



**AA Bayusuf & Sons Limited v Northern Water Works Development Agency;  
KCB Bank Limited (Garnishee) (Commercial Arbitration Cause E098 of 2024)  
[2025] KEHC 17017 (KLR) (Commercial and Tax) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17017 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL ARBITRATION CAUSE E098 OF 2024**

**JWW MONG'ARE, J  
NOVEMBER 18, 2025**

**BETWEEN**

**AA BAYUSUF & SONS LIMITED ..... DECREE HOLDER**

**AND**

**NORTHERN WATER WORKS DEVELOPMENT AGENCY .... JUDGMENT  
DEBTOR**

**AND**

**KCB BANK LIMITED ..... GARNISHEE**

**RULING**

**Introduction & Background**

1. What is before this Honourable Court is Decree Holder's application filed on 20<sup>th</sup> August 2025 brought under section 1A, 1B, 3, 3A, and 94 of the [Civil Procedure Act](#), Order 9 Rule 9 and Order 23 Rule 1 of the Civil Procedure Rules and seeks the following reliefs:-
  - a. Spent
  - b. Spent
  - c. The Decree Holder be granted leave to execute the Decree dated 16<sup>th</sup> June 2025 before taxation of costs awarded in the suit;
  - d. Spent



- e. The Garnishee be directed to appear in Court on a date fixed by the Court, not earlier than Seven (7) days, to show cause why it should not pay the Decree Holder the sum of Kshs.76,822,199.82/= held by it and due to the Judgment Debtor.
  - f. There be a Garnishee Order Absolute commanding KCB Bank Limited to forthwith pay Kshs.76,822,199.82/= from account numbers XXXXXXXXXX, XXXXXXXXXX, XXXXXXXXXX and XXXXXXXXXX domiciled at the Garnishee's Garissa Branch, in satisfaction of the decretal sum due to the Decree Holder.
  - g. The costs of this application be awarded to the Decree Holder.
2. The Application is supported by the grounds set out on its face and the supporting affidavit of Abdulkarim A. Bayusuf. The application was opposed and the Judgment Debtor filed a replying affidavit sworn on 29<sup>th</sup> August 2025. In compliance to the directions issued by the Court to the Garnishee, pursuant to this application filed a replying affidavit sworn on 24<sup>th</sup> September 2025 by Geoffrey Korir. Both parties filed written submission and appeared before this court 11<sup>th</sup> November 2025 to highlight the same.

### **Analysis And Determination**

3. It is not in dispute that there is a decree herein for the sum of Kshs.76,822,199.82/=that was adopted and recognised as an order of this court on 16<sup>th</sup> June 2025. Parties agree indeed that the Judgment Debtor has no pending appeal before the Court of Appeal, having had its application in Civil Application No. E446 of 2025 seeking leave to file an appeal out of time, dismissed by the Court on 3<sup>rd</sup> October 2025. The Garnishee has in its replying affidavit sworn by Geoffrey Korir confirmed to this court that it holds funds sufficient to satisfy the said decree in the accounts of the Judgment Debtor in its Garissa Branch and that the Garnishee has no claim to the said funds nor is it aware of any lien over the said funds by a third party.
4. Having carefully considered the application and the affidavits filed in support and in reply thereto by the parties, in addition to the rival submissions, what the court has identified as the only issue for determination before it, is whether the Decree Holder can seek leave to execute the decree before taxation of its costs in the same application as the one seeking to garnish the accounts of the Judgment Debtor.
5. The Judgment Debtor has argued that the application as filed is incompetent as the Decree Holder has moved to execute vide the Garnishee application before seeking leave, separately as provided under section 94 of the *Civil Procedure Act*, to commence execution before taxation of its costs awarded by the Court. The Judgement Debtor argues that the move to seek the leave within the Garnishee application makes the said application defective, irregular and illegal. The Judgment Debtor in addition argues that where the Decree Holder elects to commence execution before taxation of costs, like in the present application, the right procedure is to seek the leave envisioned by section 94 of the *Civil Procedure Act* first, since leave is a mandatory prerequisite to execution.
6. Section 94 provides as follows; “ 94. Execution of decree of High Court before costs ascertained- 1. Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.”



