



**Mwangale v Trust Bank Limited (IL) Thru' Kenya Deposit Insurance Corporation
(Being the Liquidator of Trust Bank Limited (IL) & 3 others (Commercial Case
132 of 2006) [2025] KEHC 3625 (KLR) (Commercial and Tax) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 132 OF 2006**

**AA VISRAM, J
MARCH 24, 2025**

BETWEEN

SALOME NALIKA MWANGALE PLAINTIFF

AND

**TRUST BANK LIMITED (IL) THRU' KENYA DEPOSIT INSURANCE
CORPORATION (BEING THE LIQUIDATOR OF TRUST BANK LIMITED
(IL) 1ST DEFENDANT**

**KANCHAN RASIKLAL SHAH (BEING THE EXECUTRIX OF THE WILL AND
PROBATE OF RASIKLAL DEVRAJ SHAH) 2ND DEFENDANT**

AMIT RASIKLAL SHAH 3RD DEFENDANT

MEHUL RASIKLAL SHAH 4TH DEFENDANT

RULING

1. I have considered the Notice of Motion Application dated 20th July, 2023, together with the affidavit sworn in support of even date, the reply sworn in opposition to the same on 4th March, 2025, the rival submissions of the parties, and the applicable law.
2. The Applicant submitted that by way of a judgment delivered on 6th April, 2018, the court awarded the 2nd, 3rd and 4th Defendants inter alia: mesene profits of Kshs. 120,000/- per month from 11th August, 2006, until eviction of the Plaintiff from the suit property, together with costs of the suit.
3. Simultaneously, the Plaintiff was awarded Kshs. 2,745,000/- against the 1st Defendant Bank (in liquidation). Further, that an appeal by the Plaintiff to the Court of Appeal was dismissed with costs on 9th June, 2023. Accordingly, the Applicant garnished the decree awarded by the court in favour of



the Plaintiff and as against the 1st Defendant. The Applicant submitted that it was not in dispute that the funds are due from the 1st Defendant to the Plaintiff.

4. The Applicant relied on the decision of *Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)* [2021] KEHC 13342 (KLR) in support its claim, where the court held as follows:-

“A litigant is entitled to reap the fruits of his successful litigation. As a result, where a Judgment-Debtor fails to comply with the terms of a judgment, the Judgment-Creditor is entitled to enforce such judgment by adopting a suitable procedure provided under the law. By the process of garnishee, the court has power to order the garnishee to pay directly the sums it owes the Judgment-Debtor to the garnishor or so much of it as may be sufficient to satisfy the amount of the judgment and the cost of the garnishee proceedings. In this regard, the provisions of Order 23 Rule 4 provide with sufficient clarity what this court should do where the Garnishee admits the debt as in this case.

[Order 23, rule 4.] Execution against garnishee.

If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-Debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings; and the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.”

5. When the matter originally came up for highlighting of submissions, the Application was unopposed at the time. No reply had been filed. However, the Court, noting the public interest in the matter, given that the Bank is in liquidation, directed the Applicant to file further submissions relating to the impact of the orders sought on the relevant statutory provisions governing the liquidation process, and in particular, affecting provisions relating to preference, and priority.
6. No further submissions were filed by the Applicant. However, the 1st Defendant filed a replying affidavit sworn on 4th March, 2025, together with submissions in opposition to the Application. This Court notes that the replying affidavit was filed late, and beyond the time stipulated pursuant to its directions issued on 28th October, 2024. However, I have chosen to consider the deposition and submissions because the funds held by the 1st Defendant in liquidation belong not to it, but to the public at large, in particular, the depositors who stand to be prejudiced, and suffer loss.
7. The 1st Defendant submitted that the order sought in the Application contravene the provisions of the Kenya Deposit Insurance Act (KDI). The Defendant submitted that the Application is misconceived as the Judgment Debtor was not a depositor of Trust Bank, but rather, a Creditor. Furthermore, the KDI expressly prohibits any attachment against the liquidator. The assets of the institution in liquidation are safeguarded for the benefit of depositors and subsequent distribution to Creditors in accordance with the ranking prescribed under the act.
8. The 1st Defendant clarified that the Judgment Debtor qualifies as a Creditor rather than a depositor because she did not maintain an account with the Bank. The deposit insurance scheme is designed to protect depositors as a priority over Creditors. Payments to Creditors is a right in accordance with the provisions of the Act and are made without preferential treatment, and the availability of funds, after the realization of the institution’s assets.



