



**Shikolio v Transmara Sugar Company (Cause 5 of 2022)
[2025] KEELRC 2673 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2673 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 5 OF 2022
JK GAKERI, J
OCTOBER 2, 2025**

BETWEEN

ABUBAKAR ASLAN SHIKOLIO CLAIMANT

AND

TRANSMARA SUGAR COMPANY RESPONDENT

RULING

1. Before the court for determination is the applicant's Notice of Motion dated 1st July, 2025 filed under Certificate of Urgency seeking Orders that:
 1. Spent.
 2. Garnishee Order Nisi against I & M Bank Kenya Ltd, ordering that all monies lying/and/or held in deposit by the Garnishee to the credit of Transmara Sugar Company, the Judgment Debtor be attached in answer to the decree of Kshs.192,890.00 being the decretal sum.
 3. An Order Nisi upon the herein do issue and served on the Garnishee before being served on the Judgment debtor or its advocates.
 4. Spent.
 5. The Decree-holder be at liberty to apply for any such further Orders and/or directions as the court may deem fit and just to grant.
 6. Costs of this application be borne by the Judgment Debtor.
2. The Notice of Motion is expressed under Order 50 Rule 1, Order 23 Rule 1, 3, 4 and 8 and Sections 1A, 1B and 3A of the *Civil Procedure Act* and is based on the grounds set forth on its face and the Supporting Affidavit of Abubakar Aslam Shikolio sworn on 1st July, 2025.
3. The applicant's case is that Judgment was entered in his favour on 11th September, 2024 as follows:



1. Equivalent of 2 months gross salary as compensation Kshs.330,808.00.
2. Compensation Kshs.230,808.00 and
3. Interest at court rates from date of Judgment at 12% Kshs.27,426.39.
4. That the respondent paid Kshs.398,000 yet the total decretal sum was Kshs.563,463.00 as at 16th January, 2025 and the balance of kshs.165,463.00 as at 4th February, 2025 was not paid.
5. According to the applicant the respondent held an account with I & M Bank Kenya Ltd, Kisumu Branch.

Respondent's case

4. In opposition to the Notice of Motion, the respondent filed a Replying Affidavit sworn by Mr. Dicken's Mitawia Ouma on 29th July, 2025 who deposed that the motion before the court ought to have instituted pursuant to the provisions of Rules 45, 47 and 75 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
5. The affiant further deposed that the motion before the court was devoid of merit because paragraph 12 of the Court's judgment was emphatic that the court was satisfied that the respondent had complied with the requirements of procedural fairness and awarded the equivalent of 2 months gross salary at Kshs.165,404.00 per month as compensation and the court awarded the sum of Kshs.230, 808 but the figure ought to have been Kshs.303,808 and the same had been paid and no other compensation was awarded.
6. The affiant further deposed that the Decree extracted from the Judgment had a material defect as it was not in accord with the Judgment and was thus not actionable and it was not necessary for the judgment to be actioned by Radido J as there was no interpretation needed.
7. The affiant prayed that the motion be dismissed as the applicant received and acknowledged the sum of Kshs.398,059 vide counsel's letter dated 5th February, 2025 and the sum of Kshs.165,463 claimed was unconscionable and unjustified.

Analysis and determination

8. The singular issue for determination is whether the applicant's motion dated 1st July, 2025 was merited.
9. It is not in dispute that the applicant obtained judgment against the respondent on 11th September, 2024 where the court awarded the applicant the equivalent of 2 months gross salary as compensation at a gross salary of Kshs.165, 404.00 per month.
10. In its 'Conclusion and Orders' at paragraphs 28, 29, 30 and 31, the Judgment the learned trial Judge stated:

The court finds that the termination of the claimant's contract did not accord with justice and equity. The claimant is awarded:

1. Compensation Kshs.230,808.

The award to attract interest at court rates from the date of Judgment.

The claimant is not blameless. He is awarded costs on half scale.

The Decree dated 20th March, 2025 reproduced paragraphs 28, 29, 30 and 31 of the Court's Judgment.



