



Metropole Holdings Limited & another v Elfam Limited; Commodities Fund (Interested Party); Co-operative Bank of Kenya Limited (Garnishee) (Environment & Land Case 24 of 2020) [2025] KEELC 3955 (KLR) (19 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3955 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 24 OF 2020**

CK YANO, J

MAY 19, 2025

BETWEEN

METROPOLE HOLDINGS LIMITED 1ST PLAINTIFF

KOBILO FARM LIMITED 2ND PLAINTIFF

AND

ELFAM LIMITED DEFENDANT

AND

COMMODITIES FUND INTERESTED PARTY

AND

CO-OPERATIVE BANK OF KENYA LIMITED GARNISHEE

RULING

1. The Decree Holder/Applicant filed garnishee proceedings against Co-Operative Bank of Kenya Limited, Kitengela Branch, Kajiado County dated 3rd April, 2025 seeking the following orders: -
 1. Spent
 2. THAT this Honourable Court be pleased to issue an Order Nisi forthwith attaching the sum of Kshs.24,280,000/= (Kenya Shillings Twenty Four Million Two Hundred and Eighty Thousand) being the decretal sum herein together with interest thereon which sum is held to the credit of the Plaintiffs/Judgement Debtors herein in account number 01103285248200 held at Co-Operative Bank of Kenya Limited, Kitengela Branch, Kajiado County.
 3. THAT this Honourable Court be pleased to order the above stated Garnishee, Co-operative Bank of Kenya Limited and the Plaintiffs/Judgement Debtors to attend court on an appointed



date and time to show cause why the said Garnishee should not pay to the Defendant/Decree Holder's Advocates, Yano & Company Advocates the decretal sum herein or so much thereof as may be sufficient to satisfy the said sum of KShs.24,280,000/= (Kenya Shillings Twenty Four Million Two Hundred and Eighty Thousand) being decretal sum together with interest thereon until payments in full.

4. THAT upon the inter parties hearings of this Application, this Honourable Court be pleased to issue Garnishee Order Absolute in terms of prayer 2 herein above.
5. THAT the Costs of this application be provided for and be borne by the Judgement Debtor.
2. The Application is supported by an Affidavit of even date sworn by ALICE YANO, the Advocate on record for the Defendant/Decree Holder herein. She deponed that judgement was entered by this Honourable Court on the 14th of March, 2023 in favour of the Defendant. That thereafter, the Judgement Debtors lodged an application for stay of execution of the judgement pending the hearing and determination of an appeal, which application was dismissed by this Honourable Court on the 3rd of October, 2024. That there is therefore no order of stay of execution of the decree herein, and further, that no appeal has been lodged challenging the judgement herein.
3. She deponed that the Judgement Debtors have not satisfied the decree herein nor have they made any effort to do so. She averred that pursuant to the order of court made on 24th September, 2020 a sum of KShs. 58,000,000/= (Kenya Shillings Fifty-Eight Million), being the amount paid by the Plaintiffs to the Defendant, was deposited in a joint interest earning account in the names of the advocates with the Co-operative Bank of Kenya Limited, Kitengela Branch (the Bank). She explained that as at 30th January, 2025, the Bank held a sum of KShs. 64,427,998/- in account number 01103285248200, to the credit of the Judgement Debtors as per the orders of this court issued on the 24th September, 2024.
4. Ms. Yano deponed that pursuant to the judgement of the court aforesaid, the Judgment Debtors are entitled to a refund of the aforesaid sum less 10% deposit, which is forfeited to the Defendant. She expressed apprehension that the Judgment debtors would demand the said refund unless the orders sought herein are granted. She deponed that garnishee proceedings are a form of execution whose purpose under the provisions of Order 23, is to facilitate the satisfaction of judgement debts. She asked that the Bank be directed to appear before the Honourable Court to show cause why it should not be directed to pay the Decree Holder the amount in the decree. She urged that this application is made in the interest of justice so that the Decree Holder can enjoy the fruits of litigation, thus the orders herein ought to be granted.
5. The Bank's response was in the form of a Replying Affidavit sworn on 25th April, 2025 by Emma Jean Lutta, its Branch Manager. She confirmed that the Judgment Debtors operates and maintains an account with it, being Account No. 01103285248200 at its Kitengela Branch, Kajiado County. That upon receipt of the Garnishee Order Nisi, the Bank flagged and froze the Judgment Debtors' account pending hearing and determination of the instant Motion. She annexed a Statement of Account showing that the Judgment Debtors' account holds sufficient funds to satisfy the decretal sum of KShs. 24,280,000.00/-. She expressed the Bank's willingness to abide by the orders of the court, and only asked for costs of the Bank's participation in these proceedings, which costs the Court has jurisdiction to award.
6. The Application was opposed by the Judgment Debtors through a Replying Affidavit sworn on 28th April, 2025 by Wilson Kipkosgei Maina, a Director of the Judgment Debtors. He deponed that the Application offends the mandatory provisions of Section 94 of the Civil Procedure Act as well as Rule 9 of the Advocate (Practice) Rules. He averred that the decree sought to be executed has never been



