



Eric Ntabo & Co. Advocates v Trident Insurance Co. Ltd; Kenya Commercial Bank Limited & 7 others (Garnishee) (Miscellaneous Civil Case E011 of 2024) [2025] KEHC 6030 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CIVIL CASE E011 OF 2024
CM KARIUKI, J
MAY 15, 2025**

BETWEEN

ERIC NTABO & CO. ADVOCATES APPLICANT

AND

TRIDENT INSURANCE CO. LTD RESPONDENT

AND

KENYA COMMERCIAL BANK LIMITED GARNISHEE

SAFARICOM PLC GARNISHEE

M ORIENTAL COMMERCIAL BANK LIMITED GARNISHEE

NCBA BANK KENYA PLC GARNISHEE

I&M BANK GARNISHEE

STANBIC BANK LIMITED GARNISHEE

PRIME BANK LTD (KENYA) GARNISHEE

MIDDLE EAST BANK KENYA LTD GARNISHEE

RULING

1. The Applicant vide a notice of motion dated 21/01/2025, sought orders;
 - a. Spent.
 - b. Spent.
 - c. Spent



- d. That this honourable court be pleased to make a garnishee order absolute that, the sum of Kshs. 232,058.32/= such sums or debts as are sufficient to answer the decree obtained by the decree-holder against the judgment-debtor, or the unsatisfied part thereof owing or accruing due from the garnishees, Kenya Commercial Bank LTD, Safaricom Plc, M Oriental Commercial Bank Limited, NCBA Bank Kenya PLC, I&m Bank, Stanbic Bank Kenya Limited, Prime Bank Ltd(kenya) and Middle East Bank Kenya LTD to the judgment-debtor be attached to answer the decree passed herein against the judgment-debtor.
 - e. That costs of this application be borne by the judgment-debtor.
2. The application is premised on Order 23 rule 1, 2, 8, and 9, Order 49 rule 1,2,5, and 7, Order 50 rule 1 of the Civil Procedure Rules, sections 1A, 1B, and 3A of the [Civil Procedure Act](#).
 3. The application is based on the grounds set out on the face of the application and the supporting affidavit sworn by Victor Otieno on 21/01/2025.

The background.

4. The respondent retained the applicant as their advocates and failed to pay the requisite legal fees, prompting the applicant to file advocate-client bill of costs being Narok High Court, MISC E012 of 2024.
5. Despite being duly served the respective advocate client bills of cost and notices of taxation, the respondent failed to enter appearance and put in a response to oppose the bill rendering it unopposed.
6. Having filed proof of service of the bills and notices, the advocate-client bill of costs was duly taxed by Hon. Phylis Lusiah Shinyada, and a certificate of taxation was issued to the applicant.
7. The respondent, despite service of the certificate of taxation dated 2/10/24 on 7/10/24 & 8/10/24 physically and by email, the respondent failed to settle, challenge, or set aside the certificate.
8. The applicant subsequently filed application dated 22/10/24 seeking that the attached certificate of taxation be converted into judgment and an order of the court.
9. Despite service of the application dated 22/10/24 and hearing notice, which was slated for mention on 18/12/24, the respondent still failed to act, and as such, the application was allowed as prayed and the applicant was issued with a decree dated 18/12/2024 against the respondent/judgment debtor herein which decree remains unsettled.
10. The decree herein is for the sum of Kshs. 231,058.32/= together with costs, which amounts continue to attract interest and remain unsatisfied.
11. The respondent, despite being served with the decree dated 18/12/2024 with a seven-day notice to pay on 07/01/2025 detailing the amount, ought to be settled. The respondent has failed to settle the same, and there has been no communication from the respondent with regard to their proposed mode of settlement of the decretal sum.
12. The applicant intends to execute by way of garnishee through attaching the judgment debtor's accounts held by the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th garnishees since the judgment debtor has no attachable properties known to the applicant.
13. The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th garnishees have accruing in their accounts, credit deposits on behalf of the judgment debtor in account number 1121xxxxxx held by the 1st garnishee at KENYA COMMERCIAL BANK, high court branch, Safaricom m-pesa pay bill number xxxxxx held by the 2nd



garnishee, account number 008xxxxxxx held by the 3rd garnishee at M ORIENTAL COMMERCIAL BANK LIMITED, account number 17912xxxxxx held by the 4th garnishee at NCBA BANK KENYA PLC, account number 1121xxxxxx held by the 5th garnishee at I& M BANK YAYA TOWERS BRANCH, account number 0100003xxxxxx held by the 6th garnishee at STANBIC BANK KENYA LIMITED KENYATTA AVENUE BRANCH, account number 3000xxxxxx held by the 7th garnishee at PRIME BANK LTD(KENYA) RIVERSIDE DRIVE BRANCH, account number 1003028xxxxxx held by the 8th garnishee at MIDDLE EAST BANK KENYA LTD MILIMANI BRANCH respectively.

