



**Ouya (Suing as the Personal Representative of the Estate of Faith Judith Ouya) v Kuriah & another; Equity Bank Kenya (Garnishee) (Environment and Land Miscellaneous Case E007 of 2025) [2026] KEELC 1140 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1140 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E007 OF 2025  
YM ANGIMA, J  
FEBRUARY 26, 2026**

**BETWEEN**

**DICKENS OUYA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF FAITH JUDITH OUYA) ..... DECREE HOLDER**

**AND**

**PURITY WANGUI KURIAH ..... 1<sup>ST</sup> JUDGMENT DEBTOR**

**ESTHER GATHONI GICIMU (AS THE PERSONAL REPRESENTATIVE OF THE UWE KERSCHEK) ..... 2<sup>ND</sup> JUDGMENT DEBTOR**

**AND**

**EQUITY BANK KENYA ..... GARNISHEE**

**RULING**

1. By a notice of motion dated 24.11.2025 filed pursuant to Order 23 Rule 1, 2, 9 & 10 as reads together with Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A and 1B of the *Civil Procedure Act* (the Act), and all other enabling provisions of the law, the decree holder sought a garnishee order against the bank to release Kshs 433,815/= from the 1<sup>st</sup> judgement debtor’s account held at Equity Bank Limited, Nyali Branch to settle the decretal sum.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Dickens Ouya dated 24.11.2025. It is the decree holder’s case that he was awarded Kshs 433,815/= as taxed in the Mombasa Court of Appeal, Civil Appeal No. 64 of 2019, Dickens Ouya & another v Esther Gathoni Gicimu & another. On 30.10.2025 this court adopted the certificate of taxation as the judgment and decree of this court, which the judgment debtors have failed to honour despite numerous follow-ups. It was pleaded that the 1<sup>st</sup> judgment debtor holds a USD account with Equity Bank Nyali Branch, with the credentials ID No. xxxxxxxx and KRA Pin



A0024xxxxxx. The decree holder is urging the court to order the bank to settle the decretal sum from the said account. It has been argued that it is in the interest of justice that the decree holder be allowed to attach the 1<sup>st</sup> judgment debtor's deposits held at the garnishee's bank.

3. The garnishee bank opposed the application vide a replying affidavit sworn by Stanley Irungu on 09.12.2025. It was argued that the application was defective and devoid of merit for not specifying the account number to be attached. It was contended that the decree holder ought to have disclosed all material facts, including the bank account he wished to attach. The garnishee urged the court to find that the orders sought could not be effected in the absence of an identifiable bank account.
4. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The garnishee filed submissions on 4.12.2025 while the decree holder filed a supporting authority on 16.01.2026.
5. The court has perused the application, the response thereto and the material on record as well as the submissions made by counsel. The court is of the view that the following key issues arise for determination herein:
  - a. Whether the decree holder has established a proper case for the making of the garnishee order.
  - b. Who shall bear the costs of the application.
6. The garnishee application is anchored on Order 23 of the Rules, its states;

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 salary or allowance coming within the provisions of Order 22, rule 42 owing 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.

7. In the instant case, there is no dispute that on 06.10.2025, this court converted the certificate of taxation dated 15.12.2023 issued in the Mombasa Court of Appeal, Civil Appeal No. 64 of 2019, Dickens Ouya & another v Esther Gathoni Gicimu & another into a judgment and decree of the court. The decree holder has maintained that the decree has not been settled, and now avers that the garnishee bank holds a USD account in the 1<sup>st</sup> judgment debtor's name, prays for the same to be used to settle the decree. On its part, the garnishee's case is that the decree holder's prayer is unmerited for failing to specify which account will be used to satisfy the said decretal sum.
8. It appears that the garnishee Bank does not dispute that the 1<sup>st</sup> judgment debtor has a USD account at its Nyali Branch or any other account in any of its branches. The garnishee bank is claiming that the decree holder has failed to identify the specific account to be attached. In *Lesinko Njoroge &*



Gathogo Advocates v Invesco Assurance Co; Co-operative Bank of Kenya (Garnishee) [2020] KEHC 8931 (KLR) the court held inter alia that;

“Garnishee proceedings are in their very nature proceedings whereby the garnishee is required to prove whether or not the garnishee is indebted to the judgment-debtor. Ordinarily, the judgment-creditor only makes allegations of the garnishee’s indebtedness based on sound evidence whereby the burden of proof shifts to the garnishee to prove otherwise. In this regard, to discharge that burden, the garnishee has to produce strong, sufficient and convincing evidence that the funds in its hands or the debt is not due or payable.

9. In my considered view, the 1<sup>st</sup> judgment debtor has an account at the garnishee bank, since the garnishee has not expressly denied the existence of the account. Whether the said funds can satisfy the decretal sum is a question of fact. At this point is not necessary for the court to question the bank whether the funds held can or cannot satisfy the entire decretal sum. It is just for the court to order that the garnishee order nisi made on 26.11.2025 be made absolute.
10. Regarding the issue of costs, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. The decree holder will recover costs of these garnishee proceedings from the said accounts.
11. The upshot of the foregoing is that the court finds and holds that the decree holder’s application dated 24.11.2025 is merited and allowed as prayed. Accordingly, the court shall make the following orders for disposal thereof;
  - i. That the Garnishee Order made on 26.11.2025 is hereby made absolute.
  - ii. Execution be and is hereby issued against the Garnishee (Equity Bank Limited) directing it to pay the amounts in account held in the names of Purity Wangui Kuriah towards the satisfaction of the decree.
  - iii. The decree holder shall recover the costs of these garnishee proceedings from the said accounts.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026.**

.....

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Abidha holding brief for the applicant

Mr. Juma for the Garnishee

N/A for the Judgement debtor

