

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**HCCOMM NO. E 79 OF 2010**

B. M LOGISTICS LIMITED.....PLAINTIFF/RESPONDENT

-VERSUS-

KENYA NATIONAL BUREAU  
OF STATISTICS.....DEFENDANT/ APPLICANT  
BULK MOVERS & LOGISTICS  
(EA) CO. LTD.....INTERESTED PARTY  
KENYA COMMERCIAL BANK LIMITED.....GARNISHEE

**RULING NO. 2**

1. Before me is a Notice of Motion application dated 17<sup>th</sup> February 2025 filed by the defendant/applicant pursuant to the provisions of Section 21(4) of the Government Proceedings Act, Cap 40 Laws of Kenya, Sections 1A, 1B, 3A & 63(e) of the Civil Procedure Act, Order 22 Rules 51 & 52 and Order 51 Rules 1 & 3 of the Civil Procedure Rules, 2010, Article 159 of the Constitution of Kenya, 2010, and all other enabling provisions of the law. The defendant prays for a declaration that the execution of the decree, particularly, the warrants of attachment and sale issued on 6<sup>th</sup> February 2025, was unlawful and grossly irregular. The defendant also seeks an order for lifting and discharging the said warrants of attachment and sale.
2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Dr. Obudho, the defendant's Director General. Dr. Obudho averred that Judgment in this matter was delivered on 28<sup>th</sup> April 2020, in favour of the plaintiff for

Kshs.20,746,800/= together with costs and interest at Court rates, which amount was subsequently fully satisfied after the plaintiff garnisheed the defendant's bank accounts and recovered a total of Kshs.32,528,145.70, inclusive of costs and interest, as well as an additional sum of Kshs.50,000/= being Advocates' costs. He further averred that despite full settlement of the decretal sum, the plaintiff never served any fresh decree and the defendant was surprised to receive warrants of attachment and sale issued on 6<sup>th</sup> February 2025.

3. Dr. Obudho contended that the claim for the alleged unpaid interest of Kshs.814,683.02 is unlawful, irregular, and intended to unjustly enrich the defendant, as the Court order of 9<sup>th</sup> February 2024 confirmed payment of the total sum of Kshs.32,528,145.70 in full. He asserted that having fully satisfied the decree, the defendant was discharged from any further liability in the suit, thus the continued execution is illegal, prejudicial and exposes the defendant to irreparable loss. Dr. Obudho deposed that the sums claimed are colossal, amount to unjust enrichment, and would be paid from public funds, contrary to the provisions of Section 21(4) of the Government Proceedings Act, which bars execution or attachment against the Government.
4. In opposition to the instant application, the plaintiff filed a replying affidavit sworn on 19<sup>th</sup> February 2025 by Mrs. Esther Kimathi, the plaintiff's Director. Mrs. Kimathi averred that Judgment in this matter was delivered on 28<sup>th</sup> April 2020, in favour of the plaintiff for Kshs.20,746,800/= together with costs and interest until payment in full, resulting in a total decretal sum of Kshs.32,528,145.70 as at 13<sup>th</sup> October 2023, which continued to accrue interest until settlement. She deposed that due to the defendant's failure to pay, warrants of attachment were issued on 13<sup>th</sup> October 2023, followed by garnishee proceedings that culminated in a Garnishee Order Absolute on 26<sup>th</sup>

January 2024, pursuant to which the decretal amount was paid in full. She contended that interest lawfully continued to accrue between 13<sup>th</sup> October 2023 and 26<sup>th</sup> January 2024, amounting to Kshs.814,683.02, which was duly certified by the Court and enforced through warrants of attachment issued on 6<sup>th</sup> February 2025.

5. Mrs. Kimathi asserted that the plaintiff is entitled to this accrued interest as part of the fruits of its Judgment, that no fresh decree was required since the sums claimed are a mathematical computation of Court-ordered interest, and that the defendant's allegations of irregular execution and unjust enrichment are misleading and untenable. She maintained that the accrued interest arose from the defendant's own delay in satisfying the decree. She asserted that the application herein is intended to frustrate lawful execution, and that no valid legal or procedural grounds have been shown to set aside the impugned warrants of attachment. She urged this Court to dismiss the instant application with costs, and uphold the plaintiff's right to recover the full interest due.
6. In a rejoinder, the defendant filed a further affidavit sworn on 7<sup>th</sup> March 2025 by Dr. Obudho, the defendant's Director General. Dr. Obudho averred that Judgment in this suit was delivered on 28<sup>th</sup> April 2020 in favour of the plaintiff for Kshs.20,746,800/= together with costs and interest at Court rates until payment in full, and that Court interest rate is 12% per annum. He further averred that a Certificate of Taxation for Kshs.1,700,000/= was issued on 11<sup>th</sup> October 2023 and that upon issuance of the decree absolute on 26<sup>th</sup> January 2024, the plaintiff garnisheed the defendant's accounts for the sum of Kshs.32,528,145.00.
7. According to Dr. Obudho's computation, the total amount due as at 26<sup>th</sup> January 2024, inclusive of principal, interest, costs, Court fees, and collection fees, was Kshs.31,786,405.15, resulting in an overpayment of Kshs.741,739.85

