

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**MILIMANI LAW COURTS**  
**MISC. CASE NO. E019 OF 2023**

**GITUMA OTIENO &**

**COMPANY ADVOCATES** .....

**APPLICANT**

**VERSUS**

**ANGELA WAMBUI NDERITO** (*Sued as the  
Administratrix of the Estate of the late ELIZABETH*

**WARIARA NDERITO (DECEASED)**

.....

**RESPONDENT**

**RULING**

1. The background of this matter is that the firm of Gituma and Company Advocates (Applicant) has a decree in their favour in the sum of Kshs.1,823,543.98/= against Angela Wambui Nderito (Respondent), who is sued in her capacity as the legal representative of the estate of Late Elizabeth Wariara Nderito. The decree arises from

certified advocate/client costs arising from legal representation in High Court at Nairobi, Family Division **Milimani P&A E2321 of 2021.**

2. The Applicant commenced garnishee proceedings against Stanbic Bank Kenya Limited concerning a bank account held with it as the garnishee. The application dated 28<sup>th</sup> July, 2025 was heard *ex parte* at first instance, and an order *nisi* was issued. The application dated 28<sup>th</sup> July, 2025 is supported by an affidavit of even date. The applicant also filed a further affidavit in support thereof, dated 17<sup>th</sup> November, 2025.
3. The garnishee did not enter an appearance nor participate in the garnishee proceedings' hearing. There is, however, a Replying Affidavit dated 22<sup>nd</sup> October, 2025, sworn by one Samuel Kahuhu, the Bank's Legal Advisor. The affidavit, together with the correspondence between the Applicant and the Bank, is annexed to the Applicant's Affidavit dated 24<sup>th</sup> November, 2025.
4. The legal representative of the Estate filed a replying affidavit and grounds of opposition, both dated 15<sup>th</sup> October, 2025 contesting the garnishee proceedings. She

also filed a Preliminary Objection of even date and thereafter filed an application dated 3<sup>rd</sup> November, 2025.

5. The Applicant opposed the application dated 3<sup>rd</sup> November, 2025, filed by the Respondent, through a replying affidavit dated 24<sup>th</sup> November, 2025.

6. The orders sought in the application dated 28<sup>th</sup> July, 2025 are as follows;

**i. Spent**

**ii. THAT the Honourable Court be pleased to make a garnishee order nisi against Stanbic Bank Limited, Malindi Branch - Oasis Mall Malindi, the Garnishee herein being Account No. 01000066\*\*\*19 ordering that all the monies lying and/or held in deposit by the Garnishee to the credit of Angela Wambui Nderito, the Respondent (Judgment Debtor) herein, be attached to answer the Decree for the sum of Kshs. One million eight hundred twenty-three thousand five hundred forty-three shillings and ninety-eight cents (Kshs.**

***1,823,543.98/-) being the sum awarded by this Honourable Court vide a Judgment delivered on the 2nd April, 2025 in favour of the Applicant herein and further costs of the garnishee proceedings;***

***iii. THAT an Order Nisi upon the Garnishee do issue and the same be served on the garnishee before being served on the Respondent/Judgment debtor or its Advocates;***

***iv. THAT the Garnishee do appear before this Honourable Court on an appointed date and time to show cause why they should not pay to the Applicant's Advocates the sum of Kshs. One million eight hundred twenty-three thousand five hundred forty-three shillings and ninety-eight cents (Kshs. 1,823,543.98/-) being the sum awarded by this Honourable Court vide a Judgment delivered on the 2nd April, 2025 in favour of the Applicant herein and***

**further costs of these garnishee proceedings;**

**v. THAT the Applicant be at liberty to apply for any such further orders and /or directions as the Honourable Court may deem fit and just to grant;**

**vi. THAT costs of this application be borne by the Respondent.**

7. The orders sought in the application dated 3<sup>rd</sup> November, 2025 are as follows;

**i. Spent**

**ii. THAT the Orders dated the 8<sup>th</sup> October, 2025 and Warrants of Sale dated 10<sup>th</sup> June, 2025 be struck out or at the very least be set aside with immediate effect as they are both inaccurate and both fatally defective both in fact and in law and were both acquired fraudulently with the sole aim of extorting extra funds owed by the estate by irregularly targeting the private and personal account of the administrator in**

*complete and total violation of the Succession Act and other provisions of the Law;*

*iii. THAT the Applicant, Gituma Otieno and Company Advocates be restrained from further interfering with the private and personal Bank account and property of the administrator in order to protect her fundamental rights and freedom which have been grossly violated and infringed upon having deliberately and wilfully withheld vital information from the court and violated the basic statutes of the law;*

*iv. THAT the costs of the application be provided for.*

8. The Preliminary Objection is predicated on **Section 83 (c)** of the **Law of Succession Act**. The Respondent asserts that the Applicant has contravened the provisions of the **Act** by seeking to attach the personal account and personal property of the administrator/beneficiary to cover legal fees incurred by the administrator, which,

according to the respondent, ought to be borne by the estate.