served. Further, that the Decree Holder seeks to alter the judgment by asking for an amount that was not granted or awarded contrary to Order 21 Rule 3(3) of the Civil Procedure Rules.

7. Mr. Maina further deponed that the Bill of Costs dated 21st March, 2024 is yet to be taxed and there is no reason why the execution cannot await the taxation of costs and ruling of the Court of Appeal in Civil Application No. 54 of 2024 where the funds in issue were offered as security. He averred that the account is in the joint names of the parties' advocates thus there is no urgency in executing the matter before taxation. Further, that the amount of interest has not been ascertained thus the basis of the amounts sought to be attached is unknown. He alleged that the Decree Holder is only driven by malice and asked that the application herein be stayed pending the determination of Eldoret Court of Appel Civil Application No. 54 of 2024.
8. In further response, the Judgment Debtors also raised a Preliminary Objection dated 29th April, 2024 on grounds that: -
 - i. That the aforesaid application is premature and incurably incompetent and amounts to abuse of the court process.
 - ii. That the aforesaid application offends the mandatory provisions of section 94 of the Civil Procedure Act.

Submissions:

Defendant/Decree Holder's Submissions;

9. The Application was canvassed orally on 29th February, 2025 where Mr. Ngaira for the Decree Holder submitted that per the Decree annexed to the Supporting Affidavit, the total amount including interest came to Kshs. 24,280,000/-. Counsel submitted that the court issued the Garnishee Order Nisi on 9th April, 2025 as sought per prayer No. 2 of the Motion. Counsel pointed out that the Garnishee Bank has agreed that the account exists and holds sufficient funds to settle the decretal sum. Counsel also pointed out that the Bank had expressed willingness to comply with orders of the court and asked for costs. Counsel thus submitted that the Garnishee Order Nisi should be made absolute.
10. Counsel submitted that the Judgment Debtors were confusing Garnishee Proceedings under Order 23, with execution under Order 22 of the Civil Procedure Rules (CPR). Counsel expounded that under Order 23 Rule 1, the application is made ex-parte in the first instance to secure the amounts and thereafter, under Rule 2 thereof, the Application is served on the Garnishee. Counsel argued that as required, the Decree Holder has proved that it has a judgement in its favour that has crystallized. Counsel referred to Milimani Commercial & Tax Division No. 241 of 2019, Ntandoro & Co. Advocates vs National Water Conservation & Pipeline Corporation and Kenya Commercial Bank Ltd which was the Garnishee, which sets out the process of Garnishee proceedings. Counsel submitted that Garnishee Proceedings are self-contained, elaborate and independent of Order 22 of the Civil Procedure Rules.
11. Counsel for the Decree Holder also submitted that the Preliminary objection does not amount to a Preliminary Objection. He explained that a Preliminary Objection is targeted at a specific pure point of law, which is not the case in this instant, and he termed the instant Preliminary objection a fishing expedition. Counsel submitted that Section 94 gives the court a discretionary power to allow execution before assessment of costs. That in any event, Section 94 would not apply to garnishee proceedings, thus the Preliminary objection is an abuse of court process.
12. Counsel submitted that Rule 9 of the Advocates (Practice) Rules is on coaching of witnesses and does not apply here. Counsel stated that there is no Appeal filed. Further, that the Judgment Debtors is



aware of the decree as it is annexed to the instant Motion, and that the judgment was read in open court in the presence of Mr. Kibii and his client and is even reported. Counsel contended that the figures in the judgment are known and faulted the Judgment Debtors for not pointing out where they had been amended. He reiterated that there is no order of stay of execution, and moreover, that court interests are known. Counsel argued that one year after the judgment, the Judgment Debtors have been seeking stay after stay.

