



REPUBLIC OF KENYA



KENYA LAW
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Okemwa v Musau; Family Bank Limited & 2 others (Garnishee) (Miscellaneous Civil Case E005 of 2025) [2025] KEHC 4518 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL CASE E005 OF 2025**

FN MUCHEMI, J

APRIL 3, 2025

BETWEEN

ALEX BARONGO OKEMWA APPLICANT

AND

JULIANA NTHENYA MUSAU RESPONDENT

AND

FAMILY BANK LIMITED GARNISHEE

EQUITY BANK (K) LIMITED GARNISHEE

SAFARICOM PLC GARNISHEE

RULING

1. The application dated 23rd January 2025 seeks for orders of varying and setting aside the garnishee orders issued on 9th January 2025 as well as orders of stay of execution of the decree issued on 21st November 2023 in respect of the award.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 10th February 2025.

Appellant's/Applicant's Case

3. The applicant states that he is the account holder of account numbers 09xxxxxx and 09xxxxxx at Family Bank, account number 0250xxxx at Equity Bank Kenya Limited and account number 0721xxxx and 0769xxxx at Safaricom PLC.
4. The applicant states that the respondent instituted a suit in the Small Claims Court vide Thika SCCC No. E1623 of 2023 claiming Kshs. 404,605/- which resulted from a contract of purchase of motor vehicle. The respondent obtained judgment and was issued with a decree and certificate to that effect



and he further obtained a garnishee order dated 9th January 2025 to satisfy the decree against the applicant's bank accounts and Mpesa accounts which remain frozen to date.

5. The applicant avers that he has duly paid Kshs. 579,289/- via Mpesa leaving a balance of Kshs. 50,711/- from the principal amount of Kshs. 630,000/-.
6. The applicant states that his failure to pay the balance is due to his frozen accounts whereby his clients have been depositing the business proceeds and he therefore seeks the garnishee order to be lifted to allow him to pay the balance. The applicant avers that he stands to suffer irreparable loss and damages if the garnishee remains in place.

The Respondent's Case

7. The respondent avers that default judgment was entered against the applicant for the sum of Kshs. 404,605/- plus interest and costs in the Small Claims Court at Thika SCC COMM No. 1623 of 2023. The respondent further states that the applicant was served with the decree but he refused to pay the decretal sum.
8. The respondent states that her advocates filed an application to attach the applicant's accounts and the court granted interim orders attaching his accounts pending the hearing and determination of the application. The respondent was served with the order and was required to attend court on 16th January 2025 to answer why his accounts should not be attached but he did not attend the same. The respondent avers that the said orders were interim orders and the matter will be mentioned on 6th March 2025 to confirm if parties have filed their submissions.
9. The respondent states that it is not true that the applicant has paid the amount indicated in his affidavit. Furthermore, the proper forum to ventilate whether the applicant has paid the decretal sum is the Small Claims Court at Thika and not the present court.
10. The respondent avers that the decree issued in Thika SCC COMM No. 1623 of 2023 has not been challenged and thus she is entitled to the sum awarded by the court.
11. The respondent states that the present application is premature as the trial court is yet to make a determination on the application for garnishee orders and thus the application ought to be dismissed.
12. Directions were issued that parties put in written submissions and the record shows that the respondent complied by filing submissions on 26th February 2025. The applicant on the other hand had not filed his submissions by the time of writing this ruling.

The Respondent's Submissions

13. The respondent submits that the applicant filed an application on 19th February 2025 in Thika SCC COMM No. 1623 of 2023 seeking similar orders. The application was certified urgent and the matter was mentioned on 26th February 2025 where the Small Claims Court directed that the said application and the respondent's garnishee application to be disposed of together by way of written submissions. The court issued a ruling date for 27th March 2025 and the mention date for 6th March 2025 was vacated.
14. The respondent relies on Order 23(5) & (9) of the Civil Procedure Rules and Section 38 of the *Small Claims Court Act* and submits that the orders sought by the applicant ought to be determined by the trial court that issued the garnishee nisi orders. Further, the respondent argues that the applicant has not paid part of the decretal sum as he alleges and the proper court to determine the truth is the Small Claims Court. The Small Claims Court has not yet determined the matter and the order dated 9th January 2025 are garnishee order nisi pending the hearing and determination of the garnishee



proceedings and not garnishee absolute orders. The respondent argues that the jurisdiction of the instant court can only be invoked after the application for the garnishee is determined, if the applicant is aggrieved by the determination of the trial court.

15. The respondent submits that the applicant has challenged the garnishee order nisi through a miscellaneous application and not an appeal, which is not a proper way to challenge orders. Furthermore, the applicant seeks to challenge the decree dated 21st November 2023 using an improper mode which is through a miscellaneous application. The applicant ought to file an appeal instead of a miscellaneous application if he seeks to set aside the decree dated 21st November 2023.

The Law

Whether the court has jurisdiction to entertain the application.

16. The law on the question of jurisdiction was enunciated in the case of Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

17. On the source of jurisdiction, it was held in the case of Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR that:-

A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

18. In the instant case, the respondent instituted a suit against the applicant in Thika Small Claims Court vide SCC COMM No. E1623 of 203 claiming Kshs. 404, 605/-. Default judgment was entered against the applicant for the said sum on 21st November 2023. The respondent filed garnishee proceedings vide her application dated 7th January 2025 whereby the court issued garnishee orders nisi attaching Kshs. 411,205 held in account number 09xxxxxxx and 09xxxxxx at Family Bank Kenya, account number 025xxxxxx at Equity Bank Kenya and account numbers 0721xxxxxx and 076xxxxxx at Safaricom PLC. The application was set for directions on 16th January 2025 upon service on the applicant. The applicant then filed a similar application on 19th February 2025 before the same court seeking similar orders as the present application. Currently both the applicant’s application and the garnishee application are waiting determination by the trial court scheduled for 27th March 2025.
19. It is evident that the respondent obtained judgment against the applicant in the small claims court. Execution has commenced in the same court by filing garnishee proceedings and a garnishee order nisi has been granted. It is pending confirmation. The court that pronounced judgment has jurisdiction to follow up execution to ensure that the decree has been satisfied.
20. As for this court, it would have heard the applicant on appeal against the judgment of the Small Claims Court based on points of law. The applicant does not deny the debt and has no intention to challenge the judgment on appeal. This being the position, I am on the considered view, that this court lacks jurisdiction to interfere with the garnishee proceedings that are still pending in the Small Claims Court.
21. I find this application misconceived and being improperly before the court. It is hereby struck out with costs to the respondent.



22. It is hereby ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF
APRIL 2025.**

F. MUCHEMI

JUDGE

