



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kadu v Kenya Ports Authority; National Bank of Kenya & another (Garnishee)  
(Cause E096 of 2021) [2025] KEELRC 2863 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2863 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E096 OF 2021  
K OCHARO, J  
OCTOBER 13, 2025**

**BETWEEN**

**ERASTUS OTINO KADU ..... CLAIMANT**

**AND**

**KENYA PORTS AUTHORITY ..... RESPONDENT**

**AND**

**NATIONAL BANK OF KENYA ..... GARNISHEE**

**CITI BANK N.A ..... GARNISHEE**

**RULING**

1. By a Notice of Motion Application dated 8<sup>th</sup> September 2025, the Respondent/ Judgment Debtor seeks the following orders:
  - I. That this Court issues an ex parte interim order stopping further proceedings in respect of the Notice of Motion application dated 1<sup>st</sup> August 2025 until the hearing and determination of this application.
  - II. That there be a setting aside of all garnishee proceedings herein, including the Garnishee Order Nisi issued on 4<sup>th</sup> August 2025, for being incompetent and fatally defective.
  - III. That this Court finds and holds that the decretal sum to be obtained in the garnishee proceedings is incorrect, as it does not conform to the Judgment delivered on 7<sup>th</sup> March 2025.
  - IV. That this Court be pleased to set aside the Garnishee Order Nisi issued on 4<sup>th</sup> August 2025.
  - V. Costs of this application be provided for.



2. The application is based on the grounds outlined on its face, supported by an affidavit sworn by Stephen Kyandih on 8<sup>th</sup> September 2025.
3. The Respondent opposes the application by filing a replying affidavit sworn on 18<sup>th</sup> August 2025.
4. When the application came up for hearing on 18<sup>th</sup> September 2025, Counsel for the Claimant/Decree Holder informed this Court that he was served with the application the previous day at 11:00 p.m., a fact that Counsel for the Judgment Debtor did not dispute, and as a result, he had not filed a response to the application.
5. By reason of the premises, this Court was prompted to give the following directions;
  - a. The Respondent/ Decree Holder is granted leave of 10 days to file and serve a response to the application by the Judgment-Debtor.
  - b. The Judgment debtor to file and serve submissions on the application within 3 days of service of the Response.
  - c. The Decree-Holder shall have 4 days of service of the submissions by the Judgment Debtor to file response submissions.
  - d. Mention 6<sup>th</sup> October 2025, for fixing the matter for ruling.
  - e. Writing of the ruling in respect of the Garnishee application is stayed pending the determination of the application by the Judgment Debtor. However, the Garnishee order nisi shall remain in force till then.
6. On 6<sup>th</sup> October 2025, Counsel for the Claimant/ Decree Holder stated to this Court that he had not been served with the written submissions by the Judgment Debtor's Counsel. However, he had perused those uploaded on the system and managed to prepare the Claimant's submissions.
7. He observed that from the Judgment Debtor's Submissions, it is evident that they have calculated a sum of KShs. 3,375,191.56, as due and payable to the Decree Holder, and stated that his client agrees to the figure. However, as it captures interest up to the 6<sup>th</sup> of August 2025, the Court should direct that the interest for the period 6<sup>th</sup> August 2025 – 6<sup>th</sup> October 2025, approximately Kenya Shillings Eighty thousand, should be included. The application should be allowed, considering this factor.
8. Mr Cheruiyot, then holding brief for Mr Kiandi, for the Judgment debtor, stated that the submissions by the Judgment Debtor had not specified an amount as due and owing to the Decree Holder to be acceded to by the latter and be a basis on which the Judgment Debtor's application can be compromised. He urged the Court to render a decision on the application.
9. The gravamen of the Judgment Debtor's application is that the Decree Holder has commenced execution proceedings against it by way of Garnishee proceedings for an amount that is unjustifiably high and which does not align with the judgment of the Court delivered on 7<sup>th</sup> March 2025.
10. In their submissions dated 23<sup>rd</sup> September 2025, they clearly state the amount they consider to be correct. They urge this Court to determine that this amount is genuinely due and payable to the Decree Holder, in accordance with the terms of the judgment.
11. In paragraph 2 of the submissions, they state;  
Basis for the Application



The Applicant avers that the decree extracted on 14<sup>th</sup> March 2025, reflected a sum of KShs. 4 049 608.33, which is consistent with the Judgment of the Court. Additionally, the decree states that the awarded sum shall be subject to such statutory deductions as applied to the Claimant as at the date of his retirement and lastly that the Claimant was awarded costs of the suit and interest on the awarded sum at the court rate from the date of the judgment.

The cost of the suit was assessed at KShs. 349, 417. 16 vide the ruling dated 3<sup>rd</sup> July 2025.

The tax in employment matters is Pay as you earn, which is 30% of the employee's earnings. The Claimant is therefore entitled to KShs. 2,834.725.83 as net pay. [Emphasis added].

Total payment due under the Judgment is therefore'

- I. Net Pay..... KShs. 2,834 725.83.
  - II. Costs.....KShs. 349, 417.16.
  - III. Interest [12% per annum for 6 months, i.e. from 7<sup>th</sup> March to 6<sup>th</sup> August 2025] KShs 191. 048.57.
  - IV. Total .....KShs. 3, 375, 191.56.
12. With the foregoing, I am completely unable to comprehend how Counsel Cheruiyot can confidently assert that the Judgment Debtor has not specified any particular amount as payable and owed to the Decree Holder, an amount that the latter can accept.
  13. The amount specified in the Judgment Debtor's submissions, KShs. 3,375,191.56. Decree Holder has acknowledged this sum as the accurate sum payable by them to him as of 6<sup>th</sup> August 2025. This amount includes costs and interest accrued on the principal sum. Therefore, for the purposes of the garnishee proceedings herein or any form of execution process, the amount plus any interest accrued on the same after the 6<sup>th</sup> August 2025, till full payment, shall constitute the subject matter.
  14. Noting that on 18<sup>th</sup> August 2025, Counsel for the 2<sup>nd</sup> Garnishee indicated that the Garnishee had sufficient funds to settle the amount sought in the Garnishee application, and therefore, the order nisi would be made absolute, for clarity of record, the order nisi is hereby made absolute against the 2<sup>nd</sup> Garnishee for the aforementioned sum. The Garnishee proceedings against the 1<sup>st</sup> Respondent shall continue.
  15. Orders accordingly.

**READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 13<sup>TH</sup> OCTOBER 2025.**

**OCHARO KEBIRA**

**JUDGE**