to the plaintiff. Dr. Obudho contended that despite this overpayment, the plaintiff is unlawfully demanding a further sum of Kshs.814,683.02, which would amount to unjust enrichment and an aggregate overpayment of Kshs.1,556,422.87 at the expense of public funds.

8. The instant application was canvassed by way of written submissions. The defendant's submissions were filed on 7<sup>th</sup> March 2025 by Mr. Bonn Bett, an Advocate in the office of the Honourable Attorney General, whereas the plaintiff's submissions were filed by the law firm of Gitonga Mureithi & Co. Advocates on 23<sup>rd</sup> January 2026. No submissions were filed by and/or on behalf of the interested party and the garnishee.
9. Mr. Bett, learned Counsel for the defendant relied on the Court of Appeal case of **Kipchumba v BOG Tambach Teachers Training College** [2023] KECA 802 (KLR), and submitted that at the time of satisfaction of the decretal sum in this suit through garnishee proceedings, the accrued interest was calculated at Court rates of 12% per annum, amounting to Kshs.9,337,405.15, bringing the total decretal sum due to Kshs.31,786,405.15. He argued that the plaintiff garnisheed Kshs.32,528,145.00, resulting in an overpayment of Kshs.741,739.85, and therefore no further amount is owing under the decree issued on 21<sup>st</sup> April 2022.
10. Counsel cited the case of **Diamond Trust Bank Kenya Limited v Juba & another** (Civil Appeal No. 164 of 2022) [2023] KEHC 19107 (KLR), and contended that the plaintiff has failed to demonstrate the existence of any debt due and recoverable, to justify the garnishee application dated 7<sup>th</sup> February 2025, since the claimed sum of Kshs.814,683.02 allegedly accruing as interest between 13<sup>th</sup> October 2023 and 26<sup>th</sup> January 2024 is unsupported by the Judgment and decree. In light of the foregoing, Counsel submitted that the

warrants of attachment and sale issued on 6<sup>th</sup> February 2025 are illegal and irregular and ought to be lifted and discharged.

11. Mr. Kitonga, learned Counsel for the plaintiff relied on the cases of **Choti alias Ibrahim C. Osoro v Nyang'au** [2023] KEHC 27388 (KLR) and **Feroz Nuralji Hirji v Housing Finance Company of Kenya Ltd & another** [2015] KEHC 8220 (KLR), and submitted that a judgment debt attracts interest until payment in full, pursuant to Section 26 of the Civil Procedure Act. Counsel argued that although in this case the principal sum and accrued interest were settled on 26<sup>th</sup> January 2024, interest lawfully accrued between 13<sup>th</sup> October 2023 and 26<sup>th</sup> January 2024 and is recoverable.
12. Mr. Kitonga maintained that the impugned warrants of attachment were properly issued pursuant to the Court's certification of accrued interest and that the defendant has failed to demonstrate any procedural impropriety or jurisdictional error to warrant them being set aside. Counsel submitted that the sum of Kshs.814,683.02 is lawfully due as accrued interest duly certified by the Court and that it is entitled to recover the same as part of the fruits of its Judgment.

#### **ANALYSIS AND DETERMINATION.**

13. I have considered the instant application, the grounds on the face of it and the affidavits filed in support thereof, the replying affidavit by the plaintiff and the written submissions by Counsel for the plaintiff and the defendant. The issue that arises for determination is whether the warrants of attachment and sale should be set aside.
14. Judgment in this matter was delivered on 28<sup>th</sup> April 2020 in favour of the plaintiff for Kshs.20,746,800/= together with costs and interest at Court rates from the date of Judgment until payment in full. It is not disputed that the

plaintiff subsequently pursued execution through garnishee proceedings and recovered a sum of Kshs.32,528,145.70 on 26<sup>th</sup> January 2024. What is therefore in dispute is whether that payment fully satisfied the decree of this Court or whether further interest accrued and remained unpaid.

