



Muriuki t/a Gitonga Muriuki & Co Advocates v Ufundi Savings & Credit Co-operative Society Limited; Co-op Holdings Co-operative Society Limited (Garnishee) (Miscellaneous Application E1244 of 2023) [2025] KEHC 12873 (KLR) (Civ) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12873 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E1244 OF 2023
JN MULWA, J
SEPTEMBER 18, 2025

BETWEEN

**GITONGA KITHINJI MURIUKI T/A GITONGA MURIUKI & CO
ADVOCATES APPLICANT**

AND

**UFUNDI SAVINGS & CREDIT CO-OPERATIVE SOCIETY
LIMITED RESPONDENT**

AND

CO-OP HOLDINGS CO-OPERATIVE SOCIETY LIMITED GARNISHEE

RULING

1. The Applicant/Decree holder filed the instant Notice of Motion dated 1/7/2025 seeking the following orders:
 - i. Spent
 - ii. That this Honourable Court be pleased to issue a prohibitory order, restraining the Company Secretary and/or Registrar of Co-op Holdings Co-operative Society Limited from transferring or registering any transfer of the said shares standing in the name of the Judgment-Debtor and from paying or allowing payment of any dividends, rights, bonuses or other entitlements, including the dividends, in respect of the said shares to the Judgment-Debtor, his agents, nominees or assigns or any other party.



- iii. That upon attachment, the said shares be sold, either by public auction or private treaty, under the supervision and direction of this Honourable Court, and the proceeds thereof be applied towards full or partial satisfaction of the decretal sum, including interest and costs.
 - iv. That the costs of this application be provided for.
2. The application is supported by grounds set out on its face together with the supporting affidavit of Gitonga Kithinji Muriuki, the Managing Partner of the Decree Holder sworn on an even date.
 3. The Respondent in opposition to the application filed a replying affidavit sworn by Lucy Muthama, its legal officer sworn on 16/7/2025.
 4. On 7/4/2024 the bill of costs against the Respondent was taxed at Kshs. 20,791,340.00 and subsequently a Certificate of taxation was issued on 17th April, 2024. Upon application the Certificate of taxation was adopted as judgment of the Court, on 21/3/2024 with interest at court rates from 11/4/2024, and costs. It is the said judgment on costs that is subject of the execution application.
 5. On 17/7/2025 Kamau Muturi, Advocate appeared for the Applicant/Advocate while Papa Okiring appeared for the Garnishee. There was no appearance for the Respondent (Judgment Debtor).
 6. The application is not defended by the Judgment Debtor.
 7. The court has considered the submissions by both the Garnishee and the Decree holder.
 8. The only issue before the court for determination is whether the of the JD's shares held by the Garnishee, not the dividends which have already been paid out to the JD, should be attached to satisfy the decree as issued by the court.

Analysis and Determination

9. The Applicant seeks to attach the Judgment Debtor's moveable property in the form of shares. While the Applicant holder has approached the court by way of Notice Motion, the proper manner of applying for execution by attachment of shares is provided for under Order 22 Rule 6 of the Civil Procedure Rules which provide as follows;

Order 22, rule 6, Application for execution.

Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A:(emphasis mine)
10. Form No. 14 is the application that sets out the details required under Order 22 Rule 7(2) to be provided by the Decree-holder in tabular form. Once the application has been made in the proper form has been filed, the Deputy Registrar exercising delegated authority under Order 49 rule 7(1) issues a prohibitory order and thereafter settles the terms of sale under Order 22 Rule 40 which states as follows:
11. Order 22 Rule 40. Attachment of share and other property not in possession of judgment-debtor,

40. (1) In the case of-

 - a share in the capital of a corporation; or
 - other movable property not in the possession of the judgment-debtor.



For the attachment of which specific provision is not made by these Rules the attachment shall be made by a written order prohibiting-

- i. in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon; or
- ii. in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

12. The Judgment Debtor was represented in the proceedings before the Taxing Master and the decision must have been relayed to it. There is no evidence of the judgment debtor filing reference against the decision of the taxing master. The instant application was served upon the Respondents, there is no evidence of the judgment debtor putting in a response. The court agrees with the Applicant that the instant application is for attachment of shares and that the Garnishee misapprehended the prayers as set out on the face of the application. There is evidence of the judgment debtor holding 14,524,272 shares at Co-op Holdings Co-operative Society Limited – Garnishee.

13. The Judgment Debtor has not taken any steps in settling the debt despite after the Garnishee having paid it dividends as aforesaid. This a clear case of a judgment debtor denying the decree holder the right to enjoy the fruits of its judgment.

The court has highlighted the correct procedure in securing a prohibitory order. However the Court is alive to the provisions of Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act that empowers the court to make other interlocutory orders as may appear to the court to be just and convenient, for the determination of proceedings before it, and , upon invocation of the inherent powers of the court as may be necessary for the ends of justice or to prevent abuse of the process of the court.

14. In the end, the court finds the Applicant’s application dated 1/7/2025 to be merited. It is allowed in terms of prayer 1, 2, and 3.

15. The Judgment Debtor shall bear costs of this application to both the Applicant and the Garnishee.
Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

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JANET MULWA.
JUDGE

