

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT MISCELLANEOUS CIVIL CASE E014 OF 2023**

**KINYUA & MAINGI ADVOCATES.....APPLICANT**

**VERSUS**

**TRIDENT INSURANCE COMPANY LIMITED.....RESPONDENT**

**RULING**

1. Before this Court is the Notice of Motion dated **19<sup>th</sup> May 2005** by

which the Applicant/Decree Holder **KINYUA & MAINGI ADVOCATES** seek the following orders:-

**(a) SPENT**

**(b) SPENT**

**(c) THAT** this Honourable Court be pleased to issue Ganishee order

Nisi against the Ganishee SAFARICOM LIMITED to attach all monies due and belonging to Trident Insurance Co. Ltd in her credit or on her Mpesa paybill number 985850 and or in any other paybill or Till number or so

much of it as is sufficient to satisfy the decree of Kes 145,705.80 only together with costs of this Ganishee proceedings amounting to Kshs. 30,000/= totaling to Kshs. 175,705.80 herein which amounts remain due and owing.

- (d) **THAT** the Ganishee Safaricom Limited shall upon being served with Ganishee order Nisi issued by this Honourable Court, notify the Court in writing of what sum is held in the said Mpesa Paybill Number 985850 and due to the judgment Debtor Trident Insurance Co. Limited and if the Ganishee does not dispute this debt, she shall pay to M/s Kinyua & Maingi Advocates the sum of Kes 145,705.80 plus costs of this ganishee application amounting to Kshs. 30,000/=
- (e) **THAT** if the Ganishee SAFARICOM LIMITED disputes holding funds and monies to the credit of Trident Insurance Co. Limited in Mpesa Paybill Number 985850 then she the Ganishee be ordered by this Honourable Court to appear and state the same during the hearing of the Applicants application.

- (f) **THAT** the Ganishee orders be made absolute.
- (e) **THAT** costs be provided for.”
2. The application was premised upon **Section 1A, 1B and Section 3A of the Civil Procedure Act, Order 51 Rules 1 and 3 Order 22 Rule 1 Rule 11 and Order 23 Rules 1 and 10 of the Civil Procedure Rules 2010** and all relevant enabling provisions of the law and was supported by the affidavit of even date sworn by **NJOKI KINYUA** an Advocate of the High Court of Kenya.
  3. The Ganishee SAFARICOM PLC filed a Replying Affidavit dated **21<sup>st</sup> May 2025** sworn by **STELLA MUTINDI MUTUA** the Senior Merchant Officer in the Enterprise Channels Department Mpesa Service within Lipa na M-pesa under the Fintech operations for the Ganishee.
  4. The application was canvassed by way of written submissions. The applicant filed the written submissions dated **12<sup>th</sup> August 2025** whilst the Ganishee relied upon its written submissions dated **16<sup>th</sup> September 2025**.

### **ANALYSIS AND DETERMINATION**

5. The Applicant acted for the Respondent Trident Insurance Co. Ltd in Nyeri CM Civil Case No. **193 of 2021**. Thereafter the Applicant filed an Advocate client Bill of Costs which was taxed at **Kshs. 145,705.80**.
6. The Applicant states that the Respondent has refused, neglected and/or failed to settle this bill. They commenced garnishee proceedings in order to recover the amount due from the Respondents paybill M-pesa account held and operated by the garnishee.
7. In its Replying affidavit the garnishee confirms that the paybill Account Number **985850** is indeed held and operated by the Respondent and that said account currently has a balance of **Kshs. 6,919,161.53** which is sufficient to satisfy the decretal sum plus interest and costs totaling **Kshs. 165,705.80**. The garnishee indicated its readiness to comply with any orders issued by the court but prayed that its awarded its costs for application.
8. Garnishee proceedings are provided for by **Order 23** of the Civil **Procedure Rules 2010**. **Order 23 (1)** provides that

**“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 the 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 coming 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.”**

9. **Order 23 Rule 4** of the **Civil Procedure Rules** states that:-

**“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.”**

10. This is a case in which the Advocates Bill of costs was taxed at **Kshs. 145,705.80**. A certificate of taxation was duly issued on **13<sup>th</sup> November 2024**. The judgment-debtor (the client) has not paid said costs to date.