15. From the pleadings filed, it is clear that the parties herein agree that interest at Court rates is calculated at 12% per annum. The defendant contends that the sum garnisheed from the defendant's account by the plaintiff on 26<sup>th</sup> January 2024 was sufficient to settle the decretal sum. The plaintiff on the other hand averred that although the garnisheed sum settled the principal, costs and interest as at 13<sup>th</sup> October 2023, interest continued to accrue between 13<sup>th</sup> October 2023, when warrants of attachment were issued and 26<sup>th</sup> January 2024, when payment was eventually made. According to the plaintiff that accrued interest amounts to Kshs.814,683.02, which was duly certified by the Court and formed the basis of the impugned warrants of attachment.
16. It is legally correct that a monetary decree attracts interest until payment in full. Section 26 of the Civil Procedure Act expressly provides for interest from the date of decree to the date of payment, and Courts have consistently affirmed this position. This Court is therefore tasked with ascertaining whether on the facts and figures placed before it, there remained any outstanding decretal sum or accrued interest capable of lawful execution after 26<sup>th</sup> January 2024.
17. The defendant has placed before this Court a detailed computation showing the principal sum, interest at 12% per annum up to 26<sup>th</sup> January 2024, taxed costs, and incidental fees, culminating in a total sum of Kshs.31,786,405.15. The said computation is anchored on the undisputed Judgment sum and the generally accepted Court's rate of interest at 12% per annum. Notably, the plaintiff did

not substantially controvert the arithmetic computation, but instead asserted that additional interest accrued within the same period and was later certified.

18. The onus lies on the judgment creditor to demonstrate that there is a debt due and recoverable before coercive execution procedures such as garnishee orders or warrants of attachment can issue. Where the decretal sum has been fully satisfied, execution cannot lawfully issue unless and until a further liability is clearly established within the four corners of the Judgment and decree. This position was affirmed by the Court of Appeal in the case of **James G. K. Njoroge t/a Baraka Tools & Hardware v Apa Insurance Company Limited & 3 others** [2018] KECA 212 (KLR) as hereunder -

*As was stated in Petro Sonko & another v HAD B Patel & another 20 EACA 99, the onus is on the Judgment Creditor to establish that there is a debt due and recoverable from the Garnishee to the Judgment Debtor.*

19. From the material placed before this Court, I note that by the time the decretal sum was garnisheed from the defendant's account on 26<sup>th</sup> January 2024, it had accrued a total interest of Kshs.9,337,765.21. In the circumstances, the aforesaid amount together with the decretal sum of Kshs.20,746,800/=, taxed costs of Kshs.1,700,000/= and incidental Court and collection fees, the total decretal amount payable as at 26<sup>th</sup> January 2024, the date of settlement was 31,786,405.15.
20. In the circumstances, this Court agrees with the defendant that upon recovery of the sum of Kshs.32,528,145.70 through garnishee proceedings on 26<sup>th</sup> January 2024, there was an overpayment of the decretal sum by Kshs.740,580.50. It is my finding that the subsequent demand for a further sum of Kshs.814,683.02 is therefore unlawful, and it is unsupported by the

Judgment and the decree. Payment of the said amount would result in unjust enrichment at the expense of public funds.

21. In the absence of a clear reconciliation demonstrating how the further sum of Kshs.814,683.02 fits within the decree and without resulting in double recovery, I am unable to find that there exists a legally recoverable balance capable of supporting the issuance of fresh warrants of attachment. For this reason, I am persuaded that the continued execution appears to have proceeded on a contested and uncertain basis.
22. In the circumstances, I am satisfied that the defendant has demonstrated that the decree arising from the Judgment of 28<sup>th</sup> April 2020 was fully satisfied as at 26<sup>th</sup> January 2024, and that the plaintiff has not sufficiently established the existence of a further decretal sum lawfully due to justify the warrants of attachment and sale issued on 6<sup>th</sup> February 2025. For this reason, I find that the execution founded upon those warrants cannot stand.
23. The upshot is that the defendant's application dated 17<sup>th</sup> February 2025 is merited and it is allowed as prayed. Costs of the application are hereby awarded to the defendant.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI on this 27<sup>th</sup> day of February 2026. Ruling delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Mr. Bett for the defendant/applicant

Ms Awour h/b for Mr. Gitonga for the plaintiff/respondent

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