

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC. CIVIL APPL. NO. E078 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 Ajaa Olubayi & Co. Advocates

M/s Prof. Musili Wambua Advocates LLP.

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) *Spent*

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 **90,405/=**.*

d) *Costs of this application be provided for.*

2. Which application is based on grounds that:-

- a) *The Applicant/decreed holder is owed Kshs **91,007/=** by the Respondent /judgement debtor as at **15th October 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 deponed 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 **90,405/=** 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.*

4. In response to the Application, the Garnishee filed a Replying Affidavit sworn by one Cerere Kihoro who deponed as follows;

- i. *THAT I am a Legal Counsel at Safaricom PLC, the Garnishee herein, hence conversant with the facts of this case and duly authorized to swear this affidavit on behalf of the Garnishee.*
- ii. *THAT I am conversant with the facts herein, duly authorized, and competent to swear this affidavit.*
- iii. *THAT the contents of the Applicant's/Decree Holder's Exparte Notice of Motion Application dated **21st November 2025** as well as the Supporting Affidavit sworn on even date have been read and explained to me by the Garnishee's Advocate.*
- iv. *THAT further, the import and implication of the Ex-parte Notice of Motion dated **21st November 2025** and the Garnishee Order Nisi issued on **11th December 2025** and served upon the Garnishee on **19th December 2025** whose import requires the Garnishee to attach monies in M-PESA Till Number 6716100 and 4106404 in satisfaction of the Decretal sum amounting to **KShs. 90,405/-** following Decree issued on **15th October 2025** which sum is inclusive of accrued interest and costs and exclusive of costs of these Garnishee proceedings has been explained to me by the Garnishee's Advocate and I make this affidavit in response thereto.*
- v. *THAT M-PESA Till Number 4106404 is indeed held and operated by the Respondent.*
- vi. *THAT the number 6716100 is not a Till a Number. It is a short code aggregated under the Head Till number 4106404 belonging to the Judgement Debtor. Therefore, funds paid to Till Number 4106404, ordinarily reflect in the organizational short code 6716100.*
- vii. *THAT the Merchant Account on M-PESA Till Number 4106404 short code 6716100 has the following balance as at 23-01-2026;*

| | |
|---|----------------|
| Merchant Account on M-PESA Till Number 4106404 | BALANCE |
|---|----------------|

| | |
|---------------------------|---------------------|
| short code 6716100 | |
| Merchant Account | (KSHS) 536,476.69/= |

(Annexed and marked CK1 is a copy of statement detailing the sums)

- viii. THAT concurrently M-PESA Till Number 4106404 short code 6716100 had been garnisheed due to a prior Garnishee Order Nisi that rank in priority and are pending adjudication before the respective Courts that are within the purview of the Advocates for the Garnishee as below;

| Case Particulars | Decree Holder/ Applicant s Advocates | Advocate s Garnishee | Garnishee Order Nisi Issued On | Garnisheed Amount (Kshs.) |
|--|---|---------------------------------------|---------------------------------------|----------------------------------|
| Machakos MCCC No. E219 of 2022 - Shreeji Enterprises K. Ltd Vs Amaco | Oyatta & Associates | Meritad Law Africa LLP | 27/5/2025 | 6,408,299.40 |
| Milimani MCCC No. E5251 Of 2025 - Hannah Njeri Gichuru Vs Amaco | B. W. Kamunge & Co. Advocates | Meritad Law Africa LLP | 26/11/2025 | 523,001.59 |
| Milimani MCCC No. E5251 Of 2025 - Kaveva Songolo Vs Amaco | B. W. Kamunge & Co. Advocates | Professor Musili Wambua Advocates LLP | 26/11/2025 | 898,032.08 |
| Milimani MCCC | B. W. | Kairu & | 26/11/2025 | 272,830.74 |

