



Andrew B. Khakula t/a J. S Khakula & Co. Advocates v Trident Insurance Company Limited; KCB Bank & another (Garnishee) (Miscellaneous Application E007 of 2023) [2025] KEHC 8416 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E007 OF 2023
DO CHEPKWONY, J
JUNE 10, 2025**

BETWEEN

**ANDREW B. KHAKULA T/A J. S KHAKULA & CO.
ADVOCATES APPLICANT**

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

AND

KCB BANK GARNISHEE

SAFARICOM PLC GARNISHEE

RULING

1. The Applicant/Decree Holder filed Notice of Motion application dated 23rd April, 2025 pursuant to Section 3A of the [Civil Procedure Act](#) and Order 23 Rules (1) and (2), and Order 51 (1) of the [Civil Procedure Rules](#). It seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Spent.
 - e. That the aforesaid Garnishees do appear in court to dispute that they hold the above stated amount or any part thereof for and on behalf of the Judgment Debtor and in default this Honourable Court do issue Garnishee Order Absolute and order execution against the garnishees for the above stated amount or part thereof as is sufficient to satisfy the Decree



herein together with costs of the garnishee proceedings and a further order that the said amount be paid to the Applicant/Decree Holder through its advocates on record by way of Real Time Gross Settlement (RTGS) to wit ABK Advocates Client Account, Sidian Bank Limited, Bungoma Branch, Account No. XXXXXXXXXXXXXXXX.

- f. That the costs of this application be on the judgment debtor in any event.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Dr. Andrew Khakula sworn on the instant date. According to the Applicant the Decree Holder, it obtained Judgment against the Respondent on 1st April, 2024 for a decretal sum of Kshs. 56,525.00 which the Respondent has failed and/or refused to pay which Decree arose from Certificate of Taxation dated 9th August, 2024. The Applicant also seeks his costs of Kshs.30,000/= for the garnishee proceedings to be borne by the Respondent.
 3. The Applicant holds that the Respondent operates a bank account held by KCB Bank Account No. XXXXXXXXXXX, the 1st Garnishee herein and Safaricom Paybill No. XXXXXXXX which is held by the 2nd Garnishee. The Applicant is apprehensive that the Respondent may withdraw funds from the said accounts hence make it impossible for the Decree Holder to execute the decree. The Applicant/Decree Holder holds that it will be in the interest of justice that the application be allowed as prayed.
 4. The 1st Garnishee filed a Replying Affidavit which was sworn by Wycliffe Ochieng, its Branch Manager at High Court Branch, sworn on 27th May, 2025. The 1st Garnishee confirms that the Respondent holds and operates the Bank Account Number XXXXXXXXXXX but as at 5th May, 2025, the Judgment Debtor held a debit balance of Kshs. -98,654,203.46 (negative Ninety Eight Million, Six Hundred and Fifty Four Thousand, Two Hundred and Three plus Forty Six Cents) as indicated in the Certificate of balance. He further holds that the Judgment Debtor has an overdraft loan facility of Kshs. 100,000,000/= which remains due and owing and thus have a priority interest in all monies available in the account. For this reason, the 1st Garnishee contends that it is not in a position to attach or make payment sought by the Applicant but seeks that costs of the garnishee proceedings be borne by the Judgment Debtor and the same to be recovered in the same account.
 5. The 2nd Garnishee, Safaricom PLC also filed a Replying Affidavit which was sworn by Cerere Kihoro, its Legal Counsel, on 19th May, 2025. It confirms that a Decree was issued in this matter for the sum of Kshs. 56,525.00 to which the Applicant is seeking a Garnishee Order Nisi for attachment together with costs. The 2nd Garnishee confirms that it is holding the said pay bill for the Judgment Debtor which has sufficient funds to satisfy the whole decretal sum, and has in fact set aside the sum of Kshs. 86,525.00 from the Respondent's account and deposited it in a special utility account as is required of its role. The Garnishee contends that it is ready, able and willing to remit the said decretal sum and its costs of the garnishee application of Kshs. 30,000/= together with the applicable transaction costs which the court may award.

