

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM MISC. NO. E335 OF 2022

ANDREW B. KHAKULA T/A J.S.

KHAKULA & CO. ADVOCATES.....APPLICANT

-VERSUS-

EMCO BILLETS & STEEL LTD.....RESPONDENT/JUDGMENT-DEBTOR

COOPERATIVE BANK OF KENYA LTD.....GARNISHEE

RULING

1. The applicant filed a Notice of Motion application dated 8th April 2025 pursuant to the provisions of Order 23 Rules 1 & 2, Order 51 Rule 1 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act and all enabling provisions of the law, seeking orders requiring the garnishee to appear before the Court to show cause and dispute whether it holds the stated amount, or any portion thereof, on behalf of the judgment debtor. The applicant also prays for an order that if the garnishee fails to dispute the same, the Court be pleased to issue a Garnishee Order Absolute and order execution against the Garnishee for the stated sum, or such amount as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings. The applicant further prays for an order that the amount due be paid to the decree holder through its Advocates on record by way of RTGS into ABK Advocates Client Account held at Sidian Bank Limited, Bungoma Branch, Account Number 01028020003951.

2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Dr. Andrew Khakula, an Advocate of the High Court of Kenya and learned Counsel for the applicant. Dr. Khakula averred that a decree was issued on 22nd May 2023 ordering the respondent to pay the applicant the sum of Kshs.13,296,691.00 together with interest at the rate of 9% per annum from 28th November 2022, which amount has since accrued to Kshs.16,117,136.50. He further averred that the respondent has since failed and/or refused to satisfy the said decree for over two (2) years, prompting the applicant to seek the examination of the company's Directors under Order 22 Rule 35 of the Civil Procedure Rules.
3. In response to that application, the Directors of the respondent indicated in a replying affidavit sworn by Mr. Diamond Nurani on 5th April 2025, that the Garnishee was in the process of selling the respondent's land known as L.R. No. 12034/3 to settle its outstanding liabilities, including the decretal sum herein. Mr. Nurani deposed that the Garnishee, being a secured creditor, holds sufficient funds arising from the sale of the respondent's assets to satisfy the decree. He asserted that any such funds should be attached *ex parte*, due to the risk of the respondent evading execution, as its conduct demonstrates an unwillingness to settle the decree herein.
4. In opposition to the application herein, the Garnishee filed a replying affidavit sworn on 29th April 2025 by Mr. George Elega, the Garnishee's Accounts Relationship Manager based at the Special Assets Unit. Mr. Elega averred that the sale of the respondent's property was terminated by the purchaser through a Termination Notice dated 2nd April 2025, thus no funds are held by the Garnishee on behalf of the respondent and there are no funds expected from the purchaser to satisfy the decretal sum herein.

5. He further averred that the applicant has not specified any other accounts belonging to the respondent for purposes of attachment, and that the owes its customer a duty of confidentiality which prevents it from disclosing information regarding unspecified accounts. Mr. Elega stated that there are no funds held by the Garnishee on behalf of the respondent capable of satisfying the decretal sum herein should a Garnishee Order Absolute be issued. He further stated that the Garnishee is only required to inform the Court of any monies held arising from the sale of the property and that it was not is entitled to costs of the proceedings.
6. In a rejoinder, the applicant filed a supplementary affidavit sworn on 30th September 2025 by Dr. Andrew Khakula, an Advocate of the High Court of Kenya and learned Counsel for the applicant. Dr. Khakula averred that it is evident that the only attachable assets of the respondent are the proceeds from the sale of the land known as LR No. 12034/3. He deposed that inquiries made in the area indicate that portions of the said land have already been sold by the Garnishee, while other portions remain in the market awaiting buyers, which suggests that the Garnishee currently holds monies belonging to the respondent. He contended that this raises a triable issue under Order 23 Rule 5 of the Civil Procedure Rules, 2010, thereby inviting the Court to give directions regarding the determination of the Garnishee's indebtedness. Dr. Khakula proposed that the Court orders the Garnishee to make full disclosure of the status of the sale of L.R. No. 12034/3, render accounts regarding present and future sales, and that it settles the Judgment sum upon completion of the sale process.
7. The application herein was canvassed by way of written submissions. The applicant's submissions were filed on 4th December 2025 by the law firm of ABK Advocates LLP. Upon perusal of the Court record and the Case Tracking

System, this Court notes that despite the Garnishee being given an opportunity to file written submissions, it did not comply with the said directions.

