



**Directline Assurance Company Limited v Ogalle (Civil Appeal E154 of 2022)
[2026] KEHC 2746 (KLR) (Civ) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 2746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E154 OF 2022
WA OKWANY, J
JANUARY 29, 2026**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPELLANT

AND

DAVID OGALLE RESPONDENT

*(Being an appeal from the Ruling delivered by Hon. by E. N. Kagoni
(PM) on 16th March 2022 in Milimani CMCC No. 600 of 2020)*

JUDGMENT

Background

1. The Respondent obtained a declaratory judgment against the Appellant on 4th November 2020. An Amended Decree was subsequently issued in the sum of Kshs. 1,997,836, inclusive of interest calculated up to 6th February 2020 and 14th January 2021.
2. Following non-satisfaction of the decree, the Respondent obtained warrants of attachment for an outstanding sum of Kshs. 2,314,158 on 22nd June 2021. The Respondent later filed a garnishee application dated 21st December 2021 against the Appellant's bankers.
3. Garnishee Orders Nisi were issued on 30th December 2021 and 19th January 2022, and later made absolute on 31st January 2022, even though execution was temporarily held in abeyance.
4. The Appellant then filed an application dated 11th January 2022 seeking stay of execution, the setting aside of the garnishee orders, and dismissal of the garnishee application. The said application was dismissed on 16th March 2022 thereby prompting the present appeal.
5. Both parties filed detailed written submissions which the Court has carefully considered.



6. The Appellant submitted that it opposed the garnishee application on the basis that the amount therein was in excess of what was stated in the decree and that the Respondent had been paid Kshs. 704,893. The Appellant added that the Respondent was paid Kshs. 2,513,735 from the Garnishee but that the decree was for Kshs. 1,987,886. It was further submitted that the Appellant had deposited Kshs. 1,292,942 thereby making Kshs. 3,218,628 as the total sum already paid resulting in an excess amount of Kshs. 1,220,792 which it ought to be refunded.
7. The Respondent opposed the appeal arguing that the same is misconceived as the judgment of the trial court delivered on 4th November 2020 was for Kshs. 1,477,977.60 together with accruing interest in the Kericho case and interest on the principle sum in the declaratory suit until payment in full. The Respondent explained that warrants were issued before the garnishee proceedings were instituted and that calculations were done by the court at Kshs. 2,314,158 as stated on the warrants of attachment.
8. The Respondent faulted the Appellant for approaching this appellate court as a trial court arguing that the matter before this court is an application for stay of execution and to set aside the Garnishee Order Nisi and the dismissal of the application dated 21st December 2021. It was submitted that the decision of the trial court was purely based on the facts of the case and that the ruling that should be the subject of this appeal was the finding that there was no evidence of a stay.
9. It was submitted that since there was no contention on the amount on the garnishee order before the trial court, the Appellant is precluded from raising the issue of the amount due before this court.
10. It was the Respondent's case that since the Garnishee Order absolute was made under Order 23 Rule 4 of the Civil Procedure Rules (CPR) on 31st January 2022, the said Order is not one of the orders where an appeal is filed as a matter of right. The Respondent emphasized that the Appellant was therefore required to seek and obtain leave to file an appeal yet the appeal was filed without leave and out of time.
11. The Respondent urged this court to dismiss this appeal while arguing that it has been brought in an unconventional manner since the Record of Appeal contains a judgment by a different magistrate. On the allegation that payments had been made to the Respondent, the Respondent argued that no proof of such payment had been exhibited.

Duty of the First Appellate Court

12. As a first appellate court, this Court is obligated to re-evaluate, reassess, and re-analyse the evidence and proceedings on record and arrive at its own conclusions while bearing in mind the fact that it did not hear or see the witnesses. (See *Selle & Another vs. Associated Motor Boat Co. Ltd* [1968] EA 123 and *Peters vs. Sunday Post Ltd* [1958] EA 424).

Issues for Determination

13. Having considered the pleadings, record, and submissions, the Court identifies the following issues:
 - a. Whether this appeal is properly before the Court, including the question of leave and timelines
 - b. Whether the Record of Appeal is competent and reliable
 - c. Whether the trial court erred in dismissing the Appellant's application dated 11th January 2022
 - d. Whether the garnishee proceedings and execution were lawful
 - e. Whether the Appellant is entitled to the reliefs sought



Whether the Appeal Is Properly Before the Court

14. The Respondent raised a preliminary and substantive objection that the appeal is incompetent for want of leave and for being filed out of time.
15. Under Order 43 Rule 1 of the CPR, appeals as of right are limited to specified orders listed under the said Rule. This means that for all other orders, an appeal lies only with leave of the court as stated under Order 43 Rule 2.
16. It is not disputed that the impugned orders arose from garnishee proceedings that were made under Order 23 Rules 1 and 4 of the CPR and which do not fall among the orders listed under Order 43 Rule 1 of the CPR that allows appeals as of right.
17. The record before this Court does not demonstrate that the Appellant sought or obtained leave either orally at the time of the ruling or formally thereafter. Furthermore, the appeal was filed more than 30 days after the garnishee orders were made absolute on 31st January 2022, contrary to Section 79G of the *Civil Procedure Act*.
18. The Court therefore finds that, to the extent the appeal challenges the garnishee proceedings and interlocutory orders, it is procedurally defective.

Whether the Record of Appeal is Competent

19. The Respondent raised serious concerns regarding the integrity of the Record of Appeal, including; illegible documents, omission of the Amended Decree and warrants of attachment, inclusion of a judgment not delivered by the trial court and internal inconsistencies in figures and pagination.
20. While this Court refrains from making findings of deliberate misconduct, it is clear that the Record of Appeal is materially deficient and falls short of the standard required to enable a fair and just appellate determination. I find that the shortcomings on the record has the effect of substantially prejudicing the appeal.

Whether the Trial Court Erred in Dismissing the Application

21. The Appellant argued that there existed a stay of execution in the primary suit and that deposited security should have barred execution in the declaratory suit. My take is that the trial court correctly found that any stay in the primary suit had lapsed, no appeal had been filed against the declaratory suit, a miscellaneous application does not constitute an appeal and that there was no valid stay in force at the time execution commenced
22. I find that since the Appellant did not demonstrate the existence of a valid appeal or a subsisting stay capable of restraining execution, the trial court exercised its discretion judiciously and in accordance with the law.

Whether the Garnishee Proceedings Were Lawful

23. The record shows that the Respondent followed the procedure set out under Order 23 of the Civil Procedure Rules, obtained Garnishee Orders Nisi, and later Garnishee Orders Absolute. My view is that the Appellant's objections relating to the figures stated in the decree, interest, and costs were not raised substantively before the trial court during the garnishee proceedings. I find that this court, as an appellate court cannot be turned into a court of first instance or a trial court so as to deliberate on matters not dealt with by the trial court. This is the position that was stated in Kenya Hotels Ltd



vs. Oriental Commercial Bank Ltd [2019] eKLR, where it was held that an appellate court will not entertain issues not pleaded, canvassed, and determined in the court below.

Disposition

24. Having regard to the findings and observations that I have made in this judgment, I find that the instant appeal is not merited I therefore make the following final orders: -
- a. The appeal is hereby dismissed in its entirety.
 - b. The ruling and orders of the trial court delivered on 16th March 2022 are upheld.
 - c. The garnishee orders and execution proceedings remain valid and enforceable.
 - d. Costs of the appeal are awarded to the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

HON. W. A. OKWANY

JUDGE

29/01/2026

For Appellant

For The Respondent

Court Assistant Uber

