

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU
CAUSE NO.2 OF 2022

(Before Hon. Justice Dr. Jacob Gakeri)

PAUL ODHIAMBO
RAMOGI.....CLAIMANT
VERSUS
GREAT LAKES UNIVERSITY OF
KISUMU.....RESPONDENT

RULING

Before the court for determination is the Applicant/Decree-Holder's Notice of Motion dated 22nd July 2025 filed under Certificate of Urgency seeking Orders that:-

1. Spent.
2. Spent.
3. Spent.
4. Spent.
5. Spent.
6. The 1st to 4th Garnishees do settle the sum of Kshs.340,000 to the credit of the Decree/holder's Advocates herein Row Advocates LLP Client Accient

NCBA Bank, Kisumu Branch, Account Number 1002049311.

7. Spent.

8. The Decree/holder be at liberty to apply for any such further Orders/or directions as the court may deem fit and just to grant.

9. Costs be borne by the 1st to 4th Garnishees.

The Notice of Motion is expressed under Section 1A, 1B, 3A and 38 of the Civil Procedure Act, Order 23 rules 1, 2, 3 and 10, Order 49 Rules 1, 5 and 7 and Order 51 of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit of the applicant sworn on 22nd July 2025.

The affiant deposes that by a judgment delivered on 2nd November 2022 the court awarded him the sum of Kshs.1,844,986 and costs of Kshs.150,000 and by 19th June, 2025, the balance of the decretal sum was Kshs.264,986 out of Kshs.1,994,986.

The affiant further deposed that on 19th June 2025, the court Ordered the Interested Party to refund Kshs.340,000 to the applicant being auctioneers costs retained by the Interested Party on attachment and sale

by public auction of the Judgment debtor's motor vehicle registration number KBJ 277W.

That the Judgment Debtor and the Interested Party owed the Applicant Kshs.604,986.

That the Judgment Debtor held bank accounts as follows:

1st Garnishee A/No. 1117142876

2nd Garnishee A/No. 4662900019

3rd Garnishee A/No. 01129012485700

The affiant further deposed that the Interested Party had bank Account No. 01020244094800 at the 4th Garnishee Kisumu Premier Centre and the monies held in the bank accounts was sufficient to settle the debts.

The applicant further deposed that he needed the cash to finance his daughter's education following her admission at the Kenya School of Law for a Diploma in Law in paralegal studies.

That the interests of justice favoured the grant of the application.

By a Further Affidavit sworn on 23rd October 2025 the applicant deposed that the Interested Party's Account No.

01020244094800 was not a client account because after the sale of motor vehicle by public auction, the Interested Party paid Kshs.600,000 to the applicant's advocate but retained Kshs.300,000 and the drawer of the cheque was Jenks Auctioneer not Jenks Auction client Account and the Account had sufficient funds to settle the debt and costs of the Garnishee, but the 4th Garnishee permitted withdraws 8 times even after being served with the Garnishee Order *nisi*.

The affiant further deposed that attempts to recover the cash had been fruitless, follow ups with the Interested notwithstanding

4th Garnishee's Response

By a Replying Affidavit sworn by Janet Wasike on 1st October, 2025 the affiant deposed that the Garnishee Order *nisi* issued on 22nd July 2025 was served upon the 4th Garnishee requiring the 4th Garnishee to attach the funds in Account Number 01020244094800 in the name of Jenks Auctioneer in satisfaction of the court Order dated 19th June 2025 for the sum of Kshs340,000.00

The affiant confirmed that Account Number 01020244094800 was held and operated as Jenks

Auctioneer Client Account and the account had a balance of Kshs.2,064,518 as at 23rd July 2025 thus sufficiently funded and the 4th Garnishee would pay the sum of Kshs.340,00 within 4 days of service of the Garnishee Order absolute.

Interested Party's response

Strangely, the Interested Party filed two Replying Affidavits sworn on 21st October 2025 and 31st October 2025 and the signatures of the deponent differ and the 2nd Affidavit was sworn by a different person named Joseph Ngodia Gondi yet the opening paragraph identified the applicant as the deponent.

In the Replying Affidavit sworn on 21st October 2025, the affiant deponed that by an Order issued on 18th February 2025 the Hon. Justice Nzioki Wa Makau directed that Deputy Registrar to forward a copy of the Ruling to the Auctioneers Board for further action regarding the applicant who was trading as Jenks Auctioneers P. O Box 325 - 40100 Kisumu, but the process was not followed and the applicant was blindsided on the matter and the instant application came to him as a surprise as he was notified of the Garnishment by the Branch Manager of the 4th Garnishee.

