



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muli v Mwanja; Safaricom PLC (Garnishee) (Civil Appeal  
12 of 2023) [2026] KEHC 1161 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1161 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL 12 OF 2023  
RC RUTTO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**MARTIN MWENDWA MULI ..... APPELLANT**

**AND**

**ROSE MUNYWOKI MWANIA ..... RESPONDENT**

**AND**

**SAFARICOM PLC ..... GARNISHEE**

**RULING**

1. The respondent has filed a Notice of Motion dated 1<sup>st</sup> October 2025 brought under section 3A of the *Civil Procedure Act*, order 22, rule 1, order 23, rule 1, 2 & 9 and order 51 of the Civil Procedure Rules seeking for orders:
  1. ...Spent;
  2. That a Garnishee Order Nisi be issued against the Garnishee, Safaricom PLC, ordering that all monies held in MPESA account number 0727501198 or any other MPESA account to the credit of the appellant be attached to settle the taxed costs as per the Certificate of Costs issued on 17<sup>th</sup> September 2025 in favor of the respondent for the sum of Kshs. 175,515.00;
  3. That an order be issued directing the Garnishee, Safaricom PLC, to appear before this court on an appointed date and time to show cause why it should not release to the respondent all monies held in MPESA account number 0727501198 or any other MPESA account to the credit of the appellant to settle the taxed costs as per the Certificate of Costs issued on 17<sup>th</sup> September 2025 in favour of the respondent for the sum of Kshs. 175,515.00;
  4. That this Honourable Court be pleased to order the Garnishee, Safaricom PLC, to release to the respondent a sum of Kshs.175,515.00 held by the Garnishee to the credit of the appellant



in MPESA account number 0727501198 or any other MPESA account in settlement of the taxed costs as per the Certificate of Costs issued on 17<sup>th</sup> September 2025;

5. That this Honourable Court be pleased to make such other consequential orders as are necessary for settlement of the taxed costs as per the Certificate of Costs issued on 17<sup>th</sup> September 2025.
6. That costs of the application be provided for.
2. The application is supported by the grounds set out on its face, and by the respondent's supporting affidavit sworn on 1<sup>st</sup> October 2025. The respondent deposed that by judgment delivered on 2<sup>nd</sup> April 2025, the appellant's appeal was dismissed with costs. Subsequently, the respondent taxed the costs and obtained a Certificate of Costs against the appellant for a sum of Kshs.175,515.00. Despite this, the appellant has deliberately failed or refused to settle the taxed costs.
3. The respondent further deposed that the Garnishee holds funds to the credit of the appellant in his MPESA account number 0727501198. She expressed her belief that the funds in that account could satisfy, either wholly or partially, the unpaid taxed costs. She argued that no prejudice would be occasioned to the appellants if the orders sought were granted, and that it would be in the interest of justice that the application be allowed.
4. The application was opposed by the appellant who filed a notice of preliminary objection dated 14<sup>th</sup> October 2025. He sought to set aside or vacate the orders issued 2<sup>nd</sup> October 2025 contending that no decree had been extracted in line with Order 21, rule 7 (1) of the Civil Procedure Rule. He argued that the Certificate of Costs was not a decree and therefore could not substantiate the orders of 2<sup>nd</sup> October 2025 which ought to be struck out.
5. The appellant also filed his replying affidavit sworn on 14<sup>th</sup> October 2025. He reiterated the grounds in his preliminary objection, emphasizing that the Certificate of Costs relied upon was not a decree and could not sustain the orders sought. He argued that the process violated order 21, rule 7 and order 23, rule 1 (1) of the Civil Procedure Rules. He further stated that he was not served with the Garnishee Order Nisi or the application, and only learnt of the orders when his MPESA account was frozen. Upon inquiry with the Garnishee, he was advised to respond to the present application.
6. The appellant argued that before filing the present application, the respondent ought to have first demanded payment of the sums indicated in the Certificate of Costs. He contended that the respondent's actions infringed upon his right to fair hearing under Article 50 of *the Constitution*. The appellant urged this court to find the process irregular and unprocedural, noting that no decree had been extracted. He further submitted that the respondent had improperly commenced execution proceedings through a declaratory suit in Machakos CMCC No. E319 of 2025; Rose Munywoki Mwanzia vs. Directline Assurance Company Limited seeking to enforce the judgment in Machakos MCCC No. E496 of 2021; which is the subject of this appeal. On these grounds, he prayed that the application be dismissed with costs for being an abuse of the process of the court process.
7. In response the Garnishee filed a replying affidavit sworn by Paul Meuwa Titia, a data analyst employed by the Garnishee. He deposed that MPESA account number 0727501198 is registered in the name of Martin Mwendwa Mulwa, the appellant herein. That pursuant to the Garnishee Order Nisi, the account was suspended and frozen. A certified statement of account was annexed, showing that between 6<sup>th</sup> October 2025 to 21<sup>st</sup> October 2025, the appellant's account held a total sum of Kshs.212,629.41.



