



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

JUDICIAL REVIEW MISC. CAUSE NO. 05 OF 2020

**IN THE MATTER OF: APPLICATION BY INVESCO ASSURANCE COMPANY LIMITED
FOR JUDICIAL REVIEW ORDERS OF CERTORARI, PROHIBITION AND MANDAMUS**

AND

**IN THE MATTER OF: IN THE MATTER OF THE HIGH COURT
(ORGANIZATION AND ADMINISTRATION) ACT, 2015**

AND

IN THE MATTER OF: IN THE MATTER OF THE MAGISTRATE'S COURT ACT, 2015

AND

IN THE MATTER OF: IN THE MATTER OF FAIR ADMINISTRATION ACTIONS ACT, 2015

AND

IN THE MATTER OF: IN THE MATTER OF SAFARICOM PAYBILL NO. 980100 AND 980101

BETWEEN

REPUBLIC.....APPLICANT

AND

THE CHIEF MAGISTRATE'S COURT HOMABAY LAW COURTS.....1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT KISUMU LAW COURTS.....2ND RESPONDENT

AND

OKONGÓ WANDAGO & CO. ADVOCATES.....1ST INTERESTED PARTY

SAFARICOM LIMITED.....2ND INTERESTED PARTY

Exparte: INVESCO ASSURANCE COMPANY LIMITED

RULING

1. By this Judicial Review Cause Petition and chamber summons both filed on 27th January, 2020, the Applicant mainly challenges decree

orders nisi and decree absolute issued in favour of the 1st Interested Party garnisheeing Mpesa Safaricom Paybill No. 980100 and 980101 issued in various cases in Kisumu and Homabay Chief Magistrate's Courts.

2. I have considered the submission by Mr. Kingara for the Applicant and Mr. Omondi for the 1st Interested Party.

3. I have also considered the provisions of Section 34 of the Civil Procedure Act (Cap 21 Laws of Kenya) which deals with questions to be determined by court executing decree and it states as follows:

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

4. Order 49 rule 7 (2) provides that:

An appeal from a decision of the registrar under the Orders referred to in subrule (1) shall be to a judge in chambers.

5. From the foregoing, I am persuaded that the Applicant's remedy if it is aggrieved by the garnishee orders lies in challenging them before the court executing the decree or by way of an appeal and not by filing a separate suit.

6. It is hereby ordered that:

1. This cause is struck out with costs to the 1st Interested Party being the only party that defended the chamber summons dated 24th January, 2020

DATED AND DELIVERED IN KISUMU 13th THIS DAY OF February 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/Okodoi

For the Applicant - Mr. Kingara

For the Respondents - Ms. Langat

For the 1st Interested Party - Mr. Omondi

For the 2nd Interested Party - N/A