9. This ruling pertains to the two applications and the Preliminary Objection. The parties have submitted extensive documentation and submissions; the issues presented in the applications, affidavits and submissions are condensed in the summaries of each party's case, as outlined below.

### **Applicant's case**

10. The Applicant in its application dated 28th July, 2025 asserts that the respondent has not fulfilled the obligations set forth in the decree, despite having been afforded sufficient time to comply. The Applicant has detailed the difficulties encountered in executing the decree against the Respondent and has argued that the garnishee holds funds in an account in the Respondent's name, which should be applied to satisfy the decree.

11. The Applicant challenged the assertions in the Respondent's replying affidavit dated 15<sup>th</sup> October, 2025 and argued that the averments amounted to reopening a

reference over costs that had been taxed and the certificate of costs adopted as a judgment of the court.

12. The Applicant provided correspondence exchanged with Samuel Kahuhu, the garnishee's agent, showing that the bank account mentioned in the garnishee order had only Kshs.36.25/=. The Applicant argued that this low balance does not align with the Respondent's vigorous opposition to the garnishee application. According to the Applicant, the garnishee and the Respondent conspired to misrepresent facts before the Court.

13. The Applicant asked the Court to find that the application dated 3<sup>rd</sup> November, 2025 is an abuse of the Court process by seeking to avoid satisfaction of the decree.

### **Respondent's case**

14. The Respondent argued that the account about which the garnishee proceedings are about is her personal account and does not hold any accounts belonging to the estate.

15. The Respondent stated that the Applicant surfaced after the estate monies had been distributed to the

beneficiaries and she further stated that the Applicant had failed to represent the estate well in the succession matter, which forced her to change counsel and secure other representation.

16. She acknowledged that she paid a sum of Kshs.151,825.54/= through the referenced account, which amount was as per the first certified costs, which were set aside, and the new taxation made an award of Kshs.1,823,543.98/=.

17. The Respondent argued that she made the payment from her personal account, knowing that she would be reimbursed from the estate assets. She informed the court that the remaining assets were proceeds anticipated from a public auction of household goods belonging to the estate, which were to be sold and the proceeds shared between the parties.

18. She indicated that she does not anticipate the sale of the household goods to yield any additional profits beyond the amount she claims the estate owes her, which she quantifies at Kshs.4,460,000/=. Consequently, she asserts that the estate has no further funds.

## **Analysis and determination**

19. The Court has considered the two applications, the supporting documents and annexures, the Preliminary Objection and submissions by the parties. The issues for determination are;

- i. Whether the execution process has been set in motion validly;**
- ii. Whether the applicant has laid out a basis for issuance of the garnishee order absolute;**
- iii. Whether the administrator should be held personally liable for the costs which are a liability of the estate.**

20. Garnishee proceedings are a mode of execution and are provided for under **Order 23** of the **Civil Procedure Rules**. **Rule 2** provides that credit in a deposit account with a bank or other financial institution shall, for the purposes of the Order, be considered a sum due or accruing. A decree holder can therefore request attachment of credit held in an account belonging to the judgment-debtor held by the third-party garnishee, through an *ex parte* application supported by an affidavit.

21. The Respondent is sued in these proceedings as the personal representative and administrator of the estate of the deceased. The deceased died intestate- the administrator's role as prescribed under **Section 83** of the **Law of Succession Act** is to gather the deceased's assets, pay off liabilities, and distribute the remaining assets according to the laws of intestacy.
22. The taxation and subsequent certificate of costs, which was adopted as a judgment of the court, arise from legal representation services wherein the respondent engaged the Applicant's services on behalf of the estate. The services were terminated, leading to the taxation of the advocate/client bill of costs. The record indicates that the Applicant actively participated in the taxation and in subsequent proceedings related to the case. Furthermore, the affidavits show that she possesses a comprehensive understanding of the liability.
23. The current status is that no further reference or appeal has been lodged. As a result, the Applicant has progressed to the execution stage for recovery. Given this context, the Respondent is precluded from contesting the

initial ruling regarding the award of costs at this current stage. It is important, thus, to note that the decree remains unchallenged.

24. **Section 83 (2)** of the **Law of Succession Act** authorises the payment, from the estate of the deceased, of all expenses related to obtaining their grant of representation, as well as all other reasonable administration expenses.

