



**National Bank of Kenya v Kinura & another (Civil Appeal E331 of 2025)
[2025] KEHC 13393 (KLR) (Civ) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13393 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E331 OF 2025**

**AC MRIMA, J
SEPTEMBER 30, 2025**

BETWEEN

NATIONAL BANK OF KENYA APPELLANT

AND

JUSTINE KIBET KINURA 1ST RESPONDENT

XPLICO INSURANCE COMPANY LIMITED 2ND RESPONDENT

(Being an appeal from the Ruling and Orders of Hon. Rawlings Liluma Musiega (PM) in Milimani Commercial Courts Civil Case No. 5616 of 2019 delivered on 7th February 2025)

JUDGMENT

Background:

1. This is an appeal by the National Bank of Kenya, as a Garnishee, against an order [a Garnishee Order] attaching its property.
2. In its ruling of 7th February 2025, the trial Court, pursuant to a Notice to Show Cause [NTSC] taken out by the 1st Respondent herein, Justine Kibet Kinura, as a judgment creditor, issued Warrants of Attachment and Sale against the movable property of National Bank of Kenya in satisfaction of a debt owed by Xplico Insurance Company Limited, the 2nd Respondent herein, as a judgment debtor. The subject NTSC was dated 22nd April 2024.
3. Aggrieved by the ruling, the Appellant preferred the instant appeal which was heard by way of written submissions, hence, this judgment.



The Appeal:

4. Through a Memorandum of Appeal dated 14th March 2025, the Appellant sought the setting aside of the impugned ruling on the following grounds: -
 1. The learned trial magistrate erred in law and fact by making the finding that the Notice to Show Cause why execution should not issue dated 22nd April 2024 had merit.
 2. The learned trial magistrate erred in law by failing to hold that the Notice to Show Cause why Execution should not issue dated 22nd April 2024 was res-subjudice to the previous Notices to Show Cause dated 31st May 2024 and 20th August 2023 which sought different modes of execution against the Appellant Garnishee and which had not been set aside and were pending hearing and determination before the Court when the Notice to Show Cause dated 20th August 2023 was issued.
 3. The learned trial magistrate erred in law and fact by issuing warrants of attachment and sale of movable property against the Appellant for the execution of debt owing from the 2nd Respondent judgment-debtor to the 1st Respondent Decree-holder despite the Notice to Show Cause dated 22nd April 2022 seeking for the personal arrest and committal into civil jail of the officers of the Appellant in execution of the decree.
 4. The learned trial magistrate erred in law by completely misapplying and misapprehending the provision of Order 23 of the Civil Procedure Rules 2010.
 5. The learned trial magistrate erred in law and fact by making a finding that the Appellant Garnishee was personally bound to satisfy the debts owing from the 2nd Respondent Judgment-debtor to the 1st Respondent decree holder despite the garnishee demonstrating by evidence that there was no existing bank-customer relationship between the Appellant and the 2nd Respondent.
 6. The learned trial magistrate erred in law and fact by failing to hold that the Appellant could not constitute a garnishee for purpose of the proceedings before the trial court for the reasons that the termination of the bank-customer relations previously existing between the appellant garnishee and the 2nd respondent judgment debtor extinguished and the rights of the parties arising from the said relationship and that the 1st Respondent decree holder could not purport to exercise such rights or derive benefit therefrom in a complete vacuum extrinsic to the said bank customer relationship.
 7. The learned trial magistrate erred in law and fact by failing to hold that since there was no existing bank-customer relationship between the Appellant Garnishee and the 2nd Respondent Judgment debtor, and that the 1st Respondent decree holder not being privy to such relationship could not purport to have a greater right to money, if any, held to the credit of the 2nd Respondent by the Appellant more than the right the 2nd Respondent itself would have over such money if it were available.
 8. The learned trial magistrate erred in law and fact in failing to make a finding that the 1st Respondent decree-holder had failed to demonstrate by evidence that there was recoverable debt from the Appellant Garnishee to the 2nd Judgment debtor capable of being attached in satisfaction of the decree issued in favour of the 1st Respondent.



9. The learned trial magistrate erred in law by failing to hold that the 1st Respondent Decree holder by dint of obtaining a garnishee order absolute against the Appellant Garnishee could not purport to be holding a security, charge, lien in their favour over the property of the Appellant in the face of the absence of the said bank-customer relationship.
10. The learned trial magistrate erred in law and in fact by failing to hold that even in the unlikely event that the trial court found that the Appellant Garnishee had failed to show cause why execution should not issue, such execution process by the 1st Respondent Decree holder could only be limited to the garnishee bank accounts previously held by the Appellant to the credit of the 2nd respondent judgment-debtor and not against any movable property and assets of the appellant.
11. The learned trial magistrate completely failed to take into account the pleadings, evidence and submissions led by the Appellant and consequently arrived at an erroneous holding that the Appellant was personally bound to the debt owing from the 2nd Respondent to the 1st Respondent and that the Notice to Show Cause dated 20th August 2023 was merited and that warrants of attachment and sale against the Appellant to issue.