13. Counsel further submitted that the authorities relied on by the Judgment Debtors do not apply in this case. Counsel cited the case of Shamsen Kenya Ltd to the effect that Section 94 is not mandatory but discretionary. He asserted that the Judgment Debtors had been given over a year to settle but had failed to do so. That there being no order of stay of execution of the judgment, nothing stops this court from making the garnishee order nisi absolute. He asked the court to allow the application.

Garnishee Bank's Submissions;

14. Mr. Atancha for the Garnishee Bank, submitted that they were not opposed to the Garnishee nisi being made absolute save for their costs, which he had earlier informed the court that were to the tune of KShs. 20,000/-.

Plaintiffs/Judgment Debtors' Submissions;

15. Mr. Kibii for the Judgment debtor however submitted that the application is premature. He reiterated that the costs of the suit and interest have not been ascertained, thus the amount sought to be attached is speculative. He submitted that 10% of 69 Million is 6.9 Million, which added to 10 Million comes to KShs. 16,900,000/-, thus the amount of KShs. 24 Million is unjustifiable and ought to be ascertained.
16. Counsel also submitted that execution in the form of garnishee or other means requires leave of court, which was not obtained in this case contrary to the mandatory provisions of Section 94 of the CPA. He added that Section 94 aforesaid requires that for leave to execute to be granted before taxation, the court should be satisfied that execution is necessary and urgent. That there is no Certificate of Costs to show that taxation was done, and still no ground has been given to warrant the urgency of execution before taxation.
17. Counsel also argued that the Judgment Debtors are not in control of the funds as the account is in the joint names of the advocates on record. In addition, that the funds were offered as security for the due performance of the decree in Eldoret Court of Appeal Civil Application No. 54 of 2024, whose ruling is scheduled for 16th May, 2025 hence the need for stay pending that outcome.
18. Counsel further submitted that this court has a duty to protect the interests of all parties. Counsel prayed that the Application be dismissed for lack of merit and the Preliminary objection upheld. He faulted the Motion for reason that the supporting affidavit was sworn by an advocate and not the Decree Holder, and thus in violation of Rule 9 of the Advocates (Practice) Rules. He further asked the court not to allow execution, but to await taxation.

Defendant/Decree Holder's Submissions in Response;

19. In his rejoinder, Mr. Ngaira submitted that there is nothing wrong with an advocate swearing an affidavit on facts within her knowledge. Counsel submitted that the order for security for the due performance of the decree was made by this court and not the Court of Appeal. He contended that the judgment has been in court for over a year thus it is not right to say that there is no urgency.
20. Counsel pointed out that the decree is annexed to the Application but the Judgment Debtors had not offered a different figure. He was of the opinion that the Judgment Debtors' intention is to delay



these proceedings hoping for a favourable outcome in the superior court. Counsel asserted that a party cannot dictate to court when to deliver its ruling. He urged the court to allow the application.

Analysis and Determination:

21. I have keenly considered the Application, the responses thereto including the Preliminary objection dated 29th April, 2024 as well as the rival submissions tendered in court, the authorities cited and the relevant provisions of the law. I am of the opinion that the following 3 issues arise for determination: -
- i. Whether the Judgment Debtors' PO is sustainable and is merited;
 - ii. Whether the Garnishee Order nisi should be made absolute or be set aside; and
 - iii. Who should bear the costs of this Application?

Whether the Judgment Debtors' PO is sustainable and is merited?