25. From the above, the expenses of the estate administration are a liability to the estate. However, where an administrator acts outside the scope of their authority or acts negligently in the course of their duties, they could be held personally responsible for any financial implications, and this liability can extend to their personal assets, meaning they might have to use their own funds to cover losses or legal costs. Similarly, if the administrator distributes estate assets to beneficiaries before settling known debts, they may be held personally liable for those debts.

26. From the record, the taxation was done post the issuance of the Certificate of Confirmation of Grant

From the evidence, I am persuaded that the account under reference belongs to the Respondent herein. The Applicant has presented a compelling argument regarding the initiation of the garnishee proceedings regarding the account, asserting that the Respondent transferred the sum of Kshs.151,825.50/= from the account in question on account of the first certified costs prior to the reference. The transfer was after the Confirmation of Grant. This action by the Respondent establishes a reasonable belief that the account in question contained funds belonging to the estate.

27. After analysis, I am thus persuaded that the garnishee proceedings were well-founded, as it reflects a reasonable belief based on a prior transaction that the account contained estate funds that could satisfy the decree.

28. The Bank was served, and the rules of procedure require that they should have attended court to answer to the garnishee proceedings. They did not. The Applicant provided the Replying Affidavit dated 22<sup>nd</sup> October, 2025 deponed to by the Bank's Legal Advisor, which indicates

that the account did not have sufficient funds to satisfy the decree. It is stated that the account had Kshs.36.35/= as at the time the garnishee order was issued.

29. The Respondent contends that the issuance of the order nisi was unwarranted from the outset. However, it is important to note that applications of this nature are typically treated as *ex parte* at the first instance. The decision is based solely on the material presented at that time.

30. Upon careful consideration of the circumstances surrounding the case, whereas the court has found that the garnishee proceedings were well-founded out of a reasonable belief that the account held funds belonging to the estate, the court does not find it prudent to make the garnishee order absolute. The order nisi previously issued is set aside.

31. The warrants of sale directed to the Respondent personally are also set aside, as no prior finding or declaration was sought or issued to justify the execution

proceeding against the Respondent in her individual capacity.

32. What then should happen to the decree herein, which remains unchallenged, and the unpaid fees? I have no doubt in my mind that a decree of the Court against a deceased person's estate is a debt enforceable at law. The costs are due, just like the other costs included and paid, as shown by the Certificate of Confirmation of Grant.

33. Beneficiaries receive the assets subject to the estate's liabilities, which take priority under **Section 86** of the **Law of Succession Act**. The Respondent has indicated that the estate has not been fully administered; the duty to account for the assets, liabilities, and dealings of the estate lies solely with the Respondent as the personal representative. There is no shortcut about it. As the estate was mostly liquidated, the beneficiaries are liable to the extent of the deceased's assets (money) that have come into their hands. And the respondent, as the legal representative, must ensure that all estate liabilities are satisfied since the estate was not declared bankrupt.

If the legal representative neglects this duty and fails to ensure payment of the estate's debts, the court may compel the representative to personally cover those liabilities.

34. The record herein shows that the Respondent, as the legal representative, has not taken any action to have the decree satisfied despite her participation in the taxation proceedings, the adoption of the costs as judgment of the Court and acknowledgement of the existence of the decree issued thereof. This has led to the present execution proceedings, which may incur further costs for the estate. In order to meet the ends of justice, the legal representative is hereby granted a period of 120 days to remit payment for the certified costs from the estate funds, excluding any amounts previously disbursed. Failure of which the legal representative shall be held personally liable for the certified costs adopted as a Judgment of the Court on 2<sup>nd</sup> April, 2025

35. The Court issues the following orders with regard to the applications dated 28<sup>th</sup> July, 2025 and 3<sup>rd</sup> November, 2025;

- a. The garnishee order nisi dated 8<sup>th</sup> October, 2025 is set aside;***
- b. The warrants of sale dated 10<sup>th</sup> June, 2025 are set aside,***
- c. The respondent, as the legal representative of the estate of Late Elizabeth Wariara Nderito, is hereby granted a period of 120 days to remit payment for the certified costs from the estate funds, excluding any amounts previously disbursed. Failure of which the legal representative shall be held personally liable for the certified costs, and execution may proceed without further reference to court.***
- d. Each party shall bear its own costs of the applications.***

36. Orders accordingly.

**DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this 16<sup>TH</sup> day of MARCH, 2026.**

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**HON. C. KENDAGOR**

**JUDGE**

**In the presence of;**

Court Assistant: Beryl

No attendance for Parties

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