



**Kinyua & Maingi Advocates v Trident Insurance Co Limited;
Safaricom Plc (Garnishee) (Miscellaneous Civil Application
E334 of 2023) [2025] KEHC 6400 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E334 OF 2023**

SM MOHOCHI, J

MAY 15, 2025

BETWEEN

KINYUA & MAINGI ADVOCATES DECREE HOLDER

AND

TRIDENT INSURANCE CO LIMITED JUDGMENT DEBTOR

AND

SAFARICOM PLC GARNISHEE

RULING

1. Before Court for determination is the Applicant's Notice of Motion Application dated 8th January 2025 brought under Sections 1A, 1B, and Section 3A of the *Civil Procedure Act*, Order 51 Rule 1 and 3, Order 22 Rule 1, Rule 11 and Order 23 Rules 1 and 10 of 1 of the *Civil Procedure Rules*, Cap 21, Laws of Kenya 2010, seeking for orders that: -
 - a. Spent
 - b. Spent
 - c. That, this Honourable Court be pleased to issue Garnishee order nisi against the Garnishee, Safaricom Limited to attach all monies due and belonging to Trident Insurance Co. Limited in her credit or on her Mpesa Pay Bill Number [particulars withheld] and or in any other Pay-bill or Till-Number or so much of it as is sufficient to satisfy the decree of KES. 173,276.80 only together with costs of this Garnishee proceeding amounting to Kshs 30,000/- totally to Kshs 203,276,80/- herein which amounts remain due and owing.
 - d. That, the Garnishee, Safaricom Limited, shall upon being served with Garnishee Order Nisi issued by this Honourable Court, notify the Court in writing of what sum is held in the



said Mpesa Pay-Bill Number [particulars withheld] and due to the Judgment Debtor. Trident Insurance Co. Limited, and if the Garnishee does not dispute the debt, she shall pay to M/ S Kinyua & Maingi Advocates the said sum of KES 201,530.40 plus costs of this garnishee application amounting to Kshs 30,000/-.

- e. That, if the Garnishee, Safaricom Limited disputes holding funds and monies to the credit of Trident Insurance Co. Limited in Mpesa Pay-bill Number [particulars withheld] then she the Garnishee be ordered by this Honourable Court to appear and state the same during the hearing of the Applicants application,
 - f. That, the Garnishee orders nisi be made absolute.
2. The grounds were premised on the face of the Application and the annexed Supporting Affidavit of Njoki Kinyua counsel for the Applicant and sworn on the same date.

Applicant's Case

3. That, the Applicant [the Decree-holder] obtained a decree against the Respondent on the 3rd December, 2024 for a decretal sum of KShs. 173,276.80/= and that indeed, the Respondent has failed, neglected and/or refused to settle the decretal sum.
4. That, the Applicant [the Decree-holder] has sufficient reason to believe that that, the Respondent operates a Paybill Account number [particulars withheld] held by the Garnishee on their behalf.
5. That, to satisfy the decretal amount, the monies held by the Garnishee should be attached as the Respondent may withdraw the same hence making it impossible for the decree holder to execute the decree awarded by this Honourable Court thereby defeating the purpose of this application.
6. The Respondent did not enter appearance or file response despite being duly served.

Garnishee Position

7. The Garnishee responded vide the sworn Affidavit by Cerere Kihoro Advocate dated 22nd January 2025 Conceding that upon receiving the Court Order on 13th January 2025, the Garnishee proceeded to check its records for the Respondent's Mpesa Pay-bill account and it was discovered that the Pay-bill number [particulars withheld], cited belongs to Trident Insurance Company Limited had an active Mpesa Pay-bill account.
8. That in compliance with the Court Order, the Garnishee set-aside Kshs. 203,276.80/- from the Judgement Debtor's Pay-bill account number [particulars withheld], in a special utility account.
9. The Garnishee confirms the said Mpesa Pay-Bill Account has sufficient funds capable of satisfying the whole decretal amount.
10. That, compliance by the Garnishee is hinged on the funds available in the Judgment Debtor's Mpesa account and the Garnishee, is, therefore, able to honor any garnishee order in respect to the sums claimed by the Applicant/Decree Holder, in the instant application and is ready and willing to release the amounts held in the Mpesa Paybill Special Utility Account net of its legal costs of Kshs. 20,000/= and transaction costs which the Garnishee prays that this Court does grant.



Analysis and Determination

11. Order 23 rule 1[1] of the [Civil Procedure Rules](#), 2010 provide that;

“ 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.”

12. It is trite law that as soon as the Garnishee Order Nisi is served on the Garnishee, it operates as an injunction. It prevents the Garnishee from paying money to its customer until the garnishee order is made absolute, or is discharged, as the case maybe. It binds the debt in the hands of the garnishee, and creates a charge in favour of the judgment creditor. What Garnishee order Nisi does is to freeze the sum in the hands of the Garnishee until the Garnishee order is made absolute or is discharged. If the said order is made absolute, then the Garnishee becomes liable to pay the Decree-holder. See *Joachimson v Swiss Bank Corp* [1921] 3KB 110 at 131, [1921] All ER Rep 92 at 102 per Atkin Lj.
13. In this instance the Garnishee confirms availability of funds sufficient to discharged the decretal sum plus costs of the Application assessed at Kshs 30,000/-.
14. Therefore, having found merit in this Application and that the Applicant is deserving of the orders sought, this Court hereby allows the Application dated 8th January 2025 on the following terms;
- i. The Garnishee Order “Nisi” dated January 10, 2025 is hereby made “Absolute”.
 - ii. Safaricom PLC shall pay M/S Kinyua & Maingi Advocates the sum of KES 201,530.40 plus costs of this garnishee application amounting to Kshs 30,000/- from Mpesa Pay-bill Number [particulars withheld].

It is so Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 15TH DAY OF MAY, 2025

MOHOCHI S.M

JUDGE