14. The applicant has sought that the credit deposits be attached to satisfy the decretal sum and enable the decree-holder to recover what is due to it.
15. The applicant has also sought a garnishee order nisi.

The response.

The respondent's replying affidavit.

16. The respondent opposed the application vide replying affidavit sworn by JAMES ONJORO on 10/02/2025.
17. The respondent averred that the applicant has suppressed material facts, which facts the respondent discovered from its department of accounts.
18. The respondent averred that the applicant was paid in advance over Kshs. 7,000,000, which sum remains unaccounted for. Therefore, it is paramount that the applicant is directed to account for the said payment and that the same squarely settles the amount claimed herein.
19. The respondent therefore prays that the garnishee herein be discharged and the applicant's application be dismissed with costs.

The 3rd garnishee replying affidavit.

20. The 3rd garnishee opposed the application vide replying affidavit sworn by James King'au on 23/01/2024.
21. The 3rd garnishee averred that the judgment debtor/respondent holds bank account number 008044010584 which is an old account number. The new account number is 1008044xxxxxx which account is a Kenya shillings account with a current balance of Kshs. 0.00.
22. The 3rd garnishee averred that the said account was closed by the judgment debtor on 15/12/2016 and the same is no longer active.
23. The 3rd garnishee averred that bank accounts do not have sufficient funds to settle the decretal sum herein, as the accounts do not have any funds; as such, the 3rd garnishee is not able to comply with orders.
24. The 3rd garnishee prayed the court to award the 3rd garnishee a sum of kshs. 40,000.00 being costs for participating in these proceedings and for discharging its mandate as provided for by law.

The 7th garnishee's replying affidavit.

25. The 7th garnishee in response to the application vide replying sworn by George W. Mathui on 11/02/2025.



26. The 7th garnishee confirmed that in compliance with the garnishee order nisi issued on 21/01/2025, a debit flag on the attached bank account has been imposed pending such further directions as the court will make in connection with the garnishee application herein.
27. The 7th garnishee confirmed that the 7th garnishee will abide by this court's directions in these proceedings and, if so directed, pay out of the credit balance standing in the attached account a sum not exceeding Kshs. 232,058.32 as set out in the garnishee order nisi, but will humbly pray that it be allowed to further debit from the account a sum of Kshs. 50,000.00 or such reasonable sum as the court shall permit to cover the costs incurred in its participation herein on an advocate-client basis.

The 8th garnishee replying affidavit.

28. The 8th garnishee filed a replying affidavit sworn by Elizabeth Ongare on 11/02/2025.
29. The 8th garnishee confirmed that the respondent/judgment-debtor holds an account with the 8th garnishee whose account number is 1003028xxxxxx. The said account does not hold any funds to the credit of the judgment debtor as it has a debit balance of Kshs. 286,159,681.27 as 21/01/2025. The 8th garnishee is therefore is not in a position to satisfy the garnishee orders sought and ought to be discharged.
30. The 8th garnishee averred that its attendant costs to the subject application by the decree holder should be borne by the latter or be offset by any other garnishee with available funds.

The 4th garnishee replying affidavit.

31. The 4th garnishee filed a replying affidavit sworn by Keneth Mawira on 17/02/2025.
32. The 4th garnishee confirmed that the judgment debtor does indeed hold an account with the garnishee bank, account number 17912xxxxxx. The available balance in the judgment debtor's account as at 11/02/2025 is Kshs. 0.0 as the account has been overdrawn. As such, the account does not have funds to satisfy the decretal amount of Kshs. 303,423.76/=.
33. The 4th garnishee prayed that it be discharged and granted Kshs. 30,000 being legal costs incurred in the present application.

The 2nd garnishee replying affidavit.