8. The deponent further stated that the current balance in the appellant's MPESA account was sufficient to satisfy the Certificate of Costs. He added that upon determination of the application, the appellant should bear the Garnishee's costs of this proceedings, after which the Garnishee would be discharged from the Garnishee order Nisi and the available sum of Kshs.212,629.41 less its costs released.
9. The application was canvassed through written submissions. However, as at the time of writing this ruling, the court had only received the respondent's written submission dated 16<sup>th</sup> October 2025. In her submissions, the respondent cited various statutory provisions and case law in support of her application, urging the court to allow it as prayed
10. I have considered the application, the responses, the preliminary objection and the submissions, and analyzed the law. Before addressing the merits of the application, it is important to note that the appellant filed a notice of preliminary objection dated 14<sup>th</sup> October 2025. The essence of the objection was that the orders issued on 2<sup>nd</sup> October 2025 ought to be set aside because no decree had been extracted in accordance with Order 21, rule 7 (1) of the Civil Procedure Rules. The appellant argued that the Certificate of Costs does not amount to a decree and therefore the application should be struck out.
11. It is trite law that a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication from the pleadings, and which, if successfully argued, may dispose of the suit in its entirety. A preliminary objection must raise a pure question of law, argued on the assumption that all facts pleaded by the opposing party are correct. It cannot be raised where facts must first be ascertained, or where the court is called upon to exercise discretion. [See *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors* [1969] EA 696].
12. In the present case, the appellant's objection rests on two grounds: first, that no decree was extracted; and second, that a Certificate of Costs does not amount to a decree. The respondent, however, seeks a garnishee order absolute. The law governing garnishee proceedings is set out under Order 23, rule 4 of the Civil Procedure Rules. It provides as follows:
 

“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.”
13. From this provision, it is clear that garnishee proceedings can only be sustained where there exists a decree in favour of the judgment creditor. A Certificate of Costs, while conclusive as to the amount of taxed costs awarded by the taxing master, is not itself a decree. Section 51(2) of the *Advocates Act* provides:
 

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”
14. The implication of this provision is that a party must first move the court to convert a Certificate of Costs into a judgment. Only then does the party attain the status of a decree-holder capable of initiating



execution proceedings. As correctly pointed out, a Certificate of Costs alone cannot sustain garnishee proceedings. While the respondent's position is understandable, the present application is premature. The proper course would have been to first obtain judgment under section 51(2) of the Advocates Act before commencing garnishee proceedings.

15. The law in this regard is settled, and this court cannot depart from it. The application before me is therefore inchoate and incompetent. It is accordingly dismissed on that ground. No order is made as to costs, given that the taxed costs are not disputed. However, the appellant shall bear the Garnishee's costs, since he does not contest the sums held in his account. Costs assessed at Kshs.15,000/-.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