22. In their Preliminary objection dated 29th April, 2024, the Judgment Debtors raised two grounds of objection; that the application is premature, incurably incompetent and amounts to abuse of the court process; and secondly, that the application offends the mandatory provisions of Section 94 of the Civil Procedure Act (CPA).
23. The case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 is instructive on the issue of what constitutes a preliminary objection. The court held that: -
- “... a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”
24. Sir Charles Newbold P. stated:-
- “A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.”
25. Fairly recently, the Supreme Court lent its voice to this discourse in the case of *Hassan Ali Joho & another vs Suleiman Said Shabal & 2 Others* (2014) eKLR, where it held that:-
- “A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”
26. Thus a Preliminary objection may only be raised on a pure question of law. To discern whether an objection is a point of law, the court has to be satisfied that the determination of the Preliminary objection is not predicated or reliant on matters of fact or evidence. If the court must rely on or refer to matters of fact and evidence, then the objection falls outside the ambit of a Preliminary objection.
27. On to the merits of the Preliminary objection, the first ground of the Preliminary objection is that the application is premature and incurably incompetent and amounts to abuse of the court process. There is no proper way for this court to reach a determination on this issue without descending into



factual and/or evidential matters. It is for this reason that the first ground of the Judgment Debtors Preliminary objection is disregarded.

28. The second ground of objection is that the Application offends the mandatory provisions of Section 94 of the CPA which provides that:-

94. Execution of decree of High Court before costs ascertained

Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

29. There is no doubt that section 94 of the Civil Procedure Act contemplates a scenario where the court's decree may be executed without ascertainment of costs. Courts have on several occasions held that for execution to proceed prior to taxation and/ascertainment of costs, leave of the Court must be granted. Courts have further held that the application is meant to give the opposing party an opportunity to be heard. Execution of decrees and orders is provided for under Order 22 of the Civil Procedure Rules.
30. I have looked at the application herein. The same has not been made pursuant to the provisions of Order 22. Instead, the application is brought under Order 23 Rules 1 and 2 of the Civil Procedure Rules which deals with the attachment of debts and deposits. The Black's Law Dictionary, Seventh Edition defines 'garnishment' as follows:-

“A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party. A plaintiff initiates a garnishment action as a means of either prejudgment seizure or post judgment collection.”

31. The Black's Law Dictionary further states that: -

“Garnishee is an ... inquisitional proceeding, affording a harsh and extraordinary remedy.

It is an anomaly, a statutory invention sui generis, with no affinity to any action known to common law... It is a method of seizure; but it is not a 'levy' in the usual acceptance of that term. It is a proceeding by which a diligent creditor may legally obtain preference over other creditors; and it is in the nature of a creditor's bill, or a sequestration of a debtor in the hands of his debtor.” 38 C.J.S.

Garnishment & 3, at 248 – 50 (1996).”

32. 'Sui generis' means of its own kind or unique or peculiar. Therefore, in my view, section 94 of the Civil Procedure Act does not apply since the same is not an execution of a decree under Order 22 of the Civil Procedure Rules. I am therefore not persuaded that the present garnishee proceedings are premature as submitted by counsel for the judgment- Debtors.

Consequently, the second ground of the Judgment Debtors' preliminary objection is unmerited and is overruled.



Whether the Garnishee Order nisi should be made absolute, or whether the Garnishee order nisi should be set aside;

33. From the pleadings and submissions filed by the parties, I note that the court is called upon to determine whether the Garnishee Order nisi should be made absolute or it should be set aside. The law that governs Applications for a garnishee order is premised under Order 23 of the Civil Procedure Rules, which at Rule 1 which provides as follows: -

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 salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (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 may be sufficient to satisfy the decree together with the costs aforesaid.

34. Mativo J. in *Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)* [2021] eKLR, explained that the [*Civil Procedure Act*](#) provides for the enforcement of judgments and orders. Specifically, Order 22 provides for ordinary execution of decrees and Orders while order 23 provides for attachment of debts.

35. Although both processes emanate from a Decree of Court that is due and owing, garnishee proceedings are a special process by which a Decree Holder may attach debts due in satisfaction of the judgment debt. Garnishee proceedings involve the attachment of a debt due from a third party (the Garnishee) to the judgment debtor, and the use of the amount of that debt in liquidating the judgment debt. It is for this reason that garnishee proceedings are separately regulated under Order 23 instead of being included under ordinary execution processes under Order 22 of the Civil Procedure Rules.

