

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
MISC CIVIL APPLICATION NO. E020 OF 2021

OUMA MAURICE OTIENO T/A

O.M OTIENO & CO. ADVOCATES
APPLICANT

VERSUS

AFRICA MERCHANT ASSURANCE
COMPANY LIMITED
RESPONDENT

AND

SAFARICOM PLC GARNISHEE

RULING

1. The Applicant filed a Chamber Summons Application dated 22nd July 2025 which sought the following orders: -

I. Spent.

II. THAT at the inter parties and/or further hearing of this Application, the *Garnishee nisi* be made absolute and the monies attached be released to the Decree Holder/Advocate/Applicant, O.M Otieno & Company Advocates to satisfy the decretal sum outstanding at the time of determination of these proceedings.

III. THAT costs of this Application be provided for.

2. The Application was brought under the provisions of **Order 23 Rule 1(1) of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act** and it was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Ouma Maurice Otieno Advocate on 22nd July 2025.

The Applicant's case.

3. The Applicant stated that he had a decree amounting to Kshs 289,860/= and the Judgement Debtor/Respondent had refused to satisfy it. That the Garnishee is holding the Respondent's monies in Till Account Numbers 545400 and 4106404. The Applicant further stated that the decree remained unsettled to date and continued attracting interest.

4. It was the Applicant's case that the Respondent's refusal to satisfy the decree has exposed him to huge expenses and long proceedings to recover professional fees for services rendered. That the Respondent had engaged in clandestine

activities including paying its customers through advocates' accounts with the intent of concealing the flow of its financial dealings so as to avoid settling debts. It was the Applicant's further case that the Respondent's refusal to settle the decree was unfair as it enjoyed the Applicant's services.

Garnishee's Replying Affidavit.

5. The Garnishee filed a Replying Affidavit dated 29th September 2025 sworn by Stella Mutindi Mutua, the Garnishee's Senior Merchant Officer in the Enterprise Channels Department, M-pesa services. The Garnishee stated that Till Number 4106404 was held and operated by the Respondent. The Garnishee further stated that upon 4 days of the receipt of the *Garnishee Absolute*, it shall release Kshs 289,860/= to the Applicant.

6. In regards to the Respondent, I have gone through the proceedings and I have noted that the Applicant filed an Affidavit of Service dated 29th September 2025. The Affidavit of Service indicated that the Respondent had been served

with the present Application on 19th August 2025. Moreso, the Respondent's advocate appeared personally in court on 30th September 2025 to address the court on the present Application. I am satisfied that the Respondent was served with the Application and has not filed a reply.

7. In regards to the prayer for *Garnishee Absolute*, **Order 23 of the Civil Procedure Rules** provide: -

(1) A court may, upon the ex parte application of a decree-holder, and either before or after an oral examination of the judgment-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, rule 42 owing from such third person (hereinafter called the

“garnishee”) to the judgment-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decreeholder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.

(2) At least seven days before the day of hearing the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment-debtor.

(3) Service on the judgment-debtor may be made either at the address for service if the judgment-debtor has appeared in the suit and given an address for service, or on his advocate if he has appeared by advocate, or if there has been no appearance then by leaving the order at his usual

residence or place of business or in such manner as the court may direct.....

8. I concur with the finding of the court in **Eric Ntabo & Co Advocates v Trident Insurance Co. Ltd; Safaricom PLC (Garnishee) [2025] KEELRC 2215 (KLR)** where it was held: -

“A perusal of Order 23 of the Civil Procedure Rules demonstrates that an order for Garnishee Absolute ought to be preceded with an order for garnishee nisi. In the court’s view, this requirement is meant to serve two purposes. First, it is to give the Garnishee the opportunity to contest the request for an order of Garnishee Absolute. Second, it is to give the Judgment Debtor the opportunity to either contest the Garnishee proceedings or to settle the decretal sum without the need for attachment of the amounts held by the Garnishee.”

9. From the record, this court issued a *Garnishee Nisi* on 22nd July 2025. The Applicant also prayed that during the hearing of the Application, the *Garnishee Nisi* be made absolute. Further, as I have stated earlier in this Ruling, the Respondent was served with the Application together with the *Garnishee Nisi* on 19th August 2025 and did not to respond or challenge the order. It is also salient to note that the Garnishee confirmed that the Respondent operated Till Account Number 4106404 and was ready to release the monies to the Applicant upon service of the *Garnishee Absolute*.

10. Flowing from the above, I make the following orders: -

- I. An order for *Garnishee Absolute* is issued against Safaricom PLC that all monies belonging to the Judgement Debtor (Africa Merchant Assurance Company Limited) and held by the Garnishee in Till Account Number 4106404 be attached to recover Kshs 289,860/= owed to the Applicant by the Respondent.
- II. Each party shall bear their own costs in this Application.

**Ruling delivered, dated and signed at Bomet this
9th day of October, 2025.**

.....
HON. J.K.NG'ARNG'AR
JUDGE

**Ruling delivered in the presence of;
Siele and Susan (Court Assistants).
O.M. Otieno for the Appellant
Munyoki for the Respondent**