9. Having considered the above, I note that the KDI Act governs the administration of funds held by institutions in liquidation and outlines the statutory mandate of the liquidator.
10. In my view, the relevant law is found at Section 56 and 73 of the Act. The provisions states as follows:-
56. Stay of proceedings
- (1) No cause of action which subsisted against the directors, management or the institution prior to liquidation shall be maintained against the liquidator.
 - (2) No injunction may be brought or any other action or civil proceeding may be commenced or continued against the institution or in respect of its assets without the sanction of the Court.
 - (3) No attachment, garnishment, execution or other method of enforcement of a judgment or order against the institution or its assets may take place or continue. (emphasis mine)
73. Exemption from levy and attachment
- (1) The Corporation on its own or acting as receiver or liquidator of an institution shall be exempt from levy, attachment, garnishment, lien, foreclosure or sale.
 - (2) The exemptions set out in subsection (1) shall apply mutatis mutandis to institutions in liquidation. (Emphasis mine)
11. Based on the above, the default position is that all civil action subsisting prior to liquidation, are stayed once the Bank goes into liquidation. Further, it is evident from a reading of the above that no attachment, garnishment, execution, or other method of enforcement of a judgment or order against the institution or its assets may take place or continue. (Emphasis mine). It is also evident that The Corporation on its own or acting as receiver or liquidator of an institution is exempt from levy, attachment, garnishment, lien, foreclosure or sale.
12. The reason for the above is because the Bank is no longer trading. The logic behind the law is to ensure that the liquidator may carry out its mandate without disruption, and may utilize the assets realized from the liquidation for the benefit of all depositors, and affected members of the public, in accordance with priorities set out under the Act, and in an equitable manner.
13. Based on reading of the above, the orders sought by the Applicant seeking to attach the funds under the control of the liquidator are expressly prohibited by statute. Allowing garnishee proceedings in the manner contemplated by the Applicant would in my view subverts the legal framework, and undermined the mandate of the liquidator.
14. As regards the question, of whether or not the liquidator can be held liable for the obligations of the Bank in liquidation, the answer is no. KDIC is a statutory body established under section 4 of the KDI Act. It is mandated to provide a deposit insurance scheme for customers of member institutions and to liquidate institutions in respect of which the corporation is appointed as a receiver or liquidator. Section 54 and 50 (5) of the Act provides for the appointment and powers of the liquidator.
15. Section 50 (5) of the Act, under the heading powers of receivers, similarly reads as follows:-
- Where the Corporation, exercises one or more powers under this section, the Corporation shall not, by reason of the exercise of such powers, be held to have assumed or incurred any obligation or liability of the institution for its own account.



16. In Andrew Muma and Charles Kanjama Trading as Muma & Kanjama Advocate & others v Deloitte & Touche East Africa & 5 others [2020] eKLR, the court made the following observation:-

“It is clear that, the aforesaid provisions expressly prohibit institution of a suit against the Corporation, save for a person claiming that; they have sustained losses as a result of the action of the Corporation. However, the Corporation acts as an agent of the Chase Bank Limited in Receivership... Therefore, the Bank in Receivership and the Corporation cannot both be parties in the suit.”

17. In Atul R. Shah & another v Imperial Bank Limited & another [2021] eKLR, where Hon. Justice Mabeya in addressing himself as to the effect of Sections 45(5) and 50(5) of the KDI Act, made the following observations:-

“...The upshot of the foregoing is that, when the 2nd Defendant is appointed as receiver of any entity, it acts as an agent of such entity. It assumes no liability of such entity at all. Its liability is restricted to damages suffered by any party as a result of its own actions. See Andrew Muma And Charles Kanjama Trading as Muma & Kanjama Advocate & others v Deloitte & Touche East Africa & 5 others [2020] eKLR.

In view of the foregoing, the Plaintiffs claim in the plaint should be directed at the 1st Defendant and should not extend to the 2nd Defendant. This is so because it relates to the release of part of the deposit to the insured depositors of the 1st Defendant. Although the 2nd Defendant may be exercising its powers as a receiver of the 1st Defendant, it is not to be held liable for its carrying out that mandate

In view of the foregoing, the Preliminary Objection dated 7/12/2020 is meritorious. The court allows the same and strikes out the 2nd Defendant from the suit. Costs are awarded to the 2nd Defendant...”(Emphasis mine)

18. In E.L.C Case No. 137 of 2015: Daniel Kipruto Metto versus Chase Bank (K) Limited (IL), Hon. Justice Obaga observed as follows at paragraphs 7 - 11 as follows:-

The law is clear that once KDIC has been appointed as a receiver or liquidator of an institution, it becomes an agent of that institution. The law then protects it from assuming any obligations or liabilities of the institution for its own account....in the instant case, the Applicant is seeking to join KDIC in the proceedings for purposes of execution of a decree arising from a judgment of 17/1/2022. This cannot be allowed in view of the express provisions of KDI Act. This is clear from section 45(5) and section 50(5) of the KDI Act.... from the above analysis, it is clear that KDIC cannot assume liabilities and obligations of the Respondent...” (Emphasis mine)

19. Guided by the law above, I am of the view that the Corporation may not be held liable for the acts of the institution or entity in the pursuance of its mandate. As an agent, no liability may attach, save for damages that may be attributed to its own actions leading to loss. There is no evidence of the same in the present matter.

20. Finally, I am of the view that, the ranking of debts under the KDI Act requiring protected depositors in accordance with Sections 28 (1) and (33) of the KDI Act as the first payment ranking priority over other obligations of the institution in liquidation. Section 57 of the KDI Act provides for the ranking of other payments including Creditors. I have considered the above sections and I find that there is no basis for the preferential treatment sought by the Applicant arising out of garnishee proceedings.



A reading of the relevant provisions of the Act leads me to the conclusion that payments to general Creditors may only be made once the institution has declared payments to depositors and Creditors of the Bank in accordance with the law and the said ranking.

21. In conclusion, I find and hold that the orders sought by the Applicant contravenes the express provisions set out above, and runs contrary to the purpose and objectives of the KDI Act.
22. I find and hold that the Application is without merit and the same is dismissed with costs.
23. The file is marked as closed.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 24TH DAY OF MARCH, 2025

ALEEM VISRAM, FCIARB

JUDGE

In the presence of;

.....Court Assistant
.....For Plaintiff/Judgment Debtor/Respondent
.....For 1st Defendant/Garnishee
.....For 2nd Defendant/Decree Holder/Applicant
.....For 3rd Defendant/Decree Holder/Applicant
.....For 4th Defendant/Decree Holder/Applicant