The affiant further deposed that Account Number 01020244094800 was Jenks Auctioneers Client Account at the 4th Garnishee's Bank and the funds therein belonged to the applicant's client as opposed to his personal account.

That the court ought not to grant a Garnishee Order absolute as it would compromise his financial relationship with the bank in so far as the operation of the account was concerned.

That the court ought to Order alternative means of recovery of the sum of Kshs.340,000 owed to the Decree-holder.

Applicant's submissions

As to whether the sum of Kshs.340,000 owed by the Interested Party should be paid out of the Interested Party's account with the 4th Garnishee, counsel citing Order 23 Rule 2 of the Civil Procedure Rules.

Counsel, further submitted that the Interested Party admitted owing the sum of Kshs.340,000.00 to the

applicant/Decree-Holder and the account had over kshs.2,000,000.00

According to counsel, although the Interested Party averred that A/C No. 01020244094800 was a client Account, the cheque to Row Advocates LLP for Kshs.600,000 dated 6th January 2024 had no indication that it was a client account contrary to Rule 20(3) of the Auctioneers Rules, which required cheques drawn on clients account to clearly state so on the face of the cheque which meant that it was not a client's account after all.

That the Interested Party did not disclose particulars of the clients in whose favour he was holding the sum of Kshs.2,000,000 and not all money in a client's account is deemed client money and the Interested Party did not segregate the funds in the bank account and could not hide behind the general cover of client account.

Counsel submitted that the Interested Party's signature on the Replying Affidavit and the cheque dated 6/1/2024 were similar and he was the sole signatory and was thus indistinguishable from the business.

Reliance was placed on the decision in **Ngaywa Ngigi & Kibet Advocates V Invesco Assurance Co. Ltd; Diamond Trust Bank (Garnishee) [2020] eKLR** for the proposition that a Garnishee Order *nisi* operated as an injunction to prevent the Garnishee from paying monies out of the customer's account until the Order is discharged or made absolute, but annexure K002 to the Interested Party's Replying Affidavit showed about kshs.1 million was debited from the account on 19th August 2025, 26th August 2025, 5th September 2025, 8th September 2025, 9th September 2025, 17th September 2025, 19th September 2025 and 6th October 2025.

That the 4th Garnishee permitted debits to defeat the Garnishee proceedings even after being served with the Garnishee Order *nisi* on 23rd July 2025.

That the 4th Garnishee had admitted its readiness and willingness to pay the sum of Kshs.340,000 within 4 days of service of the Garnishee Order absolute.

That costs of the Garnishee be assessed at Kshs.30,000.00.

The Interested Party did not file submissions.

Analysis and determination

In the course of the proceedings, it became clear that the Judgment Debtor had discharged its obligations under the Judgment dated 2nd November 2022 and the only amount outstanding was Kshs.340,000.00 owed by the Interested Party in respect of to an auction sale he conducted but only remitted part of the amount from the winning bidder and the manner in which the Interested Party remitted the sum of Kshs.600,000 to the applicant's counsel would haunt him later in these proceedings.

It is common ground that on 19th June 2025 the court Ordered the Interested Party to refund the sum of Kshs.340,000 to the applicant but the amount remained unpaid.

Puzzlingly, the court accorded counsel for the Interested Party time to file an Affidavit as to how the sum of Kshs.340,000 would be liquidated but counsel turned down the offer opting for a ruling on the application; which the court was obligated to do.

Instructively, when the matter came up on 23rd July 2025 under Certificate of urgency, the court granted Garnishee

Order *nisi* against the Garnishees but Orders against the Judgment Debtors accounts were subsequently discharged save the Garnishee Order *nisi* against the 4th Garnishee in respect of the account held by the Interested Party.

The only issue for determination is whether the Garnishee Order *nisi* granted on 23rd July 2025 should be made absolute to enable the Applicant/Decree-holder recover the sum of Kshs.340,000 owed by the Interested Party. While the Interested Party averred that Account Number 01020244094800 at the 4th Garnishee was a client account and attached a Bank statement dated 9th October, 2025 as evidence of that fact, counsel for the Interested Party submitted that facts discernible from the Interested Party's documents and dealings in relation to the account revealed that the account was indistinguishable from the Interested Party himself.

For the Interested Party, the National Bank Statement for the period 1st August 2025 dated 9th October 2025 indicated that it was a Business current Account under the name Jenks Auctioneers - Client Account No. 77001820986 which differs from the Account in respect

of which a Garnishee Order *nisi* was granted which is Account Number 01020244094800.

For unexplained reasons, the statement availed by the Interested Party had a different account number and none of the parties explained that the two were Account numbers referred to the same account held by Jenks Auctioneers.

