



**Government of Makueni County & 2 others v Kavila; Kenya  
Commercial Bank Limited (Garnishee) (Environment and Land Petition  
4 of 2017) [2025] KEELC 6186 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6186 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND PETITION 4 OF 2017  
EO OBAGA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**GOVERNMENT OF MAKUENI COUNTY ..... 1<sup>ST</sup> APPLICANT  
COUNTY ASSEMBLY OF MAKUENI ..... 2<sup>ND</sup> APPLICANT  
MAKUENI COUNTY SAND CONSERVATION AND UTILIZATION  
AUTHORITY ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JACKSON MUTUA KAVILA ..... RESPONDENT**

**AND**

**KENYA COMMERCIAL BANK LIMITED ..... GARNISHEE**

**RULING**

1. The Applicants filed the Motion dated 1<sup>st</sup> August, 2024 under the provisions of Section 80 of the [Civil Procedure Act](#) in addition to Order 45 of the Civil Procedure Rules. The Applicants seek the following orders: -
  1. That this Honourable Court be pleased to review and or revise its orders issued on the 22<sup>nd</sup> January, 2024.
  2. That this Honourable Court be pleased to direct and order the Respondent should bear the costs of the Notice of Motion application dated 5<sup>th</sup> October, 2023.
  3. That the costs of this application be borne by the Respondent.
2. The application is premised on the grounds appearing on the face and the supporting affidavit of Anthony M. Mulekyo Advocate sworn on even date. The deponent averred that the Applicants/



- Decree-holders filed the Notice of Motion dated 5<sup>th</sup> October, 2023 seeking the attachment of funds in the account of the Respondent herein and held by the garnishee in account No. XXXXXXXXXX.
3. The deponent added that the garnishee's replying affidavit sworn on 21<sup>st</sup> December, 2023, it was revealed that the Respondent's account No. XXXXXXXXXX had a nil balance and hence it could not satisfy the decree. As a consequence, on 22<sup>nd</sup> January, 2024 this court issued an order allowing the withdrawal of the application dated 5<sup>th</sup> October, 2023 with costs.
  4. The Applicants lamented that the garnishee wrote a letter to the Applicants demanding costs of the application dated 5<sup>th</sup> October, 2023. It was contended that since the application was necessitated by the Respondent's failure to satisfy the decretal amount, the Respondent should also bear the costs for the subsequent withdrawal.
  5. In opposition to the instant application, the Respondent filed a replying affidavit sworn by himself on 2<sup>nd</sup> September, 2024. He averred that upon filing of the application dated 5<sup>th</sup> October, 2023, the Applicants bore the burden of demonstrating that there existed a decree which remained unsatisfied and also that there was a debt due from the garnishee to the judgment debtor capable of being attached to answer the decree. The Respondent contended that the Applicants were unable to demonstrate the foregoing.
  6. The Respondent contended that garnishee proceedings subsist between the decree-holder and the garnishee and the judgment-debtor has a minimal role therein. He further contended that he did not file any response to the application dated 5<sup>th</sup> October, 2023 and it would be unconscionable for the Applicants to demand that he bears the costs of the withdrawn application. He urged the court to dismiss the application herein with costs for being unmeritorious.
  7. The Garnishee filed a replying affidavit sworn by Lucy Nzili Advocate on 15<sup>th</sup> November, 2024. She averred that the instant application is uncalled for as the court orders issued on 22<sup>nd</sup> January, 2024 are explicit to the effect that the Applicants were to bear the costs of the application. That the instant application only lengthens these proceedings resulting in more costs for the garnishee. Counsel urged the court to dismiss the application accordingly.
  8. Parties agreed to dispose of the application by way of written submissions.
  9. In the Applicants' submissions dated 19<sup>th</sup> March, 2025, Counsel contended that this court is vested with jurisdiction to review its orders under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules 2010, where there is sufficient reason to do so. Relying on the decision of the Court of Appeal in Supermarine Handling Services Ltd V Kenya Revenue Authority [2010] KECA 373 (KLR), Counsel submitted that the party who has been forced to seek legal redress due to the wrongful acts of another party should be awarded costs.
  10. Counsel argued that it was because of the Respondent's consistent frustration of the Applicants' efforts to realize the fruits of the judgment that they had filed the garnishee proceedings. That the withdrawal of the application was not a matter of choice since it was necessitated by the Respondent's failure to maintain sufficient funds to satisfy the decretal amount.
  11. Counsel contended that the application was filed as a consequence of the Respondent's default and it is therefore just and equitable that he should bear the costs.
  12. In the Respondent's submissions dated 7<sup>th</sup> April, 2025, Counsel reiterated the position that garnishee proceedings are separate between the decree-holder and the garnishee. That the judgment-debtor is not necessarily a participant in garnishee proceedings. Counsel argued that the garnishee's involvement in



the suit was not due to the Respondent's failure to satisfy the decree but being a result of being joined as such in the application dated 5/10/2023.

