



**Musyoki t/a Alfajiri Auctioneers v Trident Insurance Company Limited;
KCB Bank Kenya Limited (Garnishee) (Miscellaneous Civil Application
E331 of 2024) [2025] KEHC 14968 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION E331 OF 2024
G MUTAI, J
OCTOBER 3, 2025**

BETWEEN

URBANUS KIOKO MUSYOKI T/A ALFAJIRI AUCTIONEERS APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

AND

KCB BANK KENYA LIMITED GARNISHEE

RULING

1. Before this court is a Notice of Motion application dated 26th June 2025 filed by the Applicant, vide which he seeks the following orders: -
 - a. Spent;
 - b. Spent;
 - c. That this Honourable Court be pleased to order the above-named Garnishee and the Respondent to attend before the court on a date to be appointed, to show cause why the said Garnishee should not pay to the Applicant the taxed costs herein or so much thereof as may be sufficient to satisfy the said sum of Kes.87,404/-, plus interest at the rate of 12% per annum;
 - d. That upon the inter parties hearing of this Application, this Honourable Court be pleased to issue a Garnishee Order Absolute in terms of Prayer 2 herein above;
 - e. That the cost of this application be provided for by the Respondent.
2. The application is premised on the grounds therein and the supporting affidavit sworn by the Applicant on 26th June 2025. Vide the said affidavit, the Applicant stated that a certificate of costs



was issued by the Court on 9th June 2025, against the respondent in the sum of Kes.87,404.00/-. He served the respondent with the said certificate of costs on 17th June 2025 through their email address, legal@trident.co.ke, demanding payment of the sum claimed; however, the same remains unsatisfied to date.

3. He further stated that the garnishee is holding funds to the credit of the Respondent in bank account no.1121577032, High Court Branch, Nairobi. The Applicant deposed that he is apprehensive that the Respondent may withdraw and/or move the funds unless the orders sought are granted. He therefore urged the court to allow the application as prayed.
4. In response, the garnishee filed a replying affidavit sworn by Wycliff Ochieng, the garnishee's branch manager, High Court Branch, on 10th July 2025. In the said affidavit, Mr Ochieng confirmed that the Respondent holds and operates the account mentioned by the Applicant with the garnishee. He deposed that at the Respondent's request, the garnishee granted the Respondent a loan facility/ financial accommodation in the form of an overdraft facility for the sum of Kes.100,000,000/- by a letter of offer and acceptance dated 9th October 2023 in respect of the said account. The said facility was to finance the judgment debtor's working requirements, and it allowed it to withdraw from the subject account to a maximum of Kes.100,000,000/- and repay the overdrawn sums to the garnishee as per the mutually agreed terms.
5. He stated that the respondent utilized the overdraft facility, and as at 10th July 2025, the account was overdrawn by Kes.99,244,395/28. He further stated that, as the Respondent had overdrawn the account, the garnishee cannot be said to be indebted to the Respondent/Judgment Debtor. Mr Ochieng stated that the account balance is insufficient and the garnishee is therefore unable to settle the decretal sum of Kes.87,404/- as sought by the decree holder.
6. Mr Ochieng urged the court to discharge the garnishee from these proceedings and direct the applicant/decree holder to pursue other avenues of execution. He also prayed that the Court order the Applicant to pay the garnishee's costs of Kes.30,000/-, being the costs of the garnishee proceedings.
7. I have considered the application and the responses thereto as well as the submissions of the parties. In my view, the issue for determination by the Court is whether the Court should issue a decree nisi.
8. Order 23, Rule 1 of the Civil Procedure Rules provides that:-
 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 decree- holder 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.

9. The court in the case of *Millimo, Muthomi & Co. Advocates v Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme; Co-operative Bank of Kenya Limited & another (Garnishee)* [2021] KEHC 5009 (KLR) stated that:-

“Garnishee Proceedings are normally instituted to enforce a money decree by the seizure or attachment of the debts due to the Judgment Debtor, which form part of his property that is available for execution. In *Ecobank Kenya Ltd v True North Construction Company Ltd & Another* [2018] eKLR, the court stated that the purpose of garnishee proceedings is to enable a Decree Holder to reach a debt due to the Judgment Debtor from the Garnishee as may be sufficient to satisfy a Decree. The Garnishee is thus required to prove whether or not it is indebted to the Judgement Debtor.”