8. Dr. Khakula, learned Counsel for the applicant cited the provisions of Order 23 Rule 1(1) of the Civil Procedure Rules, 2010, and submitted that garnishee proceedings are not confined to funds held in bank accounts but extend to any property or proceeds belonging to the judgment debtor that are held by the Garnishee and capable of satisfying the decree. He relied on the case of **Jagat Singh Bains v Halimabibi** Civil Appeal No. 97 of 1954 (EACA) [1957] EA13, and further submitted that garnishee proceedings are inquisitorial in nature, their purpose being to determine whether the Garnishee is indebted to the judgment debtor at all, and not merely whether a particular debt exists.
9. He argued that the Garnishee has not disputed the partial or ongoing sale of the respondent's property and that Sections 38(c) & (f) of the Civil Procedure Act, grants the Court wide powers to enforce execution through attachment of debts or in any manner appropriate to the relief granted. Dr. Khakula relied on the provisions of Sections 1A & 3A of the Civil Procedure Act, the case of **Intex Construction Co. Ltd v Flora Marigu & Giant Auctioneers** [2016] KEHC 5757 (KLR) and the Court of Appeal case of **Nicholas Mahihu v Ndima Tea Factory Ltd & another** [2009] KECA 307 (KLR), emphasizing that Courts do not issue orders in vain and must ensure their orders are effective.
10. Counsel argued that the absence of proof of specific funds in a particular account does not prevent the Court from issuing appropriate garnishee orders because Order 23 allows attachment of debts generally. He submitted that a debt may be attached if it is presently payable or payable in the future, pursuant to an existing obligation. He contended that the Garnishee, who is in the process

of selling the respondent's assets, holds or will hold proceeds capable of satisfying the decree herein once the sales are concluded. He submitted that where the Garnishee disputes the amount payable, the proper course is to attach the debt generally and conduct an inquiry to determine the exact amount, noting that a prohibitory order may still be effective even where the money is not yet payable.

ANALYSIS AND DETERMINATION.

11. I have considered the application herein, the grounds on the face of it and the affidavits filed in support thereof. I have also considered the replying affidavit by the Garnishee and the written submissions by Counsel for the applicant. The issue that arises for determination is whether a Garnishee Order Absolute should issue against the Garnishee.
12. Garnishee proceedings, are applicable where the judgment debtor's property, or credit in possession or under control of, or owing by another, are applied towards satisfaction of a judgment debt owed to the decree holder by proper statutory process against the debtor and Garnishee. These proceedings are provided for under Order 23 Rule 1(1) of the Civil Procedure Rules, 2010, which states that –

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.

13. Garnishee proceedings were defined by the Nigerian Supreme Court in **C.B.N. v Auto Import Export** [2013] 2 NWLR (Pt. 1337) 80 p. 126 paras. E – F, cited by the Court in **Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)** [2021] KEHC 13342 (KLR), as follows -

Garnishee proceedings are special specie of process by which a judgment creditor may attach (or garnishee) debts due in satisfaction of the judgment debt. The debt owed by the third party to the judgment debtor, on being attached, shall ultimately be paid by him to the judgment creditor on the order of court. Thus, garnishee proceedings involve the attachment of debt due from a third party to the judgment debtor, and the use of the amount of that debt in liquidating the judgment debt. In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand, is referred to as the garnishor.

14. The law governing garnishee proceedings is provided for under Order 23 of the Civil Procedure Rules, 2010, which allows a decree holder to attach debts owed to a judgment debtor by a third party. In particular, Order 23 Rule 1 of the Civil Procedure Rules, 2010, empowers the Court, upon application by a decree

holder, to issue a garnishee order *nisi* requiring a third party who is indebted to the judgment debtor to appear before the Court and show cause why the debt due should not be paid to the decree holder in satisfaction of the decree. The purpose of such proceedings is to enable a decree holder to realize the fruits of a judgment by attaching debts or property belonging to the judgment debtor that are held by a third party.

15. Ordinarily, Garnishees do not object to garnishee orders becoming final, as long as there is a clear debt owed by the judgment debtor and the Garnishee possesses sufficient funds belonging to the debtor to cover the debt. It is now well settled that pursuant to the provisions of Order 23 Rule 4 of the Civil Procedure Rules, 2010, Courts have the power to order a Garnishee to pay directly to the decree holder the sums owed to the judgment debtor, or so much thereof as may be sufficient to satisfy the decree and the costs of the garnishee proceedings, where the Garnishee does not dispute the debt.
16. In this case, it is not disputed that a decree was issued in favour of the applicant against the respondent on 22nd May 2023, in the sum of Kshs.13,296,691.00 together with interest at the rate of 9% per annum from 28th November 2022. It is also not disputed that the decretal sum has not been settled to date. The applicant's position is that the Garnishee, being a secured creditor of the respondent, is in the process of selling the respondent's property known as L.R. No. 12034/3 and it is therefore likely to hold proceeds belonging to the respondent capable of satisfying the decretal sum herein.
17. In opposition to the orders being sought herein, the Garnishee contended that the sale of the said property was terminated by the purchaser through a Termination Notice dated 2nd April 2025, hence there are no funds currently held by the Garnishee on behalf of the respondent arising from the said

transaction. The Garnishee further averred that the applicant has not specified any accounts belonging to the respondent which may be attached and that disclosure of unspecified accounts would amount to a breach of the duty of confidentiality owed to its customer.