Analysis and Determination

6. Having listened to the oral submissions by counsel for the Applicant and having read through the grounds in the Supporting Affidavit filed by the Applicant and the Replying Affidavits sworn by the 1st and 2nd Garnishees respectively, the Court finds that the main issue for determination is whether the application has merit to warrant the orders sought.
7. Apart from the Garnishees, the Respondent/Judgment Debtor did not file any response to the Garnishee application. The 1st Garnishee conformed that the Respondent/Judgment debtor holds an Account No. XXXXXXXXXXX but opposed the application because as at 5th May, 2025, it had a debit



balance of Kshs.98,654,203.46 as demonstrated by the Certificate of balance attached and an overdraft loan of Kshs.1,000,000/= in which it has a priority interest. The 2nd Garnishee confirmed holding a paybill for the Respondent/Judgment Debtor with sufficient amounts to satisfy the decretal sum owed by it.

8. Given that the Respondent/Judgment Debtor has not filed any response to oppose the application and the 2nd Garnishee has confirmed its readiness and ability to settle the decretal sum owing to the fact that the Respondent's Paybill Number XXXXXX held by them has sufficient funds, the Court finds the application is unopposed and proceeds to find the same meritable.
9. The other issue for determination is with regard to costs, where Counsel for the Applicant and the Garnishee have sought to be awarded costs of Kshs. 30,000/= each. It is trite that costs follow an event and the law on costs is enshrined under Section 27 of the Civil Procedure Act which provides as follows:-

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- (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 give all the necessary directions for the purposes aforesaid; and the fact that the court 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 or issue shall follow the event unless the court or Judge shall for good reason otherwise direct.”

10. In regard to the above cited provision, it is trite that the issue of costs is usually in the discretion of a court and it is meant to compensate a successful party in a case following the basic principle that costs must follow an event. However, courts have appreciated that in granting costs to a party in a suit, this principle should not be used to penalize the losing party. In the case of *Republic –vs- Rosemary Wairimu Munene, Ex-Parte Applicant –vs- Ihururu Dairy Farmers Co-operative Society Ltd* Judicial Review Application No.6 of 2014 the Court in recognizing this held as follows:-

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.

11. Paragraph 14(b) of part A of the sixth Schedule of the Advocates Remuneration Order, provides that instructions fees to Institute or Defend garnishee proceedings shall not be less than Kshs. 14,000/-
12. In the instant case, the Applicant/Judgment Creditor instituted the Garnishee proceedings while the Garnishees instructed a Firms of Advocates to defend them and they filed Notices of Appointment of Advocates alongside Replying Affidavits in response to the application and attended court for hearing of the same. Having done this, these parties require compensation. However, the Court has considered the amount claimed by each one of this as costs and submitted by each counsel for Applicant and the Garnishee as excessive that it would amount to unjust enrichment on the part of the Advocates who have not ascertained how they arrived at the figures they have each sought to be awarded as costs thus detrimental to the Respondent/Judgment Debtor.



13. In exercise of its discretion, and in the interest of justice, this Court finds a figure of Kshs. 20,000/= for the Applicant and the sum of Kshs. 15,000.00 each for the 1st and 2nd Garnishee respectively being reasonable and proceeds to order that they each be paid the said sum so as to avoid the filing of multiple applications and put this matter to rest.

14. The court therefore makes the following orders:-

- a. Garnishee Order Nisi be and is hereby made absolute for the 2nd Garnishee to settle the outstanding decretal sum of Kshs. 56,525/= being the decretal sum together with costs of Kshs. 20,000/= by way of Real Time Gross Settlement (RTGS) to wit ABK Advocates Client Account, Sidian Bank Limited, Bungoma Branch, Account No. XXXXXXXXXXXXXXXX.
- b. The Respondent/Judgment Debtor to further pay the 1st Garnishee and the 2nd Garnishee Kshs. 15,000/= each as costs of the Garnishee proceedings.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10TH DAY OF JUNE, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Matata holding brief for M/S Otieno counsel for 2nd Garnishee

Court Assistant - Martin