The Appellant's submissions:

5. The Appellant written submissions were dated 11th April 2025. It argued that there were three NTSCs filed in the matter they sought different modes of execution. The NTSCs were dated 20th August 2023, 22nd April 2024 and 31st May 2024 respectively. While the NTSC dated 20th August 2023 sought the attachment and sale of the movable property and goods of the Appellant, the NTSC dated 22nd April 2024 and 31st May 2024 sought to have the personal arrest and committal into civil jail in the execution of the decree of the trial Court. It was its case that it along appeared before the trial Court knowing that it was responding to the NTSC dated 20th August 2023 and not any other.
6. It argued that the NTSC dated 20th August 2023 had errors apparent on the face of it because it was calling upon the Appellant to appear on 26th September 2024 before the trial Court, a position that defeated Order 22 Rule 18 of the Civil Procedure Rules which requires a NTSC not to issue after the lapse of over 12 months. The Appellant further submitted that the trial Court in its impugned ruling inadvertently got caught in the confusing myriad of NTSCs and misdirected itself in considering what was before it and ended up grant orders for attachment and sale of the Appellant's movables rather than deciding whether the Appellant's servants/officers ought to be committed to civil jail as sought in the NTSC.
7. The above notwithstanding, the Appellant claimed that all the NTSCs were bad in law as there was no Bank-Customer relationship itself and the 2nd Respondent.
8. The Appellant called to its aid the Court of Appeal decision in James G. K. Njoroge T/A Baraka Tools & Hardware -vs- APA Insurance Company Ltd and the one on Ngaywa Ngigi & Kibet Advocates -vs- Invesco Assurance Co. Ltd Diamond Trust Bank (Garnishee) 2020 eKLR to assert the position that, having denied being indebted to the 2nd Respondent, it was incumbent upon the 1st Respondent to prove that it was indeed indebted. It was its case that the termination of bank-customer relationship extinguished all the rights of the parties arising from the said relationship.
9. In the end, the Appellant submitted that even if execution was to issue, which it denied, the process could only be limited to the 2nd Respondent bank account disclosed in the Order and did not extend to



any of the Appellant's property and assets. The Appellant prayed for the appeal to be allowed and the Respondents be permanently restrained from executing against it. It also prayed for costs of the appeal.

The Respondents' cases:

10. The 1st Respondent, Justine Kibet Kinura, challenged the appeal through written submissions dated 16th May 2025. He identified the issues for determination as being; whether the NTSC was sub judice and whether the appellant is liable to settle the sum owed by the 2nd Respondent.
11. On the first issue, the 1st Respondent submitted that the Appellant did not contest that execution had commenced in respect of the sum stated in the NTSC. He also submitted that the Appellant had not denied that the NTSC were never extended and fresh ones instituted.
12. The 1st Respondent submitted that the NTSC that the Appellant is relying on were terminated when they were never executed and the Court went ahead to issue fresh NTSC. He, therefore, asserted that the allegation that the same is pending before court was incorrect.
13. He submitted that the 1st Respondent extracted a proper NTSC for purposes of ensuring compliance with the Court orders and that the purpose of all the notices was to ensure compliance.
14. In rebutting the claim that the bank-customer relationship was over, he submitted that Garnishee Absolute was served upon the Appellant on the 13th May 2021 which froze all the 2nd Respondent's accounts.
15. It was his case that despite being aware of the order, the Appellant allowed the 2nd Respondent's account to continue to operate and subsequently terminated it on the 14th January 2024.
16. In the end, the 1st Respondent submitted that the trial Court's findings were justified and ought to be upheld by this honourable Court.
17. The 2nd Respondent, Xplico Insurance Company Limited, did not participate in these proceedings.
Analysis:
18. Having comprehensively considered and set out the parties' cases, rival arguments, the written submissions and the decisions referred to thereto, the two following issues emerge for determination: -
 - i. Whether there existed a Bank-Customer relationship between the Garnishee and the 2nd Respondent.
 - ii. Depending on (i) above, the propriety of the Notice to Show Cause dated 22nd April 2024.
19. This being a first appeal, this Court's role is well settled as was established so rendered in Susan Munyi -vs- Keshar Shiani [2013] eKLR, Abok James Odera t/a AJ Odera & Associates -vs- John Patrick Machira t/a Machira & Co Advocates [2013] eKLR among many other decisions. The role of this first appellate Court is to re-evaluate, re-assess and re-analyse the evidence and arrive at its own independent conclusions.
20. With the foregoing principles, this Court shall now deal with the issues identified above.
 - (a) Whether there existed a Bank-Customer relationship between the Garnishee and the 2nd Respondent:
21. This issue is quite crucial as it determines whether this Court will down its tools or will consider the rest of the issues. I say so because if the Court finds that there was no Bank-Customer relationship between the Garnishee [which a banking institution] and the 2nd Respondent, and further that the



Appellant is not in any other manner holding any sums of money on behalf of the 2nd Respondent, then this Court will have to terminate any execution based on the garnishee proceedings and the rest of the issues will naturally fall by the wayside. In this case, whereas the Appellant denied any Bank-Customer relationship with the 2nd Respondent, the 1st Respondent was emphatic that such a relationship existed.

