



**Musyoki t/a Alfajiri Auctioneers v Directline Assurance Company Limited;  
Diamond Trust Bank (Garnishee) (Miscellaneous Civil Application  
E244 of 2024) [2025] KEHC 2672 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2672 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CIVIL APPLICATION E244 OF 2024**

**J NGAAH, J  
MARCH 7, 2025**

**BETWEEN**

**URBANUS KIOKO MUSYOKI T/A ALFAJIRI AUCTIONEERS ..... APPLICANT**

**AND**

**DIRECTLINE ASSURANCE COMPANY LIMITED ..... RESPONDENT**

**AND**

**DIAMOND TRUST BANK ..... GARNISHEE**

**RULING**

1. The application before court is a motion dated 19 December 2024 filed under Order 51 Rule 1 and Order 23 Rule 1, 2,3, & 10 of the [Civil Procedure Rules](#). The applicant sees the following orders:
  - “1. Application be certified as urgent and be heard ex-pert in the first instance.
  2. That this Honourable Court be pleased to issue an Order Nisi forthwith attaching the sum of Kshs. 33,689.00/= plus interest at the rate of 12% per annum being the taxed sum in this suit which sum is held to the Credit of M/S Directline Assurance Company Limited, the Respondent in this suit in Account Number 080xxxxxxx Capital Center Branch Nairobi, by the Garnishee herein.
  3. That this Honourable Court be pleased to order the above named Garnishee and the Respondent to attend before the court on a date to be appointed, to show cause why the said Garnishee should not pay to the Applicant the taxed costs her in or so much thereof as may be sufficient to sufficient to satisfy the said sum of Kshs. 33,689.00/= plus interest at the rate of 12% per annum.



3. That upon the inter parties hearing of this Application this Honourable Court be pleased to issue a Garnishee Order Absolute in terms of Prayer 2 herein above.
  4. That the cost of this application be provided for by the Respondent.”
2. The application is supported by the affidavit of Urbanus Kioko Musyoki who has sworn that he is an auctioneer practising under the name and style of Alfajiri Auctioneers. He filed a bill of costs against the respondent according to which the taxing officer certified the amount due to him from the respondent to be Kshs. 33,689/=. On 28 October, 2024 the applicant served the respondent with the “certificate of costs” demanding the payment of the sum claimed. However, as at the time the application was made, no payment had been received.
  3. The applicant has sworn that Diamond Trust Bank, is holding funds to the credit of the respondent in the respondent’s bank account no. 080xxxxxxx Capital Center Branch Nairobi. The applicant is seeking the orders to access the funds to such an extent that it is necessary to satisfy the amount due to him by the defendant.
  4. The defendant opposed the application and filed a replying affidavit to that end. The affidavit is sworn by Mr. Kelvin Ngure who has sworn that he is the the deputy claims manager with the respondent company.
  5. According to Mr. Ngure, the auctioneers costs which are the subject of the present garnishee proceedings, arose out of a judgment made in Mombasa Small Claims Civil Suit No. E78 of 2024. Judgment in the matter was delivered on 7 May 2024 and soon after the delivery of the judgment, the respondent’s advocates informed the respondent accordingly.
  6. The respondent Company, without delay, processed the file for payment and indeed effected payment of the amount of Kshs. 212,645.00/= on 29 July, 2024. It is the respondent’s position that it made full and complete payment of the claim before the applicant obtained warrants, and therefore, the present garnishee proceedings are misconceived.
  7. The evidence on record shows the applicant filed an auctioneer’s bill of costs dated 20 August 2024 on 21 August 2024. The bill was eventually taxed because a “certificate of costs” issued on 14 October 2024 certified the costs payable to the applicant as Kshs. 33, 689/= . Copies of the auctioneer’s bill of costs and “the certificate of costs” have been exhibited to Mr, Mutua’s affidavit.
  8. Also exhibited to Mr. Mutua’s affidavit are warrants of attachment and warrants of sale both dated 1 July 2024 issued to the applicant. There is also a copy of proclamation for attachment dated 9 July 2024 said to have been served upon the respondent’s branch manager on even date.
  9. What these documents suggest is that as at the time the respondent processed the payment of 29 July 2024, the process of execution had been set in motion and, as of that date, a proclamation of attachment had been made.
  10. Contrary to the respondent’s case that payment in settlement of the decretal sum was made before the execution process begun, it was, in fact made after the attachment of the respondent’s goods. In any event, if the respondent had any basis of contesting the auctioneer’s bill of costs, it should have done so in the taxation proceedings. In the event that the respondent was dissatisfied with the decision of the taxing master, it would have been then entitled to contest it by way of a reference to the judge.



11. For these reasons, I am satisfied that the applicant's application is merited. The application is hereby allowed and garnishee order absolute is hereby issued in terms of prayer 2 of the applicant's motion. It is so ordered.

**SIGNED, DATED AND DELIVERED ON 7 MARCH 2025.**

**NGAAH JAIRUS**

**JUDGE**

