



**Ojiambo & Company Advocates v Muki Sacco Society Limited & another (Civil Appeal E047 of 2021) [2025] KEHC 14331 (KLR) (Civ) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14331 (KLR)

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

**CIVIL**

**CIVIL APPEAL E047 OF 2021**

**FR OLEL, J**

**OCTOBER 15, 2025**

**BETWEEN**

**OJIAMBO & COMPANY ADVOCATES ..... APPELLANT**

**AND**

**MUKI SACCO SOCIETY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JULIUS NDIRANGU WAHOME ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the RULING of the Co-operative Tribunal at Nairobi- Hon B. Kimemia delivered on the 7th day of January, 2021 in the COOPERATIVE TRIBUNAL CASE NO 385 OF 2018)*

**JUDGMENT**

**A. Introduction**

1. This appeal challenges a ruling delivered by the Cooperative Tribunal dated 7<sup>th</sup> January 2021, in Nairobi Cooperative Tribunal case No 385 of 2018, where the tribunal partially allowed the 1<sup>st</sup> respondent's garnishee application as against the Appellant and issued a garnishee decree absolute for the amount of Kshs340,000/=. The appellant and the 2<sup>nd</sup> respondent, too, were further ordered to meet the costs of the said Application.

**B. Background Facts**

2. The 2<sup>nd</sup> respondent was an employee of the 1<sup>st</sup> respondent, and after they fell out, the 1<sup>st</sup> respondent sued the 2<sup>nd</sup> respondent at the Cooperative tribunal, through Nairobi Cooperative Tribunal Case No 385 of 2018, to recover unpaid loans advanced to him during employment. Eventually, judgment was



issued in their favour for the sum of Kshs.3,718,825/=, which decree remained unsettled/ unsatisfied by the 2<sup>nd</sup> respondent despite demand being made.

3. Simultaneously, while the Cooperative tribunal case was ongoing, the 1<sup>st</sup> respondent also sued the 2<sup>nd</sup> respondent vide Nakuru High Court ELRC No 48 OF 2017, seeking compensation for wrongful dismissal, which case was heard on merit and judgment entered in his favour in the sum of Kshs.819,202/= inclusive of costs and interest. To enforce this payment, the 2<sup>nd</sup> respondent garnished the 1<sup>st</sup> respondent's account held at Cooperative Bank (K) Ltd, and eventually the garnishee bank settled the said decree on 12<sup>th</sup> March 2020.
4. In the same vein, having been stung by the execution proceedings, the 1<sup>st</sup> respondent similarly applied to garnishee the sum paid out to the 2<sup>nd</sup> respondent's advocate (the appellant herein) and obtained a garnishee order Nisi on 19<sup>th</sup> March 2020 barring the appellant from releasing the sum of Kshs.819,202/= to the 2<sup>nd</sup> respondent pending inter parties hearing and determination of the said application.
5. In response thereto, the Appellant deponed that on 18<sup>th</sup> March 2020, before he was served with the garnishee order Nisi, he had released to the 2<sup>nd</sup> respondent a sum of Kshs.503,787/= and retained the rest to cover his legal fee and costs. He therefore did not owe the 2<sup>nd</sup> respondent any sum of money and prayed that the said garnishee application be dismissed.
6. The said application was considered on merit by the tribunal and vide its ruling dated 07.01.2021, they held that it was apparent that the only money available/held by the garnishee and which was capable of being attached was Kshs.340,000/=. They therefore allowed the garnishee application for this amount and issued a decree absolute. The Appellant and 2<sup>nd</sup> respondent were also ordered to pay for the costs of the said Application,
7. Being dissatisfied with the said ruling, the appellant did proceed to file his memorandum of Appeal dated 5<sup>th</sup> February 2021, wherein he raised the following grounds of Appeal, to wit;
  - a. The learned chairperson of the tribunal grossly erred when she held that the Appellant had a debt owing and payable to the 2<sup>nd</sup> respondent on 19.03.2020.
  - b. The learned chairperson erred when she failed to consider the relevant question for determination as to when the Appellant was deemed to have paid the 2<sup>nd</sup> Respondent, and therefore discharged its obligations upon the 2<sup>nd</sup> Respondent.
  - c. The learned chairperson did not consider that the Appellant had already discharged its obligation upon the 2<sup>nd</sup> respondent at the time of service of the Garnishee order Nisi on 19.03.2021
  - d. The learned chairperson erred and misdirected herself when she held the view that the Appellant did not stop the cheque which had already been issued to the 2<sup>nd</sup> respondent the previous day, and when there was no opportunity to do so.
  - e. The learned chairperson erred and misdirected herself when she held the Appellant in the same position as a banking entity with capacity to freeze an account with immediate effect upon service of a court order, and failed to consider that in the circumstances of this case, it required the involvement of a third party and processes to do so, and which could not be reasonably be done at the time.