11. However, a further Decree dated 28th March, 2025 incorporated paragraph 27 of the court's Judgment, namely the equivalent of two (2) months gross salary at Kshs.165,404.00 per month as compensation over and above the Kshs.230,808 under paragraph 29(1) of the Judgment. It is unclear to the court as to what transpired between 20th March, 2025 and 28th March, 2025.
12. When the motion came up for directions on 16th July, 2025, the court did not certify it urgent but scheduled a mention on 17th July, 2025 for further directions.
13. The applicant's case is that the Judgment Debtor still owed the sum of Kshs.165,463.00 and seeks a Garnishee Order Nisi against the bank.
14. Black's Law Dictionary, 10th Edition defines Garnishee proceedings as:

a statutory proceeding whereby a person's property; or credit possession or under control of, or owing by; another are applied to payment of former debt to third person by proper statutory process against debtor and Garnishee.
15. In *C.B.N V Auto Import Export* [2013] 2 NWLR (pt 1337) 80 P. 126 Paras E-F, the Nigeria Supreme Court stated:

Garnishee proceedings are special specie of process by which a Judgment Creditor may attach (or garnishee) debts due in satisfaction of the judgment debt. The debt owed by the 3rd party to the judgment debtor, on being attached, shall ultimately be paid by him to the judgment creditor on the Order of court. Thus garnishee proceedings involve the attachment of debt due from a third party to the judgment debtor and the use of the amount of that debt in liquidating the judgment debt. In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor on the other hand is referred to as the garnishor".
16. In *Nyandoro & Co. Advocates V National Water Conservation & Pipeline Corporation & KCB Group Ltd (Garnishee)* [2021] eKLR, Mativo J (as he then was) stated:

In *Kenya Bureau of Standards V Geo Chem Middle East Misc App. No. 455/2015* I had the occasion to address an application of this nature. I find it fitting to recall much of what I stated in the said case. One, when a party receives a judgment in his favour, he is entitled to enforce the judgment if the other party fails to comply with its terms. Two, the *Civil Procedure Act* provides for the enforcement of judgments and orders. Specifically, Order 22 provides for Execution of Decrees and Orders while order 23 provides for Attachment of Debts. As the Supreme Court of India observed in *Ghanshyam Das V Anant Kumar Sinha*, "so far as the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all aspects...
17. A reading of Order 23 of the Civil Procedure rules shows that it comprises of self-contained provisions which are distinct and independent of Order 22. It prescribes two steps in Garnishee proceedings. The first is a Garnishee Order nisi. Nisi is Norman-French. It means 'unless.' It is an order to the bank communicating that unless there is some sufficient reason why the bank should not pay the decree, it will be required to pay money held in the Judgment Debtor's account. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to the creditor might be unfair by preferring him to other creditors. If no sufficient reason appears, the garnishee order is made absolute, to pay to the Judgment-Creditor, or into court, whichever is more appropriate. On



making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if the Judgment-Debtor directed the bank to pay it.

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. The money at the bank is then said to be 'attached,' 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”.

18. Significantly, in the foregoing Ruling, Mativo J (as he then was) held:

Garnishee proceedings serve to facilitate the satisfaction of judgment debts. Garnishee, in this regard often have no objections to garnishee Orders being made final, so long as there is a discernible debt due and owing to the judgment debtor; once such indebtedness is established, it is in consequential to the garnishee who the debt is paid to. However, garnishee Orders are premised on indebtedness – without such indebtedness by the Judgment Debtor, it would be plainly unjust to Order a party to pay a sum of money to the Judgment Creditor”.

19. The foregoing sentiments of Mativo J (as he then was) capture the circumstances of the instant case where the Judgment-Debtor is disputing the alleged debtor.

20. Having carefully considered the applicant’s Notice of Motion and the respondent’s response, which is contesting the alleged indebtedness citing the court’s judgment delivered on 11th September, 2024 and payment of the sum of Kshs.398,059.00 which the applicant’s counsel acknowledged receipt, the court is satisfied that the issue of the amount due to the applicant ought to be determined prior to the application for garnishment.

21. The upshot of the foregoing is that the applicant’s Notice of Motion dated 1st July, 2025 is unsustainable and it is accordingly dismissed for want of merit.

Parties shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 2ND DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