13. Counsel submitted that it would be unjust to condemn the Respondent to pay the costs of an application filed by the Applicants which was later withdrawn after the realization that the account was empty. Counsel further submitted that the conditions necessary for the issuance of an order for review have not been met and hence the instant application should be dismissed with costs.
14. Having considered the application, the replying affidavits and the rival submissions, the primary issue for determination is whether this Court ought to review the order issued on 22<sup>nd</sup> January, 2024.
15. It is common ground that this court issued a decree in favour of the Applicants on 28<sup>th</sup> November, 2019 dismissing the petition herein with costs. Subsequently, costs were assessed and a certificate of taxation issued in favour of the Applicants on 19<sup>th</sup> September, 2023 in the sum of Kshs.672,985/=.
16. Subsequently, the Applicants sought to enforce the decree by filing the garnishee proceedings/Notice of Motion dated 5<sup>th</sup> October, 2023 following which an order nisi was issued in their favour on 9<sup>th</sup> October, 2023 with directions for service on all parties also being issued.
17. As stated under paragraph 5 of the garnishee's replying affidavit, the Bernard Muthoka who works as the Garnishee's Credit Administrator swore an affidavit on 21<sup>st</sup> December, 2023 confirming that the Respondent's account had insufficient funds to settle the debt owed to the Applicants.
18. In seeking a review of the court's order of 22<sup>nd</sup> January, 2024, the Applicants cited the provisions of Section 80 of the *Civil Procedure Act* and in Order 45 Rule 1 of the Civil Procedure Rules.
19. Section 80 of the *Civil Procedure Act* provides as follows: -  
Any person who considers himself aggrieved—
  - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
  - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
20. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides that: -  
Any person considering himself aggrieved—
  - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.



21. The provisions of Order 45 were restated by the Court of Appeal in the case of Benjoh Amalgamated Limited & another Vs Kenya Commercial Bank Limited [2014] eKLR where the Court held that:-

“In the High Court, both the *Civil Procedure Act* in section 80 and the Civil Procedure Rules in Order 45 rule 1 confer on the court power to review. Rule 1 of Order 45 shows the circumstances in which such review would be considered range from discovery of new and important matter or mistake or error apparent on the face of the record or any other sufficient reason but section 80 gives the High Court greater amplitude for review.”

22. The Applicants filed the present application after they received a letter from the garnishee. The Applicants further contended that the court did not specify that costs were to be borne by the Respondent. They contended that as the application was necessitated by the failure of the Respondent to satisfy the costs awarded, the order of 22<sup>nd</sup> January, 2024 should be reviewed to show that costs of the withdrawn application should be met by the Respondent.

23. The garnishee proceedings were mainly between the Applicants and the garnishee. Once an Order Nisi was granted, it had to be served upon the garnishee and unless otherwise ordered, was to be served upon the Respondent. This is the requirement of Order 23 Rule 1(2) of the Civil Procedure Rules.

24. Before the application for garnishee proceedings could be heard, the Applicants withdrew the same on 22<sup>nd</sup> January, 2024. The court then made an order that the application dated 5<sup>th</sup> October, 2023 had been withdrawn with costs to the garnishee.

25. The issue of costs was within the discretion of the court and the court directed that the costs were to be paid to the garnishee. It is the Applicants who had brought the garnishee to court without inquiring whether the garnishee had sufficient funds to satisfy the decree. It is the Applicant who made a decision to withdraw the application filed by them. There is therefore no basis of reviewing the order of 22<sup>nd</sup> January, 2024 to order that the costs of the withdrawn application be borne by the Respondent.

26. A review is supposed to be made within a reasonable period. The order sought to be reviewed was made on 22<sup>nd</sup> January, 2024. The application for review was made on 1<sup>st</sup> August, 2024 a period of over six months which in the circumstances I find to be unreasonable. There is also no sufficient ground shown why the discretion of the court in ordering for costs should be reviewed. I therefore find that the application dated 1<sup>st</sup> August, 2024 is devoid of merit. The same is dismissed with costs to the garnishee. As the Respondent was the cause of all this, no costs are granted to him.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

.....

**HON. E. O. OBAGA**

**JUDGE**

In The Presence Of:

Ms. Mutua for the garnishee

Mr. Muuo for Applicant

Mr. Nzei for the Respondent

Court assistant – Mueni

