



Wambua Kilonzo & Company Advocates v Trident Insurance Company Limited; Safaricom Limited (Garnishee) (Miscellaneous Application E030 of 2024) [2025] KEHC 9517 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E030 OF 2024
AN ONGERI, J
JULY 2, 2025**

BETWEEN

WAMBUA KILONZO & COMPANY ADVOCATES APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

AND

SAFARICOM LIMITED GARNISHEE

RULING

1. The application coming for consideration in this Ruling is the one dated 6th May 2025, seeking:
 - I. A stay of the Garnishee application scheduled for hearing.
 - II. Setting aside of the judgment entered on 19th March 2025 and the ruling by the Deputy Registrar.
 - III. A fresh hearing of the Respondent's Bill of Costs dated 27th September 2024 before the Taxing Master.
2. The application is supported by the affidavit of JAMES ONJORO, who deposed as follows:
 - (i) That I am the legal officer of Trident Insurance, and hence competent and authorized to swear this affidavit.
 - (ii) That the Respondent's Bill of Costs dated 27th September 2024 came for taxation on 25th October 2024, and the court granted the same via its ruling on 9th December 2024.



- (iii) That the Applicant only became aware of the taxation through a subsequent Garnishee application scheduled for 7th May 2025, after learning of the matter from the Garnishee.
 - (iv) That our advocates extracted pleadings from the case tracking system and confirmed:
 - (a) The Bill of Costs was never served upon the Applicant.
 - (b) The Bill of Costs does not bear the Applicant's rubber stamp (as pleadings are served via reception and stamped).
 - (c) I am not mandated to receive pleadings from third parties.
 - (d) The Motion Application dated 13th January 2025 was never served upon the Applicant.
 - (e) The email addresses exhibited by the Respondent for service do not exist.
 - (f) The Garnishee application dated 23rd April 2025 was served on the Applicant, though it bears the Garnishee's stamp.
 - (v) That the Respondent deliberately avoided serving the Bill of Costs to gain an ex-parte advantage.
 - (vi) That the Applicant will suffer irreparable loss if the Garnishee application proceeds.
 - (vii) That we pray for a stay of the Garnishee application, judgment, and ruling to allow a fresh hearing of the Bill of Costs.
 - (viii) That the orders sought will not prejudice the Respondent.
 - (ix) That unless granted, the Applicant will suffer loss and damage.
 - (x) That I swear this affidavit in support of the application.
 - (xi) That marked "JO1" are paginated copies of relevant documents.
 - (xii) That the contents are true to the best of my knowledge.
3. The Respondent opposed the application via a Replying Affidavit by Geoffrey Kilonzo, who deposed:
- (i) That I am an advocate for the Respondent and competent to swear this affidavit.
 - (ii) That the application:
 - i. Lacks merit.
 - ii. Aims to deny the Respondent the fruits of litigation.
 - iii. Is brought in bad faith.
 - iv. Is incompetent and an abuse of court process.
 - (iii) That the Applicant was duly served:
 - i. The Bill of Costs and Taxation Notice via email (info@trident.co.ke) on 15/10/24 (Annex GK-1).
 - ii. The Certificate of Taxation was served physically on 14/12/24 (Annex GK-2).
 - iii. The Application for judgment was emailed on 20/2/25 (Annex GK-3).



