



REPUBLIC OF KENYA



**Nyandieka and Associates Advocates v Dock Workeres Union; Bandari Sacco Limited, Moi Avenue Branch Mombasa (Garnishee) (Civil Miscellaneous Application E094 of 2024) [2025] KEHC 12134 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12134 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL MISCELLANEOUS APPLICATION E094 OF 2024**

**F WANGARI, J**

**JUNE 9, 2025**

**BETWEEN**

**NYANDIEKA AND ASSOCIATES ADVOCATES ..... APPLICANT**

**AND**

**DOCK WORKERES UNION ..... RESPONDENT**

**AND**

**BANDARI SACCO LIMITED, MOI AVENUE BRANCH  
MOMBASA ..... GARNISHEE**

**RULING**

1. The Applicant filed a Notice of Motion Application dated 13/05/2024. The application is brought pursuant to various provisions of the law. It seeks the following orders: -
  - a. Spent
  - b. Spent
  - c. Spent
  - d. That Garnishee Order Nisi be made absolute for Kshs. 7,000,000 plus interest owed by the J.D to the J.C against the J. C's Petitioner's Bank A/c No. 1000962 domiciled at Bandari Sacco Limited, Moi Avenue Branch, Mombasa.
  - e. Costs of the application be borne by the Respondent
2. The grounds in support of the application are briefly that by virtue of the Advocate-Client Bill of Costs filed after legal services offered by the Applicant to the Respondent, a consent was reached for Kshs.



7,000,000/=. The Respondent have failed to settle the decretal amount. The Respondent's account held by the Garnishee is sufficient to settle the said decretal sum.

3. Upon receiving the Garnishee Nisi Order, the Garnishee filed its response dated 18/06/2024 denying that it held such funds as alleged by the Applicant. It was stated that the Respondent had a loan facility advanced by the Garnishee, amounting to Kshs. 38,000,000/=:, the amount which was still due and owing to the Garnishee. It was further stated that the Garnishee did not owe the Respondent any funds capable of being attached vide these proceedings.
4. The Applicant filed a Further Affidavit dated 24/06/2024. The same was done without leave of court. The same is hereby expunged from the court records.
5. Directions were taken to have the application disposed off by way of written submissions. It is only the Applicant who filed its submissions dated 15/08/2024. I have given due consideration to the same.

### **Analysis**

6. This Court has carefully considered the application, the response, the Applicant's submissions, the authorities cited as well as the law and the following issues falls for this Court's determination: -
  - a. Whether the Garnishee Nisi Absolute should issue.
  - b. Who bears the costs?
7. Garnishee proceedings are provided for under Order 23 Rule (1) of the [Civil Procedure Rules 2010](#) as follows: -

### **Order for the attachment of debts**

- (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 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.
8. In the case of [Otieno Ragot & Co Advocates V City Council of Nairobi](#) [2015] eKLR it was observed that,

"Garnishee proceedings are in their nature proceedings whereby the Garnishee is required to prove whether or not the garnishee is indebted to the judgment-debtor. Ordinarily, the judgment-creditor only makes allegations of the Garnishee's indebtedness based on sound evidence whereby the burden of proof shifts to the Garnishee to prove otherwise. In this regard, to discharge that burden, the Garnishee has to produce strong, sufficient and convincing evidence that the funds in its hands or the debt are not due or payable."
9. It has not been disputed that the Respondent owes the Applicant the money claimed. It is also not in issue that the Respondent operates an account with the Garnishee. What is in issue is whether the Garnishee has funds held on behalf of the Respondent that can satisfy the decretal sum.



10. The Garnishee stated that the Respondent has a loan of Kshs. 38,000,000/=. It is important to note that the loan was taken before the consent was entered into between the Applicant and the Respondent. I therefore disagree with the submissions by the Applicant that the loan was taken to frustrate the consent order.
  11. I have perused through the Respondent's account summary with the Garnishee with the following balances as at 14/06/2024;
    - a. FOSA ordinary savings Kshs. 56,697/=
    - b. Shares Kshs. 10,000/=
    - c. Special Loan (repayable in 60 months) Kshs. 32,000,000/= with monthly instalment of Kshs. 905,333.33/= w.e.f 01/01/2024.
    - d. Development Loan repayable in 24 months Kshs. 6,300,000/= with monthly instalment of Kshs. 328,125/= w.e.f. 01/03/2024.
  12. From the statement as summarized herein above, it appears as if there are no funds to meet the decretal sum including repayment of the loan facilities. What the Garnishee is not disclosing is that the Respondent's accounts receive on monthly basis monies deducted from the unionisable employees who are not members of the Respondent Union, being the Dock Workers Union (Deduction of Agency Fees) as per the Gazette Notice dated 17/11/2023.
  13. The Garnishee deliberately failed to provide the accounts statements showing the debit and credit entries, as they would have shown the amounts deducted by Kenya Ports Authority as per the notice stated herein above. Every month, the Respondent receives into its accounts deductions from KPA employees.
  14. I have also considered that there is a pending loan payable to the Garnishee. The money that can be claimed by the Garnishee is the monthly instalments as they fall due. I find that the Garnishee has failed to make full disclosure on the money received in the Respondent's account thus aiding the Respondent in avoiding to pay the decretal sum.
  15. On costs, the same follows the event. The application having had merits, I exercise the discretion of the court and award costs of the application to the Applicant and the Garnishee.
  16. The upshot of the foregoing is that the court renders itself as hereunder: -
    - a. The Notice of Motion Application dated 13/05/2024 has merits and is allowed as hereunder;
      - i. Garnishee Order Absolute do hereby issue as prayed in prayer no. (d) of the application.
    - b. Costs to the Applicant and the Garnishee.
- It is so ordered.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of;



N/A by the Applicant

N/A by the Respondent

Ms. Getrude, Court Assistant

NB: Ruling released to the registry. Parties be notified.