34. The 2nd garnishee filed a replying affidavit sworn by Stella Mutindi Mutua on 10/02/2025.
35. The 2nd garnishee confirmed that paybill number xxxxxx is held and operated by the respondent/judgment debtor.
36. The 2nd garnishee averred that the special utility account on MPesa pay bill number xxxxxx has a balance of kshs. 1,820,694.00/= in the period of 10/02/2025, noting that the balance over and above the current garnished sums is tied to other garnishee order nisis ranking in priority in courts of concurrent and higher jurisdiction, and the withdrawals relate to matters in which garnishee order absolutes have been issued and acted upon.
37. The 2nd garnishee averred that the sums withheld are sufficient to satisfy the entire unpaid taxed advocate/client bill of costs amounting to kshs. 232,058.32/= following the decree issued on 18/12/2024, exclusive of costs that will abide by the outcome of the garnishee proceedings.
38. The 2nd garnishee averred that the 2nd garnishee is entitled to its costs on the applicant's/ decree holder's application.



39. The 2nd garnishee averred that the 2nd garnishee shall, within 4 days upon service of the garnishee order absolute shall release the unpaid taxed advocate/client bill of costs amounting to Kshs. 232,058.32/= following the decree issued on 18/12/2024, as well as minimal garnishee costs that will abide by the outcome of the garnishee proceedings, less its costs.

The 1st garnishee replying affidavit.

40. The 1st garnishee filed a replying affidavit sworn by Wycliffe Ochieng on 26/03/2025.
41. The 1st garnishee confirmed the judgment debtor/respondent is a holder of account number 1121xxxxxx with the 1st garnishee.
42. The 1st garnishee averred that as of 22/01/2025, the aforementioned account reflects an approved overdraft facility of Kshs. 100,000,000.00/= and a current overdrawn balance of Kshs. -92,501,501.85/=.
43. The 1st garnishee averred that the 1st garnishee cannot therefore comply with any order herein as there is no amount in the judgment debtor's account to satisfy the same, as the account remains unfunded. Further, the amount advanced to the judgment debtor remains due and owing to date, and on that note, the garnishee has a priority interest in all the monies that are/would be available in the judgment debtor's account.
44. The 1st garnishee averred that the garnishee's claim as against the judgment debtor is for costs incidental to the proceedings herein.
45. The 1st garnishee averred the garnishee is not opposed to the release of the money (if any) on issuance of the garnishee order, save that the account in issue has insufficient funds to satisfy any order thereof.

Further affidavit

46. The applicant filed a further affidavit sworn by Victor Otieno on 13/02/2025.
47. The applicant averred that the respondent has failed to provide any proof to the court that Kshs. 7,000,000/= was paid to the applicant in anticipation of legal work in Narok CMCC NO. 133 of 2020, or this particular matter, where the decree is for Kshs. 232,058.32/= Further, no forwarding letter was attached in support of the said unaccounted payments.
48. The applicant contends that the said payments were paid in respect to different transactions and not this particular case as legal fees, hence the reason the payments were done in person and the name ERIC NYARANGI NTABO and not ERIC NTABO & CO ADVOCATES the court need not to waste its judicious time to scrutinize the same.
49. The applicant contends that there is no connection of the payment made to Falcony Recovery, Adhi Chepkwony & Co. Advocates, Stephen Kimani Gitiche, and Oyugis SRMCC no. 23 of 2020 with this particular matter.
50. The applicant contends that the narration of the payments made in respect of Kisii CMCC NO. 471 OF 2016, and it was made in 2019, even before the filing of the suit, which gave rise to the filing of this cause. Same case to the payment in respect of two matters, being Nos. 667 and 668, all of 2012.
51. The applicant contends that the respondent has not attached any proof in the form of a letter or cheques indicating that this particular matter was settled for them to allege double payment.