In the absence of an explanation, the court will assume that these were two accounts one by Jenks Auctioneers No. 01020244094800 and the other by Jenks Auctioneers - Client Account No. 7700120986.

The foregoing assumption is bolstered by the fact that the Interested Party's cheque dated 6th January 2024 for Kshs.600,000 was drawn by Jenks Auctioneers and the Bank statement had a different account number.

Similarly, the cheque had no indication on its face that the account was indeed a client account.

As correctly submitted by the applicant's counsel, under Rule 20(3) of the Auctioneers Rules, 2017 provides:

“A cheque drawn upon a client’s account shall bear on its face the words “client’s account”.

This rule is couched in mandatory tone to underscore the distinction between a personal account and a client’s account for purposes of protection of client’s funds.

The Interested Party’s cheque on record contained no indication that it was drawn on a client’s account.

Relatedly, under Rule 2 a client Account means:

A current or deposit account at a bank or with a building society or a financial institution (as defined under the Banking Act (Cap 488) in the name of the auctioneer but in the title of which either the word “client” or word “trust” appears.

Clearly, the National Bank statement on record dated 9th October 2025 shows that it related to a client’s Account Number 7700120986.

Unfortunately, the Interested Party furnished no evidence to show that the Account Number of Jenk Auctioneers changed from 01020244094800 to 7700120986 at anytime after the cheque was drawn and honoured.

As matters are, Account No. 01020244094800 had no indication of being a client or trust account or nature of the account.

As correctly submitted by counsel for the applicant, a Garnishee Order *nisi* operates as an injunction. It freezes the judgment debtor's account and the monies therein until it is discharged or made absolute and the Garnishee's duty is to maintain the status quo until it is directed by the court.

It therefore follows that the frozen account cannot be used to transact business by the Judgment debtor or the Garnishee. It prohibits the Garnishee from giving any monies out of the judgment Debtors account.

See the sentiments of D. K. Kemei in **Ngaywa Ngigi & Kibet Advocate V Invesco Assurance Co. Ltd** (supra) cited by the counsel for the Interested Party.

See also **Kenya Electricity Generating Co. Ltd Spedbag Interfreight Kenya Ltd & 4 Others** [2024] KECA 542 (KLR) where the court held:

“There are two stages in garnishee proceedings. The 1st stage is the ex parte stage where an Order is issued attaching the debt held by the garnishee to the credit of the judgment debtor. At this stage the Garnishee is not directed to pay any money to the judgment creditor since the exact amount if any, held by the garnishee to the credit of the judgment debtor is not known. The Order made at this stage is known as garnishee Order nisi...”

In the instant case, counsel for the Decree holder deponed that the Interested Party's account had been transacting business and identified a total of eight (8) transactions since 19th August 2025, the Interested Party did not controvert the allegation in his Replying Affidavit and the National Bank statement on record evidenced the transactions and the Interested Party neither sought the lifting of the garnishee order *nisi* nor allege or demonstrate that his operations had been hampered by the Garnishee Order *nisi* in force. It would appear that either the garnishee Order *nisi* dated 23rd July 2023 was blatantly been ignored or related to a different account held by the Interested Party at the said Bank.

The court is not persuaded that the Interested Party could reasonably have continued transacting business using

the account attached by the garnishee Order *nisi* issued more than two months ago as that would constitute contempt of court. This is because Garnishee Order *nisi* operates as an injunction.

See **Barclays Bank of Kenya Ltd V Kepha Nyabera & others** [2013] KECA 349 (KLR) and **Odhiambo Owiti & Co. Advocates V CFC Stanbic Bank Ltd** [2015] KECA 895 (KLR).

The Applicant/Decree-Holder sought and was granted a garnishee Order *nisi* vide application dated 22nd July 2025, on Account Number 01020244094800 and since the National Bank Statement availed by the Interested Party styled as Jenks Auctioneers Client Account dated 9th October 2025 relates to Account Number 7700120986 and the Interested Party admitted that the amount of Kshs.340,000 remained outstanding and made no effort to show how he intended to settle the amount even after being accorded time by the court, but instead urging court to Order an undisclosed alternative means of recovery, the court is satisfied that no reason has been provided to show why the Garnishee Order *nisi* herein should not be made absolute.

Consequently, the Garnishee order *nisi* dated 23rd July 2025 be and is hereby made garnishee order absolute.

The 4th Garnishee shall pay the Applicant/Decree-Holder the sum of Kshs.360,000.00 comprising the unsettled refund of Kshs.340,000.00 and costs of Kshs.20,000.00.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 26TH DAY OF NOVEMBER 2025.**

**DR. JACOB GAKERI
JUDGE**

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of

the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI
JUDGE