



**Instalaciones Inabensa S.A v Kenya Electricity Transmission Co. Limited (KETRACO);
NCBA Bank Kenya (PLC) & 4 others (Garnishee) (Miscellaneous Application E445 of 2019)
[2025] KEHC 18357 (KLR) (Commercial and Tax) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E445 OF 2019**

**PM MULWA, J
DECEMBER 11, 2025**

BETWEEN

INSTALANCIAS INABENSA S.A JUDGMENT CREDITOR

AND

**KENYA ELECTRICITY TRANSMISSION CO. LIMITED
(KETRACO) JUDGMENT DEBTOR**

AND

NCBA BANK KENYA (PLC) GARNISHEE

KENYA COMMERCIAL BANK GARNISHEE

STANDARD CHARTERED BANK GARNISHEE

COOPERATIVE BANK OF KENYA GARNISHEE

CITI BANK GARNISHEE

RULING

1. This ruling dispose two applications. The judgment debtor’s application dated 5th June 2025 and the Decree holder’s application dated 25th March 2024. The applications were canvassed by way of written submissions.
2. I have carefully considered the two applications, the replying affidavits and the submissions made by the parties’ respective advocates. I will first deal with the application dated 5th June 2025.



3. In the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 the court persuasively stated thus:

“...whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously” (emphasis added)

4. In my view, the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles;

- i. Whether the applicant has established that it has a prima facie arguable case.
- ii. Whether the application was filed expeditiously and
- iii. Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

5. On the material placed before me, the Judgment Debtor’s core argument is that the pending garnishee ruling may be rendered in favour of a party lacking legal capacity, causing irreparable harm. I find this argument to be premature and procedurally irregular for the following three reasons.

6. Firstly, the issue of the Decree Holder’s capacity post-subrogation is not new. It was raised in the replying affidavit of Lydia Wanjia dated 20th March 2024 filed in opposition to the Garnishee Application itself. The draft Settlement Agreement referenced therein acknowledged the involvement of CA Infrastructural. Therefore, this court, being seized of the Garnishee Application, is fully competent to rule on the issue of capacity as part of its substantive determination. To arrest the ruling on the basis of an issue already before the court would be an unwarranted interference and contrary to the overriding objective.

7. Secondly, pattern of delay. The history of this matter suggests a pattern of employing procedural applications to delay the final resolution of the garnishee proceedings. Courts must be vigilant against the abuse of process.

8. And thirdly, the existence of Adequate Alternative Remedy. Should the ruling be rendered and the Judgment Debtor be aggrieved, it possesses the full right to appeal. The existence of this adequate alternative remedy negates the claim of irreparable harm justifying the stifling of the judicial process at the point.

9. Consequently, I find no compelling reason in the interests of justice to exercise my discretion to arrest or stay the delivery of the ruling. The Application dated 5th June 2025 is hereby dismissed with costs to the Decree Holder.

10. In respect to the application dated 25th March 2024, the following issues arise for determination;

- i. Whether the Decree Holder has the legal capacity to institute and prosecute these garnishee proceedings following the assignment of the debt to CA Infrastructural.



- ii. Whether the Applicant has met the legal threshold for the grant of garnishee orders nisi and absolute
 - iii. Whether the objections raised by the Judgment Debtor constitute sufficient cause to deny the grant of the garnishee orders.
 - iv. Who bears the costs of this application?
11. I shall first address the legal capacity of the decree holder. Principles of the Law of Contract - by Kibaya Imaana Laibuta Pg 86 - 90 stipulates that one of the legal exceptions to common law doctrine of privity of contract is that “An Assignee may enforce rights originally acquired by the Assignor in a contract to which the Assignee was not privy. But save for assignment of contractual rights, which the Assignee may enforce by action, no one should be burdened with obligations under a contract to which he was not a party.
 12. In the instant case with reference to the applicant’s bundle of documents, by a Deed of Assignment executed on 28th July 2023, the Judgment Debtor has been aware of this assignment as evidenced by its own filings in related proceedings.
 13. In my view, the issue of continuing proceedings in the original name after a change of interest is procedural. Order 24 of the Civil Procedure Rules, provides for the substitution of parties upon assignment. Failure to effect a formal substitution does not automatically render proceedings a nullity, especially where the assignee is the entity actively prosecuting the matter and the defendant is fully aware of the assignment. The court’s focus is on whether any incurable prejudice is caused.
 14. In the present case, the affidavit in support of the garnishee application was sworn by Mr. Enrique Riquelme, a director of CA Infraestructural, the assignee. He explicitly deposes that he is acting on behalf of the Decree Holder by virtue of the Deed of Subrogation. The Deed itself is annexed.
 15. The core question is whether Instalaciones Inabensa S.A. can continue these proceedings in its name. The more appropriate course would have been for CA Infraestructural to apply for substitution under Order 24. However, in the interests of justice and to avoid a further multiplicity of applications and delay, and considering that the assignee is the real party in interest and is prosecuting the case through its director, the Judgment Debtor suffers no prejudice, as it knows exactly which entity it owes the debt to and has been engaging on a settlement.
 16. It is my considered view, that any defect is a procedural irregularity capable of being cured, potentially even by a subsequent amendment or order of this court.
 17. I find that this irregularity is not fatal to the current application. The overriding objective in Sections 1A and 1B of the *Civil Procedure Act* mandates this court to handle matters justly, expeditiously, and proportionately. To strike out these proceedings on this technical ground at this advanced stage, when the debt and the debtor are clearly identified, would be an affront to that objective. The issue of capacity, therefore, does not bar the grant of the garnishee orders.
 18. I now turn to the merit of the garnishee application. Garnishee proceedings are governed by Order 23 of the Civil Procedure Rules. The conditions are: (i) a valid, unsatisfied decree; (ii) a third party (garnishee) indebted to the judgment debtor; and (iii) an attachable debt.
 19. The evidence before the court satisfies all conditions:
 20. It is incontrovertible that a Decree of this court exists and remains wholly unsatisfied. Further, the Garnishees themselves, through their affidavits, confirm the existence of the accounts and, for some, the