| | | | | |
|--|-------------------------------|-----------------------------------|------------|------------|
| No. E5253 Of 2025 - Dennis Bakika Okware Vs Amaco | Kamunge & Co. Advocates | McCourt Advocates | | |
| Milimani MCCC No. E5254 Of 2025 - Kelvin Makare Vs Amaco | B. W. Kamunge & Co. Advocates | Professor Musili Wambua Advocates | 26/11/2025 | 303,432.22 |
| Eldoret MCCC No. E710 Of 2024 - Nyahira Jackline Wankuru and Margaret Vukutsa Vs Amaco | Alwanga & Co. Advocate | Meritad Law Africa LLP | 02/12/2025 | 440,333.00 |
| Milimani MCCC No. E921 Of 2025 - Martha Muthui and Benjamin Loka Muthui Vs Amaco | Mutunga & Co. Advocates | Meritad Law Africa LLP | 08/12/2025 | 3,000,000 |
| Makueni MCCC No. E040 Of 2021 - Rose Mbithe Wambua Vs Amaco | Mutunga & Co. Advocates | Professor Musili Wambua Advocates | 10/12/2025 | 7,434,039 |
| Nyamira HCCCMISC No. E047, E048, | O.M. Otieno & Co. | Professor Musili Wambua | 16/12/2025 | 955,510.00 |

| | | | | |
|--|--------------------------------------|------------------------------|------------|------------|
| E052, E062 Of 2022- Ouma Maurice Otieno Vs Amaco | Advocates | Advocates | | |
| Nyamira HCCCMISC No. E038, E041, E046, E109 Of 2022- Africa Advocates Ouma Maurice Otieno Vs Amaco | O.M. Otieno & Co. Advocates | Meritad Law Africa LLP | 16/12/2025 | 948,625.00 |

Annexed and marked CK3 is a copy of the Garnishee Order Nisis)

ix. THAT concurrently the funds that were previously available on M-PESA Till Number 4106404 short code 6716100 have since been expended to settle prior Garnishee Order Absolutes that ranked in priority and were within the purview of the Advocates for the Garnishee as below;

| Case Particulars | Decree Holder/ Applicant s Advocate s | Garnishee Order Absolute Issued on | Garnishee Advocate s | Garnished Amount (Kshs.) |
|---|--|---|---------------------------------|---------------------------------|
| Kericho MCCC No. 151 Of 2017- Mutonyi, Jeremiah Mbugua Muchemi Vs | Mutonyi, Mbiyu & Co. Advocates | 06/11/2025 | Kairu & McCourt Advocates | 3,558,272.0 0 |

| | | | | |
|--|--|-------------------|--|---------------------|
| <i>Advocates Amaco And 2 Others</i> | | | | |
| <i>Eldoret MCCC No. E429 Of 2025 - John Kipketer Ngososei Vs Amaco</i> | <i>Mwinamo Lugonzo & Co. Advocates</i> | <i>11/12/2025</i> | <i>Kairu & McCourt Advocates</i> | <i>500,000.00</i> |
| <i>Milimani No. MCCC No. E1605 Of 2025 - Kinyanjui Njuguna & Co. Advocates Vs Amaco</i> | <i>Ombima & Co. Advocates</i> | <i>22/12/2025</i> | <i>Professor Musili Wambua Advocates</i> | <i>6,676,051.00</i> |
| <i>Milimani MCCC No. E5750 Of 2024 - Godfrey Odhiambo Were (Suing as the Personal Representative of the Estate of Brian Onyari Were Deceased) Vs Amaco</i> | <i>Oduk & Co. Advocates</i> | <i>22/12/2025</i> | <i>Meritad Law Africa LLP</i> | <i>3,030,000.00</i> |
| <i>Malindi MCCC</i> | <i>Wambua</i> | <i>12/01/2026</i> | <i>Kairu &</i> | <i>435,012.00</i> |

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|--|--------------------------------|------------|------------------------------------|------------|
| No. E289 Of 2025 - Faith Karambu Peter Vs Amaco | Kilonzo & Co. Advocates | | McCourt Advocates | |
| Malindi MCCC No. E290 Of 2025 - Ian Machuka Onchiri Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Professor Musili Wambua Advocates | 485,680.00 |
| Malindi MCCC No. E292 Of 2025 - Rodgers Karisa Justin Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Meritad Law Africa LLP | 485,012.00 |
| Malindi MCCC No. E293 Of 2025- Emmaline Shida Charo Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Professor Musili Wambua Advocate s | 485,417.00 |
| Malindi MCCC No. E294 Of 2025 - Faith Mkenga James Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Professor Musili Wambua Advocate s | 484,748.00 |

