



**Imperial Bank of Ltd v Muturi (Civil Case E010 of 2021)
[2024] KEHC 7101 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 7101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE E010 OF 2021
SM MOHOCHI, J
MAY 23, 2024**

BETWEEN

IMPERIAL BANK OF LTD APPLICANT

AND

EZEKIEL MACHARIA MUTURI RESPONDENT

RULING

1. Having considered the application dated 8th January, 2024, together with supporting affidavit by Andrew Rutto evenly dated, the replying affidavit sworn by Owen Magata advocate dated 6th February 2024, together with the written submissions dated 7th February 2024 by the Respondent and a further affidavit by the Applicant dated 27th February, 2024. I am persuaded that the solo issue for consideration is whether execution against a party in liquidation may be commenced and concluded without leave of the Court and if the application should thus be allowed.
2. This Court disagrees with the Respondent position that he is not constrained by any law from executing the certificate of costs as served on 3rd December 2023.
3. This Court affirms that notwithstanding proper service of Notice by the Respondent the payments of creditors by a financial institution under liquidation is subject to Section 56 (2) and 55 (1) (c) and Section 57 (c) on residual payments, payable by the corporation.
4. In other words, the purpose of the *Kenya Deposit Insurance Act* was to front for deposit insurance system and for receivership and liquidation of deposit taking institutions.
5. I would hasten to add that Section 56 (3) was a bar extending to include execution processes such as this one.



6. In the instance, the Applicants must comply with Section 33 and lodge their claim with the Corporation and that the certificate of costs constitutes a debt to a liquidated deposit taking institution to rank accordingly in settlement by the liquidator.
7. I am thus persuaded to find favour with the Notice of Motion dated 8th January, 2024 and allow the same on the following terms: -
 1. The warrants of attachment of movable property dated 11th December, 2023 and the proclamation notice dated 20th December, 2023 are hereby set aside and quashed.
 2. The Respondent shall pursue the payment of costs in compliance with the law by lodging a claim to be paid within the framework of *Kenya Deposit Insurance Act* (2012).
8. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 23RD DAY OF MAY, 2024.

S. MOHOCHI

JUDGE