52. The applicant contends that the decree herein dated 18/12/24 has not been challenged, culminating in the filing of these garnishee proceedings, which gave to the instant garnishee orders despite the respondent being aware of the proceedings of the court on 18/12/24 as evidenced by the fact that the respondent filed his notice appointment dated 18/12/24.
53. The applicant that the judgment debtor has not set aside the order-nisi of the court, but has chosen to file a response to their application and order nisi, which does not amount to setting aside.
54. The applicant contends that the law is clear on the garnishee proceedings that a judgment debtor cannot leverage in the garnishee proceedings with a replying affidavit when she ought to have filed the necessary applications with a replying affidavit when she ought to have filed the necessary applications to challenge the certificate of taxation which is final as per section 52(1) of the *advocates act*.
55. The applicant contends that the respondent has adopted a vexatious pattern of filing responses to their advocate client bill of costs proceedings and garnishee proceedings in multiple high court stations across Kenya.
56. The applicant contends that through a retainer, the applicant represented the respondent in various high court stations in the country; Nairobi, Kisumu, Malindi, Nyeri, Bomet, Bungoma, Busia, Embu, Garissa, Homabay, Kajiado, Kakamega, Kapenguria, Kericho, Kerugoya, Kiambu, Kisii, Kitale, Kitui, Mahakos, Makueni, Marsabit, Meru, Migori, Mombasa, Muranga, Naivasha, Nakuru, Nanyuki, Narok, Nyamira, Voi, Thika, Iten, Kapsabet, Kwale, Nyahrur, Vihiga, Nyandrua & Eldoret and as such the annexed alleged payments amounting to Kes 7,000,000 cannot be said are for narok station less the respondent proves the same.
57. The applicant contends that if the respondent seeks a directive from the court for the applicant to account for Kes. 7,000,000/= the total taxed amount for this particular case is KES. 232,058.32/= / =, therefore, it will mean that the applicant to refund the balance of over Kshs. 6,500,000/= which will amount to the abuse of the courts, as this will apply to all taxations that the applicant has filed against the respondent.
58. The applicant contends that granting a judgment debtor an opportunity to be heard in garnishee proceedings will defeat the very purpose of the proceedings, as it has no role in garnishee proceedings, noting that it was garnishee to show cause why the garnishee order nisi ought not to be made absolute.

Directions of the court.

59. Vide orders issued on 21/01/2025, this court issued an order nisi, restraining any debiting of account number 1121xxxxxx held by the 1st garnishee, Safaricom mpesa paybill number xxxxxx held by the 2nd garnishee, account number 008xxxxxxx held by the 3rd garnishee, account number 17912xxxxxx held by the 4th garnishee, account number 1121xxxxxx held 5th garnishee, account 0100003xxxxxx held by the 6th garnishee, account number 3000xxxxxx held by the 7th garnishee, account number 1003028xxxxxx held by the 8th garnishee, and/or any other account held account held by the judgment debtor with the garnishees.
60. This court gave a date when the garnishees will show cause why they should not pay the decretal amount to the decree-holder owed by the judgment debtor.

ANALYSIS AND DETERMINATION.

61. This court considered the application, the supporting affidavit, 1st, 2nd, 3rd, 4th, 5th, 7th, and 8th Garnishee's replying affidavit, further affidavit, and the respective parties' submissions.



Issues

62. The main issue for determination: Whether the Garnishee had an existing relationship with the judgment debtor so as to be obligated to discharge the Garnishee Orders Absolute, and if not, whether they provided sufficient evidence to remove them from this obligation.
63. Order 23 of the Civil Procedure Rules 2010 stipulates as follows on garnishee proceedings: -1. A court may, upon the ex parte application of a decree holder, and either before or after an oral examination of the judgment-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 judgment -debtor and is within the jurisdiction, order that all debts (other than the salaries or allowances coming and is within the provisions of Order 22, rule 42 owing from such third persons (hereinafter called the “garnishee”) to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall Appear before the court to show cause why he should not pay to the decree-holder the debt due from him to the judgment debtor or so much thereof as maybe sufficient to satisfy the decree together with the costs aforesaid.
64. It is not disputed that there is a decree entered on 18/12/2024 in favour of the applicant, and therefore the garnishee proceedings were grounded on a decree of the court as required by Order 23 Rule 1 of the Civil Procedure Rules.
65. on whether the respondent has locus standi to challenge the Garnishee proceedings by way of a replying affidavit. The respondent averred that the applicant was paid in advance over Kshs. 7,000,000, which sum remains unaccounted for. Therefore, it is paramount that the applicant is directed to account for the said payment and that the same squarely settles the amount claimed herein. The applicant, on the other hand, averred that the respondent has failed to provide any proof to the court that Kshs. 7,000,000/= was paid to the applicant in anticipation of legal work in Narok CMCC NO. 133 of 2020, or this particular matter, where the decree is for Kshs. 232,058.32/= Further, no forwarding letter was attached in support of the said unaccounted payments.
66. I have perused the proceedings prior to the granting of the garnishee nisi, and I find that Order 23 Rule 1 provides that it is not obligatory to examine the judgment debtor. I also find that the Garnishee banks were given an opportunity to show cause why they should not pay the decretal sum.
67. The garnishees have filed replying affidavits save for the 5th and 6th garnishees, and there is a return of service. At this stage, what was required was for the Garnishee to show cause why the Garnishee Order Nisi should not be made absolute. The judgment debtor has no locus to apply to seek to dismiss the garnishee order in the instant proceedings, as the judgment debtor is not a party to the Garnishee proceedings.
68. Garnishee proceedings are separate proceedings between the judgment creditor and the Garnishee, regardless of the fact that the judgment debtor may be examined before or after the making of an order for attachment of debts. Counsel was aware of the order nisi that was served on them on and the procedure for them if they were aggrieved was to file an application to set aside the same and not leverage in the instant proceedings to air their concerns. In this regard, the decree nisi issued by this court remains valid unless and until set aside.
69. On whether the garnishee order is to be made absolute. This is a form of attachment. A garnishee order is the order served on a garnishee attaching a debt in his hands. The effect of attachment is to prevent private alienation of the property to the prejudice of the claims enforceable under the attachment. It