credit balances held for the Judgment Debtor. The 2nd Garnishee (KCB) confirms holding over Kshs. 3.4 billion. The 4th Garnishee confirms holding approximately Kshs. 290 million. The 3rd Garnishee confirms one active account with a fluctuating balance. The 1st and 5th Garnishees did not file responses but were duly served. The debt owed by the Garnishees to the Judgment Debtor is clearly discernible and admitted. And finally, the funds in the accounts are money debts, which are prima facie attachable unless protected by law.

21. The Applicant has therefore satisfied the basic threshold for the issuance of garnishee orders nisi.
22. The judgment debtor raises several objections, none of which, in my view, constitute sufficient cause to deny the grant of garnishee orders absolute.
23. On the issue of pending Taxation of Costs, the Respondent argues that execution cannot proceed before the Bill of Costs dated 17th August 2023 is taxed, citing Section 94 of the *Civil Procedure Act*.
24. Section 94 states that a decree for costs cannot be executed until the costs have been taxed. However, the decree sought to be enforced here is not a decree for costs, it is a decree for the principal decretal sum arising from the Arbitral Award. The pending Bill of Costs relates to the costs of the recognition proceedings. The two are distinct. A decree holder is entitled to execute for the principal sum irrespective of the taxation of ancillary costs. The court has discretion in any event. This objection is without merit.
25. On the issue of ongoing negotiations, the Respondent claims parties were engaged in settlement talks. However, as rightly submitted by the Applicant, negotiations cannot indefinitely stay the execution of a court decree, especially one as aged as this. A draft settlement agreement that is not signed or approved does not create a legal bar to execution. The court cannot allow unfulfilled negotiations to be used as an instrument of delay. This objection is overruled.
26. On the nature of accounts and public interest, the Respondent, supported by the 2nd Garnishee's affidavit regarding one escrow account, argues that the attached accounts are project-specific, donor-funded, and meant for critical national infrastructure and land compensation. It contends that garnishment would cripple its operations and harm the public interest. This argument is not new. It was advanced before the arbitral tribunal and in subsequent challenges to the Award and was rejected.
27. This court (Odero, J.) in the recognition ruling held that this was a purely commercial transaction. The Court of Appeal similarly dismissed public policy arguments. The Respondent, a state corporation, voluntarily entered into commercial contracts and must bear the commercial consequences of breach. While the court is mindful of the important public functions of KETRACO, this cannot be a license to ignore court orders and indefinitely avoid lawful debts. The principle of equality before the law under Article 27 of *the Constitution* applies.
28. Regarding the specific escrow account (KCB Acc. No. 1221490435), the 2nd Garnishee avers it holds funds for project-affected persons. To the extent this account contains funds held in trust for third parties and not beneficially owned by the Judgment Debtor, those specific funds may not be attachable. This, however, does not affect the attachability of other accounts where the Judgment Debtor is the beneficial owner. This objection provides a basis for scrutinizing the nature of each account's funds at the stage of making the order absolute, but not for dismissing the application in its entirety.
29. The allegation on the insolvency of the Decree Holder is irrelevant, as to whether the debt is owed and enforceable. Furthermore, the assignment to CA Infraestructuras renders this point moot.
30. In summary, the objections raised by the Judgment Debtor do not disclose any valid defence to the garnishee application. The Decree Holder has a clear right to the fruits of its judgment.



31. For the foregoing reasons, the Garnishee Application dated 25th March 2024 is meritorious and is allowed in the following terms:
- i. A Garnishee Order Nisi is hereby issued against NCBA Bank Kenya PLC (1st Garnishee), Kenya Commercial Bank (2nd Garnishee), Standard Chartered Bank (3rd Garnishee), Cooperative Bank of Kenya (4th Garnishee), and Citi Bank (5th Garnishee), commanding them to hold all funds held to the credit of the Judgment Debtor, Kenya Electricity Transmission Co. Limited, in the seventeen (17) accounts specified in the Amended Notice of Motion dated 25th March 2024, up to the aggregate value of Euros 62,670,697.35 and Kenya Shillings 195,311,623.18, plus any interest accruing thereon, and not to part with the same pending further orders of this court.
 - ii. However, to ensure fairness and protect third-party interests, the Garnishees and the Judgment Debtor are directed to file and serve affidavits within 14 days detailing;
 - iii. The exact credit balance in each listed account as of the date of this order
 - iv. The nature of the funds in each account (specifically identifying any funds held in trust for third parties}
 - v. Any legal restrictions on attachment.
 - vi. The matter shall be mentioned on 20th January 2026 for further directions and for the court to consider making the Garnishee Order Absolute based on the information provided.
 - vii. The costs of this application are awarded to the Decree Holder/Applicant against the Judgment Debtor/Respondent.
 - viii. The 2nd, 3rd, and 4th Garnishees are awarded costs of KES 50,000/- each against the Judgment Debtor/Respondent.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 11TH DAY OF DECEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Ms. Nyangweso h/b for Mr. Muthui for Judgment Creditor

Mr. Barasa h/b for Mr. Nyamodi for Judgment Debtor

Mr. Gichana h/b for Mr. Ndirangu for 2nd Garnishee

Mr. Mosobera h/b for Mr. Ondieki for 3rd Garnishee

Mr. Imbera h/b for Mr. Muchiri for 4th Garnishee

Court Assistant: Carlos