- f. The learned chairperson erred in fact when she held that the Appellant owed the 2<sup>nd</sup> Respondent Ksh.340,000/= when no such amount was owing and/or payable to the 2<sup>nd</sup> respondent by the Appellant at the time of service of the Garnishee order Nisi.
  - g. The chairperson erred in fact when she held that the Appellant had not provided any explanation of the whereabouts of the balance of Kshs.340,000/=:, when it was well explained that the said amount had been applied to cover costs and legal fees between the 2<sup>nd</sup> respondent and the Applicant.
8. The Appellant proposed that this appeal be allowed and the impugned ruling be set aside in its entirety. He also asked for the costs of this Appeal and any other relief this court may deem fit and just to grant.

### C. Analysis & Determination

9. I have considered this appeal and the impugned ruling. I have also considered the submissions filed, the decisions relied on, and perused the trial court's record. This being a first appeal, it is by way of a retrial, and this court, as the first appellate court, must re-evaluate, re-analyze, and re-consider the evidence afresh and draw its conclusions on it. The court should, however, bear in mind that it did not see the witnesses as they testified and give due allowance for that. (see *Selle v Associated Motor Boat Co Ltd & Others* [1968] EA 123) & *Peters Vs Sunday Post Limited* (1968) EA 123).
10. A first appellate court is also the final court of fact, and litigants are entitled to full, fair, independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of section 78 of the *Civil Procedure Act*, a court of first appeal can appreciate the entire evidence and come to a different conclusion. See *Kurian Chacko Vs Varkey Ouseph*, AIR 1969 Kerala 316.
11. The central issue for determination in this Appeal is whether the Appellant had a lien over the Kshs.340,000/= he retained in lieu of his professional legal fee for services rendered to the 2<sup>nd</sup> respondent. All other issues raised in the grounds of appeal are obiter dicta, which do not warrant any determinative finding from this court.
12. Before the tribunal, the Appellant pleaded in his Replying Affidavit that the sums retained were in lieu of his legal fee for services rendered to the 2<sup>nd</sup> respondent, but did not attach any evidence to support the same. After he filed this Appeal, he filed an application seeking leave to file additional documents (fee note dated 16.10.2017) to support this contention, and his application was allowed vide a ruling dated 27.11.2024
13. Taking into consideration the addition evidence provided and prior pleadings, it is my finding that an advocate has a right to secure his legal fee from sums they hold for a client, but only after the said fee has been properly earned, in terms of rendering service to the client and the amount of legal fee payable be guided by Section 45 of the *Advocates Act*, and Advocates (Remuneration) Order, respectively.
14. It is not in dispute that the Appellant did successfully represent the 2<sup>nd</sup> respondent in Nakuru High Court ELRC No 48 of 2017 and secured for him an award of Kshs819,202/=. As the counsel on record, he cannot be faulted for securing his legal fee from the said decretal amount before releasing the balance to his client. To that extent, it was an error for the tribunal to hold otherwise, as the advocate had the first lien on the recovered decretal sum.



**C. Disposition**

- 15. This Appeal therefore has merit. The ruling dated 7<sup>th</sup> January 2021, delivered by the Honourable B Kimemia in Nairobi Co-operative Tribunal Case No. 385 of 2018, is hereby set aside, and the 1<sup>st</sup> respondent's garnishee application dated 16<sup>th</sup> March 2020 is dismissed.
- 16. Each party will bear their own costs of this Appeal.
- 17. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 15<sup>TH</sup> DAY OF OCTOBER, 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 15<sup>TH</sup> DAY OF OCTOBER, 2025.**

In the presence of: -

N/A.....Appellant

N/A ..... Respondent

Mr. Jarso .....Court Assistant