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|---|---|------------|--|------------------|
| Malindi MCCC No. E295 Of 2025 - Jackson James Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Professor Musili Wambua Advocate s | 485,417.00 |
| Malindi MCCC No. E296 Of 2025 - Josphine Karani Mwaro Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Kairu & McCourt Advocate s | 436,875.00 |
| Malindi MCCC No. E297 Of 2025 - Delight Keziah Gwiyo Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Merited Law Africa LLP | 485,012.00 |
| Malindi MCCC No. E304 Of 2025- Kimberly Celita Gwiyo (Minor - Father Gwiyo Komora) Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Kairu McCourt Advocates | 701,275.00 |
| Malindi MCCC No. E305 Of 2025 - Stephen Muthini Mwania Vs Amaco | Wambua Kilonzo & Co. Advocates | 12/01/2026 | Meritad Law Africa LLP | 1,353,954.0 0 |
| Malindi MCCC | Wambua | 12/01/2026 | Kairu | 1,328,691.0 |

| | | | | |
|--|-------------------------------|--|----------------------|---|
| No. E306 Of 2025 - Violet Walowe Mwangome (Lr - Sammy Mwahee Mgenyi (Deceased)) Vs Amaco | Kilonzo & Co. Advocates | | McCourt Advocates | 0 |
|--|-------------------------------|--|----------------------|---|

(Annexed and marked CK4 is a copy of the Garnishee Order Absolutes)

- x. *THAT the available balance of KShs. 536,476.69/- is therefore insufficient and unavailable to settle the outstanding Decretal sum amounting to **KShs. 90,405/-** following Decree issued on **15th October 2025** as well as the Decree Holder/Applicant's costs of the Garnishee proceedings.*
- xi. *THAT I am advised by the Garnishee's Advocates on record, which advise I verily believe to be true that the Garnishee is entitled to its Costs on the Decree Holder's Application, and as such we pray that the Garnishee be granted Costs.*
- xii. *THAT the Garnishee has nothing else to yield up to the Applicant/Decree Holder and any consequential adverse orders requiring to satisfy decretal sum amounting to **KShs. 90,405/-** following Decree issued on **15th October 2025** as well as the Decree Holder/ Applicant's costs of the Garnishee proceedings will unfairly prejudice the Garnishee.*
- xiii. *THAT I swear this Affidavit in response to the Applicant's/Decree Holder's Exparte Notice of Motion dated **21st November 2025** and the Garnishee Order Nisi issued on **11th December 2025** and served upon the Garnishee on **19th December 2025** and pray that the Garnishee be discharged from the proceedings upon determination.*

- xiv. *THAT the matters deponed to hereinabove are true and within my own knowledge, information and belief save as to matters deposed to or information and belief, the sources whereof and grounds whereupon have been duly disclosed*

DECISION

5. For this court to put the dimension of the decision in perspective the definition of terms is of significance;

- a. **“Garnishee** - *Is a Norman-French word which means to “furnish.” It denotes a third party who is indebted to the judgment debtor or has custody of his money and who at the instance of the judgment creditor is called upon to pay the judgment debt from his indebtedness to the judgment debtor or from the credit of the judgment debtor in his account with the third party.*
- b. **Garnishor** - *Is a creditor who initiates garnishee proceedings to reach the debtor’s property that is thought to be held or owed by a third party.*
- c. **Judgment Creditor** - *Is a person having a legal right to enforce execution of a judgment for a specific sum of money. This is usually a person in whose favor a court a money judgment. The Garnishor and Judgment Creditor are one and the same.*
- d. **Judgment Debtor** - *Is a person against whom a money judgment has been entered but not yet satisfied. His default in compliance with the judgment gives rise to the garnishee proceedings.*
- e. **Order Nisi** - *Is a conditional order which is temporarily granted until such a time, usually specified by the court, within which the person against whom the order nisi is made shows cause why the order should not be made absolute or final. The term Order nisi (decree nisi or rule nisi) derives its roots from the latin word nisi, meaning “unless”. Thus, an Order nisi is a temporary court order that will become final or come into force at a future date unless a particular condition is met. In the case of garnishee proceedings*

such condition may entail payment of the judgment debt or filing an Affidavit to Show Cause why the order should not be made absolute.

f. **Order Absolute** - *Is an order nisi that has become complete and unconditional following the failure of the person against whom the order nisi was made to show cause why the order should not be made absolute."*

6. The substratum of the law on garnishee proceedings it is as of now not in dispute if the following provisions is anything to go by;

Order 23 Rule 1(1) of the Civil Procedure Rules, 2010 provide 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 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 salaries or allowances coming and is within the provisions of order 22, rule 42 owing from such third persons (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 maybe sufficient to satisfy the decree together with the costs aforesaid."

