



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**MISC. CIVIL APPLICATION NO. E146 OF 2019**

**DENNIS MAGARE**

**T/A MAGARE MUSUNDI & CO. ADVOCATES.....**  
**APPLICANT**

**- VERSUS -**

**AFRICA MERCHANTS ASSURANCE LTD..... RESPONDENT**

**AND**

**SAFARICOM PLC.....**  
**GARNISHEE**

**RULING**

1. Before Court for determination is the Applicant's Notice of Motion Application dated 17<sup>th</sup> September 2025 brought under **Sections 1, 1A, 3, 3A** and **Order 23 Rule 1, 2 & 3** of the Civil Procedure Rules and all other enabling Provisions of Law, seeking for orders that: -

*i. SPENT*

*ii. That the following matter being NAKURU HC MISC APPLICATION NO.98 OF 2019 - DENNIS MAGARE T/A MAGARE MUSUNDI & CO. ADVOCATES VS AFRICA MERCHANT ASSURANCE CO LTD, be consolidated for the purposes of this suit.*

- iii. That a decree Nisi be issued and all monies accruing and payable by the Garnishee Safaricom PLC to the Defendant in respect of all savings, fixed and current account in particular M-PESA TILL NO. 4106404 as the operating account being held by the Judgment Debtor with the Garnishee be attached restricting any withdrawals and or transfer of funds or dealings whatsoever and be paid to the Plaintiff/Decree Holder's Advocates **WANJIKU KARUGA & COMPANY ADVOCATES** to satisfy the decree issued in the above mentioned matters for upto a sum of Kshs.364,800/= plus the accrued interests pending the inter-partes hearing and disposal of the application.*
- iv. That, a decree absolute be issued and all monies accrued and payable to the Garnishee Safaricom PLC to the Respondent in respect of all savings, fixed and current account/Till Number in particular M-PESA TILL NO. 4106404 as operating account held by the Respondent/Judgment Debtor with the Garnishee is hereby attached and be paid to the Applicant/Decree Holder's advocate through bank account to satisfy the decree herein in the sum of Kshs.364,800/=*
- v. That costs of this application be provided for: -*

2. The grounds were premised on the face of the Application and the annexed Supporting Affidavit of **Serah Wanjiku Karuga** sworn on the same date.

3. It the Applicant's case that, the Applicant/Decree Holder is owed Kshs.364,800/= by the Respondent/Judgment Debtor as at 10<sup>th</sup> September 2025 being the commutation decretal sum which continues to accrue interest.
4. That the Respondent/Judgment Debtor has failed, refused or ignored to satisfy the court's decree.
5. That the Respondent/Judgment Debtor holds an account with Garnishee in particular M-PESA TILL NO. 4106404 from which the decree can be satisfied and it is only just, fair and expedient that the application be allowed.
6. The Court had on the 5<sup>th</sup> December 2025 issued comprehensive directions on hearing and disposal including a ruling dated for the 12<sup>th</sup> February 2026.
7. The Respondent elected not to defend the Application despite service while the Garnishee filed a reply vide the sworn Affidavit dated 13<sup>th</sup> January 2026 admitting of the existence of M-PESA TILL NO. 4106404 short-code 6716100 operating account held by the Respondent/Judgment Debtor currently with **kshs 1,926,174.05/-** as at 31<sup>st</sup> January 2026.
8. The Garnishee further deponed that, the M-PESA Till Number 4106404 short-code 6716100 account has been suspended due to a prior ranking seven (7) Garnishee Orders Absolute cumulatively **kshs.33,239,232.78/-** with the funds in the account being insufficient to satisfy the orders in place.

9. The Garnishee further depones that other fifteen (15) garnishee proceedings are pending in various courts on the same account M-PESA TILL NO. 4106404 short-code 6716100 cumulatively amounting to **kshs 51,561,025.01/-**
10. The Garnishee maintains that the available balance of Kshs. 1,926,174.05/- account M-PESA TILL NO. 4106404 short-code 6716100 is insufficient and unavailable to settle the outstanding Decretal sum amounting to KShs. 364,800/- as well as the Decree-Holder/Applicant's costs of the Garnishee proceedings.
11. The court has considered the Application and the supporting affidavit, the issue for determination is whether the application is merited?
12. **Order 22 Rule 22(1)** of the Civil Procedure Rules provides as follows:  
*“ The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.”*
13. **Order 23 Rules 1(1), 5, 9 and 10** of the Civil Procedure Rules provides that, a Decree-holder can request an attachment of debts

owed to a judgment-debtor by a third party called a garnishee, through an ex-parte application supported by an affidavit. The court may order the garnishee to appear and show cause why the debt should not be used to satisfy the decree, including costs. If the garnishee disputes the debt, the court may determine the issue like any other legal dispute. These proceedings are tied to the original suit, and the costs of the process, including those of the decree-holder, are at the court's discretion and can be deducted from recovered amounts before settling the decree.

14. In this instance it was the duty of the Applicant to demonstrate availability of funds within account M-PESA TILL NO. 4106404 short-code 6716100. In the case of **Lesinko Njoroge & Gathogo Advocates Vs Invesco Assurance Co; Co-operative Bank of Kenya (Garnishee) [2020] KEHC 8931 (KLR)** the court held that,

*“garnishee proceedings involve the garnishee demonstrating whether they owe a debt to the judgment-debtor. The judgment creditor typically presents allegations of the garnishee’s indebtedness backed by credible evidence. The burden of proof then shifts to the garnishee, who must provide robust, clear, and persuasive evidence to prove that the funds or debt in question are not owed or payable”.*

15. I find no credible evidence from the judgment-creditor of existence of sufficient funds in account M-PESA TILL NO. 4106404 short-code

6716100 capable of satisfying the debt to warrant shifting the burden to the garnishee, however the garnishee has availed sufficient credible evidence of the account M-PESA TILL NO. 4106404 short-code 6716100 lacking funds sufficient to satisfy the debt as well as having previous garnishee orders enjoying priority over this matter. In any case the account stands suspended.

16. Therefore, having found no merit in this Application, this court hereby dismisses the Application dated 17<sup>th</sup> September 2025.
17. The Garnishee shall have costs of the Application assessed at kshs 30,000/-.

It is so Ordered.

**Signed, Dated and Delivered at Nakuru**

**On this 26<sup>th</sup> day of March, 2026**

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**Mohochi S.M**

**JUDGE**