7. The counter argument to this issue by the Decree Holder is that section 94 of the Civil Procedure only requires that leave to execute before taxation be sought where the party elects to proceed with execution before costs are assessed by the taxing master, and that there is nothing illegal or irregular in seeking the said leave within the same application for execution such as the present application for Garnishee absolute. The Decree Holder further argues that there is no procedure set out under section 94 of the Act on how the application for leave should be brought or the said leave is sought to be invoked and in seeking leave within the Garnishee application, the Judgment Debtor, who remains indebted to the Decree Holder, is not prejudiced in any way or at all. The Decree Holder urges the court to confirm the Garnishee nisi orders to Garnishee absolute and allow the attachment of the funds held in the Garnishee to be utilised to satisfy the orders of the court. They argue that it is their prerogative whether or not to pursue costs at a later date, and since the court awarded them costs in the matter, nothing stops them from coming back to collect the same, once they are ascertained by the court.
8. Order 23 Rule 4 of the Civil Procedure Rules provides as follows; - “4. Execution against Garnishee [Order 23, rule 4]- If the Garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the Garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the Garnishee proceedings; and the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.”
9. I am in agreement with the Applicant that the object of Garnishee proceedings is to enable the Decree Holder to reach a debt due from the Judgment Debtor, sufficient to satisfy the decree. The only requirement is that the Garnishee is indebted to the Judgment Debtor. This principle was laid down in the case of Nyagwa Ngigi Kibet Advocates v Invesco Assurance Co. Ltd; NCBA Bank Kenya Plc & Another (2021) eKLR, cited herein by the Applicant. It is only where the Garnishee has a lien over the funds so held or is aware of a claim of the same funds by a third party that the court may hesitate to make a Garnishee nisi absolute.
10. In the present case there is no dispute that there is a decree in favour of the Decree Holder from the Judgment Debtor. The Garnishee Bank confirms to this court that it holds funds sufficient to satisfy the said decree in the accounts of the Judgment Debtor and it has no claim to those funds or at all. The question therefore this court must answer is whether leave to proceed with execution before taxation of the costs herein should be granted within the same application that seeks to make the Garnishee nisi absolute.
11. I have looked at section 94 of the *Civil Procedure Act*. I note the wording of the said section gives courts leeway to allow execution to proceed before taxation. The said section states.... “Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;” I find no requirement in the wording of the law that this application for leave must be sought in a separate application. I also find no grounds advanced by the Judgment Debtor that would have stopped the court from granting the said leave even if it was sought in a separate application before execution.
12. I note from the replying affidavit and the oral submissions made before this court that the Respondent had opportunity to file grounds of opposition to the said prayer but none were advanced. I am satisfied therefore that the present application is properly before this court.
13. I find merit in the application and I allow it in its entirety. the same is allowed in the following terms: -



1. Leave is granted to the Decree Holder to proceed with execution of the decree before taxation of awarded costs.
2. Garnishee Order Absolute is hereby granted commanding KCB Bank Limited to forthwith pay Kshs.76,822,199.82/= from account numbers XXXXXXXXXX, XXXXXXXXXX, XXXXXXXXXX and XXXXXXXXXX domiciled at the Garnishee's Garissa Branch, in satisfaction of the decretal sum due to the Decree Holder.
3. On costs, I direct that the Garnishee be paid costs assessed at Kshs.30,000/= from the funds held by it belonging to the Judgment Debtor. The Decree Holder and the Judgment Debtor shall bear their own costs of this application.

14. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF NOVEMBER 2025**

.....  
**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Mr. Omondi holding brief for Mr. Gachie for the Applicant/Decree Holder.

Mr. Muriithi for the Respondent/Judgment Debtor.

Ms. Mungai for the Garnishee.

Amos - Court Assistant