11. The Applicant wrote a letter to the Respondent dated **22<sup>nd</sup> November 2024** forwarding the certificate of Taxation

(Annexure 'NK3') to the Supporting Affidavit dated **26<sup>th</sup> November 2024**). To date the costs remain unpaid.

12. The garnishee does not oppose this application. Indeed the garnishee concedes that the Respondent holds paybill account No. **985850** which contains more than sufficient balance to satisfy the decree.
13. I am guided by the case of **MENGICH t/a MENGICH & Co. ADVOCATES & Another -vs- JOSEPH MABWAI & 10 Others [2018] eKLR** in which the court held as follows:-

**“19. Generally, Garnishee proceedings is done in two different stages. The first stage is for the garnishee order nisi, while the second stage is for the garnishee order absolute. At the first stage, the judgment creditor makes an application ex parte to the Court that the judgment debt in the hands of the third party, the Garnishee, be paid directly to the judgment creditor unless there is explanation from the Garnishee why the order nisi should not be made absolute. If the judgment creditor satisfies the**

**Court on the existence of the Garnishee who is holding money due to the judgment debtor, such third party (Garnishee) will be called upon to show cause why the judgment debtor's money is in its hands should not be paid over to the judgment creditor, and if the Court is satisfied that the judgment creditor is entitled to attach the debt, the Court will make a garnishee order nisi attaching the debt.**

**20. The essence of the order nisi is to direct the Garnishee to appear in court on a specified date to show cause why an order should not be made upon him for the payment to the judgment creditor of the amount of debt owed to the judgment debtor. It is a requirement that a copy of the order nisi must be served on the Garnishee and judgment Debtor at least 7 days before the adjourned date for hearing. The second stage is for the garnishee order absolute, where on the adjourned date, the Garnishee fails to attend**

**court or show good cause why the order nisi attaching the debt should not be made absolute, the Court may subject to certain limitations make the garnishee order absolute. The Garnishee, where necessary also have an option of disputing liability to pay the debt. The applicants ignored these procedures.**

**21. The Primary object of a garnishee order is to make the debt due by the debtor of the judgment debtor available to the decree holder in execution without driving him to the suit. The court may, in the case of debt (other than a debt secured by a mortgage or charge), upon the application of the attaching creditor, issue a notice to garnishee liable to pay such debt, calling upon him either to pay into a court the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.**

14. The Respondent despite having been served with this application as evidenced by the Affidavit of Service dated **22<sup>nd</sup> May 2025** did not file this reply to the same. The High Court has already issued a garnishee order NISI vide orders made on **20<sup>th</sup> May 2025**.
15. The Garnishee has confirmed that the Respondents pay bill account held by the Respondent, has a balance of funds sufficient to satisfy the decretal sum.
16. The issue of costs lies at the discretion of the court and is meant to compensate a successful party in a case following the basic principle that costs follow the event. In my view the costs of **kshs. 30,000/=** claimed by the applicant is excessive and I find that costs of **Kshs. 20,000/=** is more reasonable which sum I do award to the Applicant.
17. Finally I am satisfied that this application is merited and this Court makes the following orders:-
- (1) Garnishee Order NISI be and is hereby made absolute for the garnishee to settle the outstanding decretal sum of **Kshs. 145,705.80** together with costs of Kshs.

**20,000** which amount is to be paid to the firm of **M/S Kinyua and Maingi Advocates**.

- (b) The Respondent/judgment-debtor to further pay the Garnishee **Kshs. 20,000/=** as costs of the Ganishee proceedings.

It is so ordered.

**Dated in Nyeri this 19<sup>th</sup> day of December, 2025**

.....  
**MAUREEN A. ODERO**  
**JUDGE**