10. Further, the court in the case of *Mengich t/a Mengich & Co Advocates & another v Joseph Mabwai & 10 others* [2018] KEHC 9737 (KLR), in dealing with the issue of garnishee proceedings, laid down the procedure to be followed and stated as follows:-

“Generally, Garnishee proceedings is done in two different stages. The first stage is for the garnishee order nisi, while the second stage is for the garnishee order absolute. At the first stage, the judgment creditor makes an application ex parte to the Court that the judgment debt in the hands of the third party, the Garnishee, be paid directly to the judgment creditor unless there is an explanation from the Garnishee why the order nisi should not be made absolute. If the judgment creditor satisfies the Court on the existence of the Garnishee who is holding money due to the judgment debtor, such third party (Garnishee) will be called upon to show cause why the judgment debtor's money in its hands should not be paid over to the judgment creditor, and if the Court is satisfied that the judgment creditor is entitled to attach the debt, the Court will make a garnishee order nisi attaching the debt.

The essence of the order nisi is to direct the Garnishee to appear in court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order nisi must be served on the Garnishee and judgment Debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the Garnishee fails to attend court or show good cause why the order nisi attaching the debt should not be made absolute, the Court, may, subject to certain limitations, make the garnishee order absolute. The Garnishee, where necessary, also has an option of disputing liability to pay the debt. The applicants ignored these procedures.

The primary object of a garnishee order is to make the debt due by the debtor of the judgment debtor available to the decree holder in execution without driving him to the suit. The court may, in the case of debt (other than a debt secured by a mortgage or charge), upon the application of the attaching creditor, issue a notice to garnishee liable to pay such debt, calling upon him either to pay into court the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

... The order contemplated by Order 23 is discretionary, and the court may refuse to pass such an order if it is inequitable. The discretion, however, must be exercised judicially. Where the court finds that there is a bona fide dispute against the claim and the dispute is



not false or frivolous, it should not take action under this rule. Before me, the Respondents disputed the amounts. Further, counsel for the Bank stated that the funds have since been transferred from the accounts. A bank statement produced in court confirmed this position. Even if the proper procedure had been followed and all the other requirements discussed earlier satisfied, in view of the foregoing revelations, the court would be inclined to decline to exercise its discretion in favour of the applicant.”

11. In this case, there is no dispute on the existence of the debt or the subject account with the garnishee. However, the garnishee argues that there are insufficient funds in the said account to settle the decretal sum and that the Judgment Debtor owes it money under the overdraft facility stated above.
12. I have considered the evidence tendered by the garnishee. I am satisfied that the garnishee's explanation is cogent. The Judgment Debtor owes the garnishee money for the overdraft facility. Allowing this application would have a perverse outcome, as the garnishee would be compelled to use its own funds to pay the Respondent's debts to the Applicant. In my view that would be inequitable.
13. I am of the view that the amounts that can be garnisheed are the credit balances with the garnishee, not loans or other similar credit facilities. In this, I am guided by the persuasive authority of the decision of Aburili, J, in the case of I & M Bank Limited v Omolo (Civil Case 11 of 2020) [2023] KEHC 25859 (KLR) wherein she stated that:-
 38. The defendant averred that he did not receive the funds stated in the overdraft as at the time the letter of offer was executed, for reasons that the financier was placed on a moratorium and all loans were stopped. However, it is noteworthy that an overdraft does not mean that one is credited with funds, but rather it is a loan arrangement that enables individuals or businesses to borrow up to an agreed limit without prior approval.
 39. Halsbury's Laws of England 4th ed. Vol. 3 paragraph 155 defines an overdraft as:-

“A customer may borrow from a banker by way of loan or by way of overdraft. A loan is a matter of special agreement. In the absence of agreement, express or implied from a course of business, a banker is not bound to allow his customer to overdraw. An agreement for an overdraft must be supported by good consideration, and it may be express or implied. Drawing a cheque or accepting a bill payable at the banker's where there are not funds sufficient to meet it amounts to a request for an overdraft.”
14. It is therefore my view that the application dated 26th June 2025 lacks merit. The same is hereby dismissed with costs.
15. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 3RD DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Kioko (pro se Applicant);

Ms Mboya, holding brief for Ms Oile, for the Garnishee;

No appearance for the Respondent; and

Arthur – Court Assistant.