22. The garnishee proceedings were initiated by the 1st Respondent through an ex-parte application by way of a Notice of Motion dated 10th May 2021. In the said application, the 1st Respondent sought orders in respect to the 2nd Respondent's Account No. 37411855 or any other account held by the 2nd Respondent with the Appellant. A decree-nisi was issued on 11th May 2021 and when the application heard, the decree nisi was made absolute on 27th July 2021.

23. The import of a garnishee order nisi was, correctly so, discussed by His Lordship Justice Denning M.R. in *Choice Investments Ltd -vs- Jeromnimon (Midland Bank Ltd, Garnishee)* [1981] 1 All ER 225 as follows: -

.... As soon as the garnishee order nisi is served on the bank, it operates as an injunction. It prevents the bank from paying the money to its customer until the garnishee order is made absolute, or is discharged, as the case may be. It binds the debt in the hands of the garnishee, that is, creates a charge in favour of the judgment creditor: see *Joachimson v Swiss Bank Corp.* [1921] 3 KB 110 at 131, [1921] All ER Rep 92 at 102, per Atkin LJ. The money at the bank is then said to be 'attached', again derived from Norman-French. But the 'attachment' is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay. [emphasis added].

24. Returning to the matter at hand, there is on record a letter dated 14th January 2022 written by the Appellant [marked 'NBK 4' in the supporting affidavit of Chrispus Maithya, the Appellant's Legal Manager], to the 2nd Respondent on the Appellant's intention to terminate the banking relationship it had with the 2nd Respondent. The letter indicated that the Appellant would close all the 2nd Respondent's accounts held by itself for failure by the 2nd Respondent to satisfactorily conduct the accounts. To this Court, that communication from the Appellant to the 2nd Respondent, without more, confirmed that the 2nd Respondent was the Appellant's customer as at the date of the letter, that is 14th January 2022.

25. Since the garnishee order nisi was made on 11th May 2021 and the parties appeared before the trial Court on 20th May 2021 where the Appellant's Learned Counsel Mr. Omondi sought for time to respond to the application and the interim orders were accordingly extended, then that in itself was a confirmation that the Appellant was duly served with and/or was well aware of the order nisi. Therefore, as at the time the Appellant intimated to the 2nd Respondent its intention to close the 2nd Respondent's accounts, the order nisi had long been made absolute on 27th July 2021 and the Appellant remained under a legal duty to satisfy the order. In the words of Lord Denning, the decree nisi [which became absolute] bound the Appellant in its hands and created a charge in favour of the 1st Respondent. The Appellant, therefore, could not purport to close the 2nd Respondent's account before satisfying the orders in place.

26. Having so rendered, this Court hereby answers the first issue in the affirmative. For clarity, there was a Bank-Customer relationship when the trial Court issued the order nisi and that the Appellant's letter dated 14th January 2022 intending to close the 2nd Respondent's accounts held by the Appellant before satisfying the Decree-Absolute order was of no legal consequence.



27. With the above finding, this Court will now consider the next issue.
- (b) The propriety of the Notice to Show Cause dated 22nd April 2024 [‘the NTSC’]:
28. Having considered the impugned ruling on the NTSC, this Court must disclose that it did not find a copy of the NTSC on nits record as well as the trial Court’s record. However, the contents of the NTSC are quite clear in the ruling and the parties’ cases and submissions and this Court shall proceed to render itself on the issue.
29. With tremendous respect to the trial Court, this Court finds and hold that there is one main reason as to why the NTSC was not properly considered. The reason is that whereas the NTSC sought to commit the judgment debtor [Xplico Insurance Company Limited] to civil jail for failure to honour the judgment and decree of the Court, the trial Court ended up issuing an order finding the Appellant [who was the Garnishee] liable to satisfy the judgment. Further, in finding merit in the NTSC, the Court went ahead to issue warrants attaching the Appellant’s property, a prayer which had not been sought.
30. This Court affirms that as the trial Court had found the NTSC merited, then it ought to have made an order committing the judgment debtor to civil jail as was prayed for instead of allowing the attachment and sale of the property of the Appellant/Garnishee. To that end, the trial Court erred and the ruling cannot stand.

Disposition

31. Deriving from the foregoing, the appeal is successful and this Court hereby makes the following final orders: -
- (a) The appeal is allowed and the Ruling dated 7th February 2025 is hereby set aside in its entirety.
- (b) For avoidance of doubt, the Warrants of Attachment and Sale of the Appellant’s property issued on 12th March 2025 are hereby quashed and set aside accordingly.
- (c) Given that there is a Decree-Absolute Order against the Appellant, parties shall bear their respective costs of this appeal.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Odongo , Learned Counsel for the 2nd Respondent.

Mr. Amalube, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.