36. In the *Nyandoro & Company Case (Supra)*, the learned Judge expounded on garnishee proceedings thus: -

“9. . A reading of Order 23 of the Civil Procedure rules shows that it comprises of self-contained provisions which are distinct and independent of Order 22. It prescribes two steps in Garnishee proceedings. The first is a Garnishee Order nisi. Nisi is Norman-French. It means ‘unless.’ It is an order to the bank communicating that unless there is some sufficient reason why the bank should not pay the decree, it will be required to pay money held in the Judgement Debtor’s account. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to the creditor might be unfair by preferring him to other creditors. If no sufficient reason appears, the garnishee order is made absolute, to pay to the Judgment-Creditor, or into court, whichever is more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if the Judgment-Debtor directed the bank to pay it.



10. 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. The money at the bank is then said to be ‘attached,’ 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.
11. A garnishee order nisi binds the debt in the hands of the garnishee. The rule operates as soon as the garnishee order nisi is served on the garnishee. By the same order or the subsequent order, the court may order the garnishee to appear before the court to show cause why he or she shall not pay to the decree holder the debt due from him or her to the judgment debtor or so much of the debt as may be sufficient to satisfy the decree with costs. The garnishee order nisi is also served on the Judgment-Debtor. Where the garnishee does not dispute the debt due or claimed to be due from him or her to the Judgment-Debtor or if he or she does not appear upon the day of hearing named in the garnishee order nisi, the court may order execution against the goods of the garnishee together with the costs of the garnishee proceedings. Where the garnishee disputes his or her liability, the court, instead of making an order that execution be levied, may order that the issue or question necessary for determining his or her indebtedness should be tried and determined. The garnishee may suggest or advance the argument that the debt sought to be attached belongs to a third party. Subsequent to that, the court may order the third-party to appear and be heard.
12. As stated above, Order 23 is a self-contained rule and prescribes its own procedures. There is no provision under Order 23 requiring a Notice to Show Cause to Issue. The only requirement under Order 23 Rule 1 is the existence of an unsatisfied decree, the amount and another person is indebted to the Judgment-Debtor. There is no argument before me suggesting that the procedures laid down in Order 23 have been not been followed. The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with. The decree must be allowed to be executed, and unless an extraordinary case is made out, no stay or setting aside should be granted.”
37. Under Order 23 of the Civil Procedure Rules and from the above cited case, all that an applicant is required to demonstrate for the court to issue a Garnishee Order is that he has a valid decree against a Judgment Debtor which remains unsatisfied, and that a third party is holding funds on behalf of the Judgment Debtor which can satisfy the decree either wholly or in part. Once these conditions are met, the court which issued the decree may issue a Garnishee Order to attach the funds that are held by the third party.
38. The first consideration therefore is that there is a valid judgment against the Judgment Debtors entered in favour of the Decree Holder. That is not in doubt, as the judgement in this case was delivered on



14th March, 2024. A decree to that effect was extracted on the same date and was annexed to the instant Motion.

39. The second consideration as per Order 23 Rule 1(2), is that the garnishee order nisi had been appropriately served a clear 7 days before the hearing. In this regard, Mr. Ngaira Advocate for the Decree Holder swore and filed an Affidavit of Service dated 23rd April, 2025 where he deponed that he served the Garnishee Bank on 10th April, 2025 and the Judgment debtors on 23rd April, 2025. The fact of service is not disputed, therefore, that requirement has been fulfilled.
40. The final requirement is that the garnishee does not dispute the debt due or claimed to be due to the Judgment-Debtor. The Garnishee has stated in its Affidavit that the Judgment Debtors' account domiciled at its Kitengela Branch, Kajiado County has sufficient funds to satisfy the decretal sum. It has annexed a Statement of Account dated 23rd April, 2025 showing that as at that date, the account attached had a book balance of KShs. 64,878,383.99/-. The Garnishee's statement has not been objected to and there is no other statement of accounts to dislodge this position by the Garnishee.
41. It has also not been claimed that a third party's rights are involved. The allegation that the funds are not in the control of the Judgment debtor is irrelevant since the funds were the purchase price paid to the Decree holder herein, which this court decreed was to be refunded to the Judgment Debtors, less the 10% deposit that was forfeited.
42. I have perused the record of this suit and confirmed that the money in the account was deposited per the orders of this court made in the Ruling delivered on 24th September, 2020 where the court held that: -

