

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC. CIVIL APPL. NO. E061 OF 2025

ELIZABETH KEMEI T/A

E. J KEMEI & COMPANY. ADVOCATES.....APPLICANT

VERSUS

AFRICA MERCHANT ASSURANCE CO. LTD RESPONDENT
AND

SAFARICOM PLC GARNISHEE

Coram: Hon. Justice R. Nyakundi

M/S Mathai Maina & Co. Advocates

M/S Nambalu, Wamaitha & Okinyi Advocates LLP

The Legal Officer/Manager Safaricom Public Limited Co.

RULING

1. Before this Court is a notice of motion dated 21st November 2025 expressed to be brought under Sections 1, 1A, 3, 3A of the Civil Procedure Act and Orders 23 Rules 1 2 and 3 of the Civil Procedure Rules and all Enabling Provisions of the Law. The same is seeking for the following orders:

a) *Spent*

b) *All monies accruing payable by the garnishee Safaricom PLC to the Respondent in respect of all savings, fixed and current account/Till in particular M-PESA TILL NO. 6716100 and 4106404 as the operating account held by the Respondent/judgment debtor with the garnishee be attached restricting any withdrawals and or transfer of funds or dealings whatsoever and be paid to the Applicant/decreed holder's advocates to satisfy the decree issued here in the sum of Kshs **170,868/=** plus the accrual interests pending the inter parties hearing and disposal of the application.*

c) *All monies accruing and payable by the Garnishee Safaricom PLC to the Respondent/judgement debtor in respect of all savings, fixed and current account/till in particular M-PESA Till No. 6716100 and 4106404 as*

*operating account held by Respondent/judgment debtor with the Garnishee is hereby attached and be paid to the Applicant/decreed holder's advocate through bank account No. 0095112002 Diamond trust Bank Ltd Machakos branch to satisfy the decree herein in the sum of Kshs **170,868/=**.*

d) Costs of this application be provided for.

2. Which application is based on grounds that:-

- a) The Applicant/decreed holder is owed Kshs **170,868/=** by the Respondent /judgement debtor as at 7th August 2025 being the decretal sum which continues to accrue interest.*
- b) The Respondent/judgement debtor has failed, refused and/or ignored to satisfy the Honourable Court's decree.*
- c) The Respondent/judgement debtor holds an account with the Garnishee in particular M-PESA Till Numbers 6716100 and 4106404 from which the decree can be satisfied.*
- d) It is just, fair and expedient that the application be allowed.*

3. The application is supported by the affidavit of Rachel Rotich who deposed as follows:

- (a) THAT I am an Advocate of the High Court of Kenya practicing in the firm of M/S E. Kemei & Company Advocates hence competent to swear this affidavit.*
- (b) THAT the Honourable Court entered judgement in this matter in our favor as against the Respondent/judgement debtor.*
- (c) THAT to date the outstanding decretal sum is Kshs **170,868/=** plus accrued interest and which sum continues to accrue interest at Court rates.*
- (d) THAT to date the Respondent/judgement debtor has refused and/or ignored to satisfy the judgement/decreed.*
- (e) THAT I am informed by my Advocate and it is also within my knowledge that the Respondent/Judgement Debtor holds and operates a*

monetary account in particular Till Number 6716100 and 4106404 working account with the Garnishee which has sufficient funds to settle the decretal sum due and owing.

(f) THAT it is fair and just that the orders sought be granted to the Applicant/decreed holder to facilitate satisfaction of the Decree.

(g) THAT the Respondent/Judgement Debtor nor the Garnishee shall not suffer any prejudice in the event this application is allowed.

(h) THAT the application is brought in good faith and the Honourable Court has jurisdiction to grant the orders sought.

DECISION

4. This Notice of Motion is based of the Civil Procedure Act and Rules specifically Order 22 and 23 respectively. In so far as **Order 22 Rule 22** is concerned it provides as follows;

“The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.”

5. The corresponding Order 23 Rule 1(1), 5, 9 and 10 of the Civil Procedure Rules also provides as follows; *that a Decree-holder can request an attachment of debts owed to a judgment-debtor by a third party called a garnishee, through an ex-parte application supported by an affidavit. The court may order the garnishee to appear and show cause why the debt should not be used to satisfy the decree, including costs. If the garnishee disputes the debt, the court may determine the issue like any other legal dispute. These proceedings are tied to the original suit, and the costs of*

the process, including those of the decree-holder, are at the court's discretion and can be deducted from recovered amounts before settling the decree.

6. In exercising discretion under these provisions, the Court has to bear in mind the guiding principles in the case of **Kenya Electricity Transmission Company Limited v Spedag Interfreight Kenya Limited & 4 others [2024] KECA 542 (KLR)** the Court of Appeal held as follows:

“There are two stages in garnishee proceedings. The first stage is the ex parte stage where an order is issued attaching the debt held by the garnishee to the credit of the judgement debtor. At that stage, the garnishee is not directed to pay any money to the judgement debtor since the exact amount, if any, held by the garnishee to the credit of the judgement debtor is not known. The order made at this stage is known as a garnishee order nisi. The second stage is where the garnishee appears 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. It is only after the second stage that the court may direct the garnishee to settle the whole amount due under the decree if the garnishee holds to the credit of the judgement debtor a sum equal to or in excess of the decretal sum, or the sum held by the garnishee to the credit of the judgement debtor where the amount owed is less than the decretal sum. The order issued at this stage is known as garnishee order absolute.”

Where the garnishee fails to appear, or appears but fails 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, a garnishee order absolute is made, and it is at that stage that the garnishee becomes liable to settle the decretal

sum owed to the decree-holder by the judgement debtor. See Mulji Kanji Mehta v Karsandas Pitamber & Brothers [1958] EA 694.”

7. Given the Notice of Motion and Affidavit evidence by the Applicant there is merit to issue the following garnishee order;

All monies accruing payable by the garnishee Safaricom PLC to the Respondent in respect of all savings, fixed and current account/Till in particular M-PESA TILL NO. 6716100 and 4106404 as the operating account held by the Respondent/judgment debtor with the garnishee be attached restricting any withdrawals and or transfer of funds or dealings whatsoever and be paid to the Applicant/decreed holder's advocates to satisfy the decree issued here in the sum of Kshs 170,868/= plus the accrual interests pending the inter parties hearing and disposal of the application.

8. The costs of this application to abide the outcome of the notice of motion dated 21st November 2025.
9. Mater fixed for hearing on 28/1/2026

**GIVEN UNDER MY HAND AND SEAL OF THIS HONOURABLE COURT
THIS 11TH DAY OF DECEMBER 2025.**

.....
**R. NYAKUNDI
JUDGE**