18. The central question for determination is whether the Garnishee currently holds or is likely to hold funds belonging to the respondent arising from the sale or intended sale of the respondent's property known as L.R. No. 12034/3, that can be attached. Although the Garnishee has indicated that the particular sale referred to by the applicant was terminated, the applicant deposed that portions of the said land have already been sold while other portions remain in the market. It is worth noting that the said assertion by the applicant, was not rebutted by the Garnishee.
19. Garnishee proceedings are commonly between the decree holder and the Garnishee. It is therefore upon the Garnishee to either refute or admit the claim made by the decree holder over the judgment debtor's funds held by the Garnishee. In refuting the claim, a Garnishee has to demonstrate and give sufficient reasons as to why the Court should not confirm the Garnishee Order *nisi* issued at the *ex parte* stage. In the case of **Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)** (supra), Mativo. J., (as he then was), in addressing a similar issue held that-

A reading of Order 23 of the Civil Procedure rules shows that it comprises of self-contained provisions which are distinct and independent of Order 22. It prescribes two steps in Garnishee proceedings. The first is a Garnishee Order nisi. Nisi is Norman-French. It means 'unless.' It is an order to the bank communicating

that unless there is some sufficient reason why the bank should not pay the decree, it will be required to pay money held in the Judgment Debtor's account. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to the creditor might be unfair by preferring him to other creditors.[10] If no sufficient reason appears, the garnishee order is made absolute, to pay to the Judgment-Creditor, or into court, whichever is more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if the Judgment-Debtor directed the bank to pay it.

20. Under Section 38 of the Civil Procedure Act, a decree may be executed through several means including the attachment of debts owed to the judgment debtor. This provision grants the Court wide powers to enforce execution in such manner as the nature of the relief granted may require. In addition, Section 3A of the Civil Procedure Act preserves the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Further, this Court is also guided by the principle that a debt capable of attachment in garnishee proceedings need not necessarily be immediately payable, is well recognized in law. As was observed in **Mulla: The Code of Civil Procedure**, “a debt does not cease to be attachable merely because the time for payment has not yet arrived.”
21. The import of the foregoing is that what must be demonstrated is that the debt is certain and presently owing, even though payment may fall due at a future date, the Court may then attach such a debt as long as it is not contingent or dependent upon an uncertain event. That being the case, the decisive consideration in garnishee proceedings is the existence of a definite debt due

from the Garnishee to the judgment debtor. The mere fact that the debt is payable at a future date does not preclude its attachment, provided that the liability is clear, existing, and not contingent upon the occurrence of an uncertain event.

22. The evidence before this Court suggests that the respondent's property is, or was in the process of being sold by the Garnishee as a secured creditor. Even if the particular transaction referred to by the Garnishee was terminated, the material placed before this Court indicates that the process of disposing of the respondent's assets may still be ongoing. Accordingly, the possibility that the Garnishee may receive proceeds belonging to the respondent cannot be disregarded. This Court finds that in the circumstances of the instant application, it must balance the Garnishee's duty of confidentiality with the decree holder's right to realize the fruits of a valid Judgment.
23. On perusal of the averments made in the applicant's and the Garnishee's affidavits, this Court notes that there is a legitimate question as to whether the Garnishee holds, or may in the near future hold funds belonging to the respondent arising from the sale of the respondent's property known as L.R. No. 12034/3. This Court is of the considered view that the said question can only be resolved through disclosure by the Garnishee regarding the status of the sale process, and any proceeds arising therefrom. Such disclosure would enable the Court to determine whether any attachable debt exists or is likely to arise in favour of the respondent.
24. Accordingly, this Court is satisfied that the applicant has demonstrated sufficient grounds to warrant intervention, in order to safeguard the applicant's right to execute the decree in issue.

25. This Court finds that the application herein is merited. It is allowed in the following terms –

- i) This Court hereby directs the Garnishee to disclose the status of the sale of L.R. No. 12034/3 and account for any proceeds arising therefrom within fourteen (14) days from the date of this Ruling, so as to determine whether the same may be applied towards satisfaction of the decree in issue; and**
- ii) I make no orders as to costs.**

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI on this 13th day of March 2026. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Mululu for the Garnishee

No appearance for the decree holder/applicant

Ms B. Wokabi – Court Assistant.