- iv. The Decree was emailed on 11/4/25 (Annex GK-4).
 - v. The Garnishee Application was served physically on 29/4/25 (Annex GK-5).
- (iv) That the Applicant's claims are false and meant to mislead the court.
 - (v) That allowing the application would encourage frivolous delays.
 - (vi) That the Applicant's indolence caused its non-attendance in court.
 - (vii) That the Respondent deserves to enjoy the judgment fruits.
 - (viii) That the Bill of Costs was properly taxed under the Advocates Remuneration Order.
 - (ix) That the application should be dismissed with costs.
4. The Garnishee (Safaricom) filed a Replying Affidavit by Stella Mutindi Mutua, who deposed:
- (i) That I am a Senior Merchant Officer at Safaricom and competent to swear this affidavit.
 - (ii) That the Garnishee Order Nisi was served on 29/4/25, requiring attachment of funds in Paybill 985850 (held by the Respondent).
 - (iii) That the account balance as of 29/4/25 is sufficient to cover the decretal sum of KShs. 294,185/- (Annex SMM-1 & SMM-2).
 - (iv) That Safaricom will comply with the Garnishee Order Absolute upon issuance.
 - (v) That Safaricom seeks costs for the proceedings.
5. The Applicant filed a Supplementary Affidavit, reiterating:
- i. That the Respondent's advocate misled the court regarding service.
 - ii. That the Bill of Costs was never served (no stamp proof).
 - iii. That reopening taxation is in the interest of justice.
 - iv. That the Respondent cannot preempt the outcome of a fresh hearing.
6. The issues for determination in this application are as follows;
- i. Whether the Applicant was properly served with the Bill of Costs and subsequent pleadings.
 - ii. Whether the Garnishee proceedings should be stayed.
 - iii. Whether the judgment and taxation ruling should be set aside for a fresh hearing.
7. On the issue as to whether the Applicant was served with the Bill of Costs and subsequent pleadings, under Order 5 Rule 2 of the Civil Procedure Rules, service of pleadings must be effected in a manner That ensures the recipient has actual notice.
8. The Respondent claims to have served the Bill of Costs via email (info@trident.co.ke) on 15/10/2024, followed by physical service of the Certificate of Taxation on 14/12/2024.
9. However, the Applicant disputes this, asserting That the email addresses provided do not exist and That no physical copies bearing their reception stamp were presented.
10. This raises a critical question of whether service was properly effected.



11. The Court of Appeal in *Bernard Murage v. Fine Serve Africa Ltd & 3 Others* [2015] eKLR emphasized That “service of court process is a fundamental step in litigation, and any defect in service may render subsequent proceedings a nullity.”
12. Similarly, in *James Kanyiita Nderitu & Another v. Marios Philotas Ghikas & Another* [2016] eKLR, the court held That “where service is disputed, the burden lies on the party alleging service to prove it was properly effected.”
13. In this case, the Respondent has exhibited email correspondences (Annexes GK-1 to GK-5) as proof of service.
14. However, the Applicant contends That these emails were never received and That their internal records (including the absence of a rubber stamp on pleadings) confirm non-service.
15. The principle in *Technomedia Ltd v. Francis Mwangi Njoroge* [2019] eKLR is instructive: “Electronic service is valid, but the sender must demonstrate That the email was successfully delivered and received.”
16. The Respondent has not provided read receipts or other conclusive evidence That the emails were actually received by the Applicant.
17. Additionally, the Applicant’s argument That the Garnishee proceedings were the first time they became aware of the taxation aligns with the holding in *Equity Bank Ltd v. Bruce Mutie Mutuku t/a Diani Tour Travel* [2016] eKLR, where the court set aside a judgment entered in default, stating That “a party should not be condemned unheard due to defective service.”
18. On the issue of setting aside the judgment and taxation ruling, Order 12 Rule 7 of the Civil Procedure Rules grants the court discretion to set aside an ex parte judgment where sufficient cause is shown.
19. In *James Kanyiita Nderitu* (supra), the court held That “the primary consideration is whether the applicant has a reasonable defence and whether justice demands a rehearing.”
20. In the current case, the Applicant has demonstrated a bona fide intention to challenge the Bill of Costs, and the interests of justice favour allowing a fresh hearing before the Taxing Master.
21. Regarding the Garnishee proceedings, the court in *Trust Bank Ltd v. Paramount Universal Bank Ltd & 2 Others* [2009] eKLR held That “a garnishee order is an enforcement mechanism, and if the underlying judgment is challenged, the court may stay garnishee proceedings to prevent irreparable harm.”
22. Since the validity of the judgment is in question, it is just to stay the garnishee application pending the rehearing of the Bill of Costs.
23. In conclusion, the application succeeds as follows;
 - i. That the Garnishee proceedings scheduled are hereby stayed pending the rehearing of the Bill of Costs.
 - ii. That the judgment entered on 19th March 2025 and the ruling of the Deputy Registrar are set aside, and the Respondent’s Bill of Costs dated 27th September 2024 shall be reheard before the Taxing Master.
 - iii. That the Applicant shall file and serve its objections to the Bill of Costs within 14 days of this ruling.



- iv. The entire bill to be taxed within
- v. That each party shall bear its own costs given the disputed nature of service and the need to ensure fairness.
- vi. The order nisi is extended.

24. The order to apply in Misc. Application E031 and E035 of 2024

DATED, SIGNED AND DELIVERED THIS 2ND JULY 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

.....**for Applicant**

.....**for Respondent**

.....**for Garnishee**

Page 4 of 4