does not create any security, charge, or lien in favour of the attaching creditor. A garnishee order is a prohibitory order that prohibits the garnishee from giving, in this case, the money on the account over to the respondent.

70. Denning M.R. considered the procedure for attachment of debts in the case of *Choice Investments Ltd vs. Jeromnimon (Midland Bank Ltd, Garnishee)* [1981] 1 All ER 225 at page 227, where he said:

“The word ‘garnishee’ is derived from the Norman-French. It denotes one who is required to ‘garnish’, that is, to furnish, a creditor with the money to pay off a debt. A simple instance will suffice. A creditor is owed £100 by a debtor. The debtor does not pay. The creditor gets judgment against him for the £100. Still the debtor does not pay. The creditor then discovers that the debtor is a customer of a bank and has £150 at his bank. The creditor can get a ‘garnishee’ order against the bank by which the bank is required to pay into court or direct to the creditor, out of its customer’s £150, the £100 which he owes to the creditor.

There are two steps in the process. The first is a garnishee order nisi. Nisi is Norman-French. It means ‘unless’. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors: see *Pritchard v Westminster Bank Ltd* [1969] 1 All ER 999, [1969] 1 WLR 547 and *Rainbow v Moorgate Properties Ltd* [1975] 2 All ER 821, [1975] 1 WLR 788. If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if he himself directed the bank to pay it. If it is a deposit on seven days’ notice, the order nisi operates as the notice.

As soon as the garnishee order nisi is served on the bank, it operates as an injunction. It prevents the bank from paying the money to its customer until the garnishee order is made absolute, or is discharged, as the case may be. It binds the debt in the hands of the garnishee, that is, creates a charge in favour of the judgment creditor: see *Joachimson v Swiss Bank Corpn* [1921] 3 KB 110 at 131, [1921] All ER Rep 92 at 102, per Atkin LJ. The money at the bank is then said to be ‘attached’, again derived from Norman-French. But the ‘attachment’ is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay.”

71. In terms of Order 23 Rule 4 of the Civil Procedure Rules, 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
72. It is the position of the law that in garnishee proceedings, the Garnishee Banks are only required to appear before the court to acknowledge or dispute the debts. In the present case, the 1st, 2nd, 3rd, 4th, 7th, and 8th Garnishees have filed their responses. I find that they acknowledged that the respondent held accounts with them, and it was not necessary for the court to question them and cross-examine them, as they did not have any objections in relation to the attachment.



73. In light of my analysis above, the applicant's application dated 21/01/2025 has merit. Thus, the court makes the order;
- i. The application is allowed in terms of prayers (d) and (e).
 - ii. The garnishee nisi is hereby made absolute.
 - iii. The applicants, the 1st, 2nd, 3rd, 4th, 7th, and 8th garnishes are awarded costs of the application assessed at ksh 30,000 each to be paid from attached accounts with funds available herein at the time of payments of the decretal amount.
 - iv. Upon payment of the full amount of debt and costs awarded to the applicant and the garnishees except no 5 and 6, the garnishees will stand discharged.
 - v. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
15TH DAY OF MAY, 2025**

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CHARLES KARIUKI

JUDGE

