



REPUBLIC OF KENYA



Trident Insurance Company v Mwangi; Safaricom Plc (Garnishee) (Civil Appeal E280 of 2023) [2025] KEHC 13764 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E280 OF 2023
DO CHEPKWONY, J
SEPTEMBER 19, 2025**

BETWEEN

TRIDENT INSURANCE COMPANY APPELLANT

AND

ANTHONY MUSYOKI MWANGI RESPONDENT

AND

SAFARICOM PLC GARNISHEE

RULING

1. The Applicant/Decree Holder filed Notice of Motion application dated 16th June , 2025 pursuant to Order 23 Rules (1) and (2), and Order 51 (1) of the *Civil Procedure Rules*. It seeks the following orders:-
 - a. Spent.
 - b. spent
 - c. That at the interpartes hearing or further hearing of this application, the garnishee order nisi be made absolute and the monies attached be released to the Respondent/Decree holder to satisfy the decretal debt outstanding at the time of determination of these proceedings.
 - d. That the costs of this application be on the Judgment debtor and the costs be deducted from the garnished accounts.
2. The Application is based on the grounds set out on its face and the Supporting Affidavit of Morris M. Karigi sworn on the even date. According to the Applicant /the Decree Holder, it obtained a Certificate of Taxation dated 3rd June, 2025 against the Appellant/Judgment debtor which remains unsatisfied in the sum of Kshs.93,590/=.



3. The Applicant holds that the Respondent operates an account with Safaricom PLC, being Paybill No. 985850 which is held by the Garnishee and has funds to satisfy the Judgment. The Applicant has deponed that it will be in the interest of justice that the decretal sum of Kshs. 93,590/= as well as accrued interest and costs be attached from the said account.
4. The 2nd Garnishee filed Replying Affidavit which was sworn by Stella Mutindi its Senior Merchant officer, on 27th June, 2025 It confirms that it is required to attach monies in Paybill No. 985850 in respect to the party and party bill of costs for the sum of Kshs. 93,590.00 as per the Certificate of Taxation dated 3rd June, 2025. It confirms that indeed the Respondent/Judgment debtor operates the Pay Bill No. 985850 which has a sum of Kshs. 1,772,478.89 which is sufficient to satisfy the decretal sum. The 2nd Garnishee confirms that it is ready, able and willing to remit the said decretal sum and the costs of the 2nd Garnishee which the court may award and for the garnishee to be discharged from the proceedings upon determination.

Analysis and Determination

5. Having listened to the oral submissions by counsel for the Applicant and I have read through the grounds in support of the application in the Supporting Affidavit filed by the Applicant alongside the Replying Affidavit of the 2nd Garnishee the court finds that the main issue for determination is whether the application has merits to warrant the orders sought.
6. Given that the Respondent/Judgment Debtor has not filed any response to the application and the 2nd Garnishee not being opposed to settling the decretal sum owing to the Applicant, the fact that the Respondent's Paybill Number 985850 held by them has sufficient funds, the Court proceeds to allow the application and orders the Garnishee Order Nisi to be made Absolute.
7. The other issue for determination is with regard to costs, where Counsel for the Applicant and the 2nd Garnishee have not indicated the costs they seek. The issue of costs is enshrined under Section 27 of the *Civil Procedure Act* which provides as follows:-
 - 27 (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or Judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

“ Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise direct.”
8. In regard to the above cited provision, it is trite that the issue of costs is usually in the discretion of a court and it is meant to compensate a successful party in a case following the basic principle that costs must follow the event. However, courts have recognized that this principle should not be used to penalize the losing party. In the case of *Republic –vs- Rosemary Wairimu Munene, Ex-Parte Applicant –vs- Ihururu Dairy Farmers Co-operative Society Ltd*, Judicial Review Application No.6 of 2014 the Court held as follows in this regard:-

“The issue of costs is the discretion of the court as provided under the above Section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it



is for compensating the successful party for the trouble taken in prosecuting or defending the case.

9. Paragraph 14(b) of part A of the Sixth Schedule of the *Advocates Remuneration Order*, provides that instructions fees to Institute or Defend garnishee proceedings shall not be less than Kshs. 14,000/-
10. In the instant case, the Applicant/Judgment Creditor instituted the Garnishee proceedings while the Garnishee instructed a Firm of Advocates to defend it, who then filed a Notice of Appointment of Advocates and Replying Affidavit. Having done this, these parties require compensation. In exercise of its discretion and in the interest of justice, this Court finds a figure of Kshs. 20,000/= for the Applicant and the sum of Kshs. 15,000 for the 2nd Garnishee to be reasonable and proceeds to order that they each be paid the said sum so as to avoid the filing of multiple applications and put this matter to rest.
11. In the upshot, the Notice of Motion application dated 16th June, 2025 is hereby allowed with the following orders:-
 - a. Garnishee Order Nisi be and is hereby made absolute and the monies attached for the decretal sum of Kshs. 93,590/= be released to the Respondent/Decree holder to satisfy the decretal debt outstanding at the time of determination of these proceedings.
 - b. The Respondent/Judgment Debtor to further pay the Applicant Kshs.20,000/= and the 2nd Garnishee Kshs. 15,000/= as costs of the Garnishee proceedings.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 19TH DAY OF SEPTEMBER, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Nyaga counsel for the Respondent/Applicant

Mr. Ojung'a for Garnishee

Court Assistant – Sakina/Martin