“Having considered the plaintiff's application together with the rival submissions by counsel I find that the balance of convenience tilts in favour of the defendant who is the registered owner of the suit land and order that the status quo obtaining as at 11th June 2020 be maintained to preserve the substratum of the case pending the hearing and determination of this case. I further order that in the interest of justice and to secure the interest of both parties the defendant to deposit in a joint interest earning account of the advocates on record for the parties the amount paid by the plaintiff in respect of the disputed parcel within the next 30 days.”
43. It is not true therefore that the funds in that account were offered as security for the due performance of the decree in Civil Appeal No. 54 of 2024. Therefore, even if indeed Eldoret Court of Appeal Civil Application No. 54 of 2024 is pending ruling scheduled for 16th May, 2025, I do not see how that relates to the instant application. And even if the Judgment Debtors now seeks to offer those funds as security, the only amount available to the Judgment Debtors to so offer in court ought not include the money due to the Decree Holder herein, which is the 10% deposit and the general damages of KShs. 10,000,000/-.
44. The Judgment Debtors have no right or authority to offer more money than that which is due to them from the judgment of this court which issued the directive to deposit the funds in the said account. They were in fact deposited as security for the due performance of the decree that would eventually be passed by this court. In any event, the Judgment Debtors have not presented any evidence that the Decree Holder would be unable to refund this amount should the Court of Appeal overturn the decision of this court.
45. In the circumstances, I am satisfied the Garnishee has shown that it is able to fully satisfy the decretal sum.



46. On the contention that the computation is erroneous more so in respect of costs, I note that this can be remedied by Section 99 of the CPA, which provides that:-

99. Amendment of judgments, decrees or orders
Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.

47. Any arithmetic errors on the amount claimed can thus be corrected as provided by section 99 of the *Civil Procedure Act* without voiding the Decree.

48. I feel also that I should address the allegations that the Application herein contravenes the provisions of Rule 9 of the Advocates (Practice) Rules. The said provision reads:-

9.

(1) No advocate may coach or permit the coaching of any witness in the evidence he will or may give before any court, tribunal or arbitrator.

(2) No advocate may call to give evidence before any court, tribunal or arbitrator a witness whom he knows to have been coached in the evidence he is to give without first informing the court, tribunal or arbitrator of the full circumstances.

49. I agree with Counsel for the Decree Holder therefore that the said provisions has no bearing on the instant Motion in any way.

50. Arising from the above reasons, I find that the notice of motion dated 3rd April, 2025 is merited and is allowed.

Who should bear the costs of this Application?

51. The law on Costs is that costs follow the event, and they are awarded at the discretion of the Honourable Court. This is per Section 27(1) of the *Civil Procedure Act*, which provides that: -

27. Costs

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers provided that the costs of any action, cause or other matter in issue shall follow the event unless the court or judge shall for good reason otherwise order.”

52. This means that the party who, on the whole succeeds in the action is entitled to costs thereof. The event in the instant case is the application herein. Therefore, the Decree-Holder is awarded costs of the application. I also note that the Garnishee Bank was unwittingly dragged into these proceedings through no fault of its own. On the day of hearing of the application, counsel for the Garnishee



informed the court that they were seeking costs of Kshs. 20,000/= being costs for participating in these proceedings. The Garnishee shall thus have its costs of Kshs. 20,000/=. For the same reason that these proceedings were made necessary due to the Judgment Debtor's inaction, the Garnishee Bank's costs herein will be borne by the Judgment Debtors.

Orders

53. Pursuant to the above, I hereby find merit in the Notice of Motion dated 3rd April, 2025 and the same is allowed. The Garnishee Order Nisi that was issued by this court on 9th April, 2025 is hereby made absolute.
54. Costs of the application are awarded to the Decree-Holder and costs of Kshs. 20,000/= are awarded to the Garnishee Bank.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 19TH DAY OF MAY, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