Order 23 Rule 4 of the Civil Procedure Rules further reads:

"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.”

7. The Civil Procedure Rules provide an elaborate procedure that ought to be applicable in dealing with Garnishee proceedings. The Procedure laid out in **Order 23 of the Civil Procedure Rules** ensures that a litigant is able to enjoy the fruit of its Judgment. It is a self-contained rule that prescribes its own procedures. In **Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee) [2021] eKLR** the court further observed that:

“11. A garnishee order nisi binds the debt in the hands of the garnishee. The rule operates as soon as the garnishee order nisi is served on the garnishee. By the same order or the subsequent order, the court may order the garnishee to appear before the court to show cause why he or she shall not pay to the decree holder the debt due from him or her to the judgment debtor or so much of the debt as may be sufficient to satisfy the decree with costs. The garnishee order nisi is also served on the Judgment-Debtor. Where the garnishee does not dispute the debt due or claimed to be due from him or her to the Judgment-Debtor or if he or she does not appear upon the day of hearing named in the garnishee order nisi, the court may order execution against the goods of the garnishee together with the costs of the garnishee proceedings. Where the garnishee disputes his or her liability, the court, instead of making an order that execution be levied, may order that the issue or question necessary for determining his or her indebtedness should be tried and determined. The garnishee may suggest or advance the argument that the debt sought to be attached belongs to a third party. Subsequent to that, the court may order the third-party to appear and be heard.”

8. In furtherance to this conceptual framework on garnishee proceedings the court in **Lensiko Njoroge & Gathogo Advocates vs Invesco Assurance Co: Co-operative Bank of Kenya (Garnishee) [2020] eKLR** placing reliance in the decision of Lord Denning MR in **Choice**

Investments Ltd vs Jeromimon (Midland Bank Ltd, Garnishee)
[1981] 1 All ER 225 where it was stated that;

“There are two steps in the process. The first is a garnishee order nisi. Nisi is Norman-French. It means ‘unless’. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors. If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate.”

9. The nature of garnishee proceedings is that it involves an application by the judgment creditor to the court for an order nisi which if granted binds the money in the hands of the garnishee who is directed to show cause why the order should not be made absolute. Where the garnishee fails to show cause the order is made absolute. In which case, the garnishee is expected to pay the judgment debt to the judgment creditor in compliance with the order absolute. In the case at bar the Garnishee in response to the Application filed an Affidavit to show cause why he cannot settle the Judgement debt as demanded by the Judgement Creditor. The real test was whether there is existence of any cash assets or cash receivables in the account of the garnishee held in favor of the Judgement debtor and capable of being attached to satisfy the Decree of the court.
10. On the part of the garnishee during the return date in answer to the Application he was able to show and demonstrate that the financial statement and account has mere Kshs 500,000/= but the same is not available for reasons that there are other earlier garnishee orders from the various courts before the present Applicant rendering that account to be precisely described as a debit/deficit account. The garnishee order absolute cannot be met as contemplated by the law as a consequence of which the garnishee is hereby discharged from any other obligations to satisfy the Decrees in favor of the Applicant as

demanded in the initial Application where an Order of Garnishee Nisi was issued.

11. With this in mind the Judgement Creditor shall be at liberty to pursue other means of execution and enforcement of the Judgement debt. That discretion is up to the Applicant to move the Court appropriately and the reason which a Status Conference will be held on 9th March 2026

**GIVEN UNDER MY HAND AND SEAL OF THIS HONOURABLE COURT
THIS 30TH DAY OF JANUARY 2026.**

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**R. NYAKUNDI
JUDGE**