



REPUBLIC OF KENYA



KENYA LAW
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**SBO Research Limited v Ciira & another (Civil Appeal E264 of 2025)
[2025] KEHC 13541 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E264 OF 2025**

AC MRIMA, J

OCTOBER 1, 2025

BETWEEN

SBO RESEARCH LIMITED APPELLANT

AND

JOSEPH NG'ANG'A CIIRA 1ST RESPONDENT

BONIFACE IRUNGU NGAHU 2ND RESPONDENT

(Being an appeal from the Ruling and Order of Hon. Rawlings Liluma (SRM) in Chief Magistrates Court Civil Case No. E1499 of 2020 delivered on 7th February 2025)

JUDGMENT

1. Through the Complaint dated 9th March 2020 filed in Nairobi [Milimani] Chief Magistrates Court Civil Case No. E1499 of 2020 [hereinafter referred to as 'the suit'], Joseph Ng'ang'a Ciira, the 1st Respondent herein, sought to recover the sum of Kshs. 474,080/= with interest and costs from Boniface Irungu Ngahu, the 2nd Respondents herein, being special damages suffered to the 1st Respondent's motor vehicle registration number KBJ 322D when it was allegedly hit by the 2nd Respondent's motor vehicle registration number KAX 846G.
2. The 1st Respondent obtained judgment as prayed and since the 2nd Respondent failed to satisfy it, the 1st Respondent instituted garnishee proceedings vide a Notice of Motion dated 15th October 2024 where SBO Research Limited, the Appellant herein, was named as the Garnishee. In a ruling rendered on 7th February 2025, the Appellant was ordered to fully satisfy the judgment in the suit.
3. Dissatisfied with the said ruling, the Appellant lodged an appeal which appeal was heard by way of written submissions, hence, this judgment.



4. Through a Memorandum of Appeal dated 4th March 2025, the Appellant proposed the setting aside of the impugned ruling on the following eight grounds namely: -

1. That the Learned Magistrate erred in law by issuing Garnishee Order absolute against the Appellant without establishing any employer/employee relationship between the parties.
2. That Learned Magistrate erred in law by failing to appreciate that the Judgment and/decree in issue was not issued against the Appellant but the 2nd Respondent and there is no lawful basis for the Appellant to settle the 2nd Respondent's decree.
3. That the Learned Magistrate erred in his said ruling by holding that the Garnishee had a burden of proving that the Judgment-Debtor's account held with them lacked enough funds to satisfy the decree without addressing its mind to the fact that the Appellant is neither the Banker nor employer of the 2nd Respondent to access his accounts.
4. That the Learned Magistrate erred in his ruling by holding that vide the service dated 2nd February 2024, the Garnishee had established the fact that the Judgment-Debtor is a consultant to their company and is paid Ksh. 119,500/= . The said service agreement was for a specific purpose and limited time. The agreement was for project "Kenya Ports Authority (KPA) Satisfaction Survey" and had time limitation from 5th February, 2024 to 29th March, 2024 for a limited purpose.
5. That the Learned Magistrate erred in Law by generating a new cause of action. The 1st Respondent in his Notice of Motion application dated 15th October, 2024 seeking Garnishee Order against Appellant ordering that 2nd Respondent's salary be attached to answer the decree dated 18th July, 2023 for the sum of Ksh. 741,770.66/= in respect of Judgment which was entered in 1st Respondent's favour. The Learned Magistrate failed to establish whether there exists an employer-employee relationship before issuing a Garnishee Order Absolute.
6. That the Learned Magistrate failed to appreciate the fact that the Appellant engages the 2nd Respondent on a consultancy basis and doesn't draw a fixed salary to warrant an attachment thereby rendering the execution of the Garnishee Order Absolute impractical.
7. That the Learned Magistrate failed to appreciate the fact that the Appellant, being a research Company, engages with various consultants from time to time as and when the need arises. The Garnishee Order absolute against the Appellant to settle the 2nd Respondent's decree, implies that the Appellant will be subjected to settle any liabilities of the many consultants they usually engage thereby setting a very bad precedent against the Appellant as all its consultants will start binding it in transactions it isn't privy to.
8. That the decision of the Learned Magistrate is against the weight of the evidence.



