



**Brinken v Jos Hansen & Soehne (East Africa) Ltd (Cause E921 of 2022)
[2025] KEELRC 3450 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3450 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E921 OF 2022
BOM MANANI, J
DECEMBER 4, 2025**

BETWEEN

THOMAS BRINKEN CLAIMANT

AND

JOS HANSEN & SOEHNE (EAST AFRICA) LTD RESPONDENT

RULING

Background

1. Through a consent order which was recorded between the Claimant's and Respondent's Advocates on 17th October 2024, judgment was entered in the cause in favour of the Claimant for the sum of Ksh. 4,976,086.96 plus costs and interest. The court record shows that the Taxing Master of the court subsequently assessed the Claimant's Party and Party Bill of Costs dated 9th January 2025 at Ksh. 325,784.00 after considering the submissions by the parties. The record further shows that the Respondent applied for and was granted stay of execution for a period of thirty (30) days.
2. It would appear that despite finalization of the taxation process, the Respondent did not settle the decretal amount. The court record shows that in a bid to recover the decretal sum, the Claimant applied for warrants for attachment and sale of the Respondent's movable assets. The record further shows that the court issued the aforesaid warrants to Betabase Auctioneers who proclaimed the Respondent's movable assets.
3. In the Claimant's affidavit dated 26th August 2025, he contends that when the Auctioneers visited the Respondent's premises to collect the proclaimed assets, it was discovered that the Respondent had relocated. As such, execution by way of attachment and sale of its (the Respondent's) goods was rendered otiose.
4. The Claimant then filed the instant application dated 26th August 2025 in which he sought the following orders:-



- a. Spent.
 - b. A Garnishee Order Nisi be issued attaching and preserving all the monies held by the Garnishee in the Respondent's account No. 03201699851210 in whatsoever branch held.
 - c. The Garnishee do appear before the court on an urgent date to demonstrate statements of accounts and articulate any claim on the monies held in the account failing which the Garnishee order Nisi to be made absolute and the Garnishee be ordered to immediately pay to the Applicant the decretal amount of Ksh. 5,865,459.96.
 - d. The costs of the application to be provided for.
5. The application was placed before the duty Judge on 28th August 2025 when she gave the following directions:-
- a. The motion is admitted for hearing during the court recess.
 - b. The Decree Holder/Applicant to serve the application upon the Respondent/Judgment Debtor and Garnishee who are to respond to the same within 14 days upon service.
 - c. In the interim and pending further orders from court, a Garnishee Order Nisi on the Garnishee is hereby issued against account No. 03201699851210 ordering that the sum of Ksh. 5,865,459.96 held to the credit of the Judgment Debtor herein be attached to answer a decree for the sum of Ksh. 5,865,459.96.
 - d. The Garnishee do appear before Court 11 on 22nd September 2025 to show cause why it should not pay the Claimant/Decree Holder the decretal outstanding sum of Ksh. 5,865, 459.96.
6. The record shows that counsel for the Decree Holder and Judgment Debtor attended court on 22nd September 2025. However, there was no representation for the Garnishee.
7. The Decree Holder's lawyer informed the court that she had served the Garnishee with the application in terms of the directions which were issued on 28th August 2025 but the Garnishee had neither responded to the motion nor appeared in court. As such, she prayed that the application be allowed and an order for Garnishee Absolute be issued.
8. However, the Judgment Debtor's lawyer informed the court that he was yet to get his client's instructions on the application. As such, he asked that the matter be adjourned for seven (7) days to enable him to file the Judgment Debtor's response.
9. Although the Decree Holder's advocate was opposed to the request, the court adjourned the Garnishee application to 30th September 2025 to enable the Judgment Debtor and Garnishee to file their respective responses. The court directed the Judgment Debtor to file and serve its response by close of business on 29th September 2025.
10. The court record shows that on 30th September 2025 when the matter was called out, only the Decree Holder's lawyer was present in court. Both the Judgment Debtor and Garnishee were absent. Further, neither of them had filed their responses to the Garnishee application as earlier ordered. The court once again adjourned the motion to 14th October 2025 with directions that the Garnishee and Judgment Debtor be served.
11. On 14th October 2025 the Judgment Debtor's and Garnishee's advocates attended court. However, there was no representation for the Judgment Debtor. This is notwithstanding that it (the Judgment



- Debtor) had been served for the day and an affidavit of service dated 30th September 2025 placed on the court file.
12. On the aforesaid date, the Garnishee asked for an adjournment of the application in order to file its response. As a result, the court adjourned the matter to 29th October 2025.
 13. On 29th October 2025, the Judgment Debtor was once again absent despite having been served. There is an affidavit of service on the court record dated 15th October 2025 to speak to the fact of service.
 14. The Garnishee's lawyer informed the court that they had filed their response and were ready to take a ruling date without further ado. Similarly, the Judgment Creditor's advocates intimated that they were not filing submissions and that the court could proceed to grant a ruling date.
 15. The foregoing record speaks to the fact that the Judgment Debtor was granted more than sufficient time to react to the Garnishee application. However, for some reason and despite being aware of the pending proceedings, it (the Judgment Debtor) elected to ignore them. As such, the Garnishee application will be decided without its (the Judgment Debtor's) participation.
 16. In the Garnishee's response to the application, it acknowledges that it holds account No.03201699851210 for the benefit of the Judgment Debtor. It further states that the credit balance on the account as at 26th September 2025 was Ksh. 194,451.49.
 17. The Garnishee contends that this amount cannot satisfy the amount in the decree held by the Judgment Creditor. As such, it prays that it be discharged from the proceedings with an order for costs in its favour.

Analysis

18. The law on Garnishee proceedings is encapsulated in Order 23 of the Civil Procedure Rules which, inter alia, provides as follows:-

"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.....

.....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.....

.....If the garnishee disputes his liability, the court, instead of making an order that execution be levied, may order that any issue or question necessary for determining his



indebtedness be tried and determined in the manner in which an issue or question in a suit is tried or determined.....

.....The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the court, and the costs of the decree-holder shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order, and in priority to the amount due under the decree."

19. From the foregoing, it is apparent that the Judgement Creditor is entitled to take out Garnishee proceedings to attach monies which are held by a Garnishee on behalf of the Judgment Debtor. The instant proceedings are thus valid.
20. It is also apparent that unless the Garnishee disputes holding monies for the Judgment Debtor, the court should permit the attachment of whatever money that the Garnishee is holding to satisfy the decree under consideration or apart thereof. In the instant case, the Garnishee admits that the account in question is held by the Judgment Debtor. The Garnishee further avers that the account has a credit balance of Ksh. 194,451.49.
21. The Garnishee's only contention is that this amount is not sufficient to satisfy the sum in the decree. However, this cannot be a reason not to order attachment of the amount.

Determination

22. Consequently, the court hereby issues an order of Garnishee Absolute to attach the sum of Ksh. 194,451.49 which is currently held on the Judgment Debtor's account No.03201699851210 to be paid to the Judgement Creditor in partial satisfaction of the decree in favour of the Judgment Creditor.
23. Each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED ON THE 4TH DAY OF DECEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Judgment Creditor

..... for the Judgment Debtor

..... for the Garnishee

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