5. In their written submissions, the Appellant and the 1st Respondent urged this Court to find in their respective favour and referred to several decisions in their said bids. The gist of the submissions shall be ingrained in the latter part of this decision.
6. The 2nd Respondent did not participate in this appeal just like in the suit.
7. The single issue for determination in this appeal is whether the Notice of Motion dated 15th October 2024 was merited. As the parties have rendered the law on garnishee proceedings [Order 22 Rule 42 of the Civil Procedure Rules, 2010] and also cited several relevant decisions thereto, this Court will not regurgitate the same save to emphasize that in contested garnishee proceedings, for a Garnishee Order Absolute to issue there must be proof that the decreed sums are either in possession and control of the Garnishee or there's certainty that such sums will be vested in the possession and control of the Garnishee. The reason for such an assurance is generally that the Garnishee is not the judgment debtor and cannot be called upon to satisfy the decree on behalf of the judgment debtor unless in certain clearly-legally established exceptions. For instance, if the Garnishee upon service of the Garnishee Order Nisi fails to withhold the funds in issue without any lawful justification, then such a Garnishee will be liable to personally avail and satisfy the amounts garnisheed.
8. Returning to the matter at hand and in satisfying the above, this Court is to ascertain whether the 2nd Respondent was the Appellant's employee or alternatively, whether the Appellant makes periodic payments to the 2nd Respondent. On the first limb, there is a contention as to whether the 2nd Respondent is the Appellant's employee. Whereas the 1st Respondent contended that indeed the 2nd Respondent was employed by the Appellant as a Manager, the Appellant denied any employer-employee relationship with the 2nd Respondent and availed evidence to the effect that the Appellant only engages the 2nd Respondent on need basis as it discharges its duties as a research institution. On its part, the 1st Respondent did not avail any credible evidence to support the allegation that the 2nd Respondent was employed as a Manager by the Appellant. This Court, therefore, finds and hold that the contention that the 2nd Respondent was the Appellant's employee fails and is for rejection.
9. The other consideration is whether there are periodic allowances payable by the Appellant to the 2nd Respondent. Again, the Appellant stated and proved by way of evidence that it last engaged the 2nd Respondent from 5th February 2024 to 29th March 2024. Therefore, by the time the impugned ruling was rendered, the Appellant had last engaged the 2nd Respondent over a year ago. Further, the Appellant stated that there was no guarantee of extending any such services to the 2nd Respondent in future since their relation was on need basis amid several other qualified consultants. As such, there was no assurance that the Appellant shall engage the 2nd Respondent in future. Likewise, there was no evidence that the Appellant held any sums for and to the benefit of the 2nd Respondent. As such, calling upon the Appellant to satisfy the decree on behalf of the judgment debtor in such circumstances lacked any legal basis and was too speculative. Such an order is certainly in vain.
10. It is on the basis of the foregoing discussion that this Court finds that the trial Court, with tremendous respect, erred in allowing the garnishee application. The prevailing circumstances dictated otherwise.
11. Consequently, this Court hereby finds the appeal merited and makes the following final orders: -
 - (a) The appeal is hereby allowed. The ruling dated 7th February 2025 allowing the Notice of Motion dated 15th October 2024 is hereby set-aside and quashed.
 - (b) The Notice of Motion dated 15th October 2024 is hereby dismissed with costs.
 - (d) The 1st Respondent shall bear the costs of the appeal.



Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF OCTOBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Mc Ronald, Learned Counsel for the Appellant.

Mr. Karuhaga, Learned Counsel for the 1st Respondent.

No appearance for the 2nd Respondent.

Michael/Amina – Court Assistants.

