

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & TAX DIVISION
HCCC NO. 517 OF 2009
ARMSTRONG ENGINEERING LIMITED.....
.....DECREE HOLDER

-vs-

**COLUMBIA DEVELOPERS
LTD.....JUDGMENT DEBTOR**

AND

**I & M BANK
LIMITED.....GA
RNISHEE**

RULING

Attachment of garnishee's goods

1. Before the court is the garnishee's notice of motion dated 3.11.2025. The garnishee seeks that the garnishee order absolute issued on 9.10.2025 and subsequent order of 29.10.2025 be reviewed and/ or set aside.
2. The application is supported by the affidavit sworn by the garnishee's legal manager, **Andrew Muchina** on 3.11.2025.
3. The decree holder opposed the application through a replying affidavit sworn by **Gerald Wafula Kangale**.

4. The background is that the court issued garnishee order *nisi* on 14.4.2025 with respect to the judgment debtor's account No. **01500459731210** held at **I & M Bank Ltd** attaching any amount in the said account to the extent of Kshs. 16,819,508.50- the decretal sum.
5. A garnishee order absolute was issued on 9.10.2025 and has been served with the Court order issued on 29.10.2025, directing the garnishee to pay the proceeds in the account to the decree holder in satisfaction of the decree within 7 days failure to which the deputy registrar to issue warrant of attachment against the garnishee's immovable property.
6. The garnishee's case is that: -
- (1) There are no funds in the judgment debtor's account to satisfy the decretal sum of Kshs. 16,819,508.50.
 - (2) Upon being served with the garnishee order nisi, it informed the decree holder's advocates via email that there were no funds in the judgment debtor's account that could be attached and requested them to inform the court on 28.5.2025.

(3)As of 14.10.2025 when the garnishee order nisi was issued, the judgment debtor's account had a credit balance of Kshs. 2,656.15.

(4)As of 24.10.2025, the judgment debtor's account has a credit balance of Kshs. 1,502,368.65 which funds it has frozen pending further directions by the Court.

7. The garnishee relied on **Maurice M. Munya & 148 others v CFC Stanbic Bank Limited (formerly Stanbic Bank of Kenya Limited) [2019] eKLR** to assert that execution by way of attachment cannot be levied against the property of a garnishee in execution of a decree against a judgment debtor.

8. The garnishee submitted that equity detests unjust enrichment and that no man shall benefit from his own wrongdoing. It faulted the decree holder for failing to inform the court that there were no sufficient funds to satisfy the decretal sum despite knowledge thereof. It stated that had the decree holder's advocates informed it that there were no sufficient funds to satisfy the decretal sum, it would have instructed its advocates to appear on 28.5.2025.

9. The garnishee submitted that it is in the interests of justice for the court to review and/ or set aside the garnishee order. It asserted that the decree holder would suffer no prejudice if the application is allowed. It highlighted that the application has been brought without delay.

Response

10. The decree holder's response is as follows: -

(1)The garnishee failed to take any steps to inform the court of the status of the judgment debtor's account as required by law despite being aware of the garnishee order *nisi*. It questioned why the garnishee would not file an affidavit to confirm that the funds in the judgment debtor's account was insufficient.

(2)It opted to attach the judgment debtor's account after it investigated and confirmed that it had received payment exceeding Kshs. 25,000,000/- from **Jomo Kenyatta University of Agriculture and Technology (JKUAT)** for construction works that had been performed and which payment was the subject of an arbitral award.

(3) Following the service of the garnishee order *nisi*, JKUAT paid a further sum of Kshs.15,000,000/- into the subject account and the judgment debtor immediately moved to court seeking the discharge of the garnishee order *nisi*.

(4) The garnishee's official, Victor Ngure wrote an email to the effect that the account had insufficient fund but the information could not be relied on based on the findings of the investigations.

Analysis and Determination

11. The central issue before the court is whether the garnishee order absolute should be reviewed and/or set aside.

12. The court has discretion to grant a review of its order or decree pursuant to **Section 80 of the Civil Procedure Act**. The discretion ought to be exercised reasonably based on principles and not capriciously or on a whim.

13. The grounds that ought to be established for a review are discovery of new and important matter or evidence or on account of some mistake or

error apparent on the face of the record, or for any other sufficient reason. **Order 45 of the Civil Procedure Rules**

14. The gist of the application is that at the time the garnishee order *nisi* was issued, there were no sufficient funds to satisfy the decretal sum of Kshs. 16,819,508.50/-.

15. The garnishee order *nisi* was issued on 14.4.2025 in respect of the judgment debtor's account no. **01500459731210** held with it. The garnishee produced a copy of the account statement as of 16.4.2025. It shows that the balance was Kshs. 2,656.15 on that date.

Enforcement of a garnishee order

16. Through the garnishee order absolute given on 9.10.2025 and issued on 29.10.2025, the court directed the garnishee to pay the funds in the account to the decree holder in satisfaction of the decree within 7 days failure to which the Deputy Registrar would issue warrant of attachment against the garnishee's property.

17. This was in accordance with **Order 23 Rule 4 of the Civil Procedure Rules** which states that if

the garnishee does not dispute the debt due or claimed to be due from the judgment debtor or does not appear in court as directed, the court may order execution against the person and goods of the garnishee. **Nyaywa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd; Diamond Trust Bank (Garnishee) [2020] eKLR**

18. The provision places a clear obligation on the garnishee to either dispute the debt claimed to be due from the judgment debtor or appear in court as directed. Admittedly, the garnishee did not do either before the garnishee order *nisi* was made absolute.

19. In the **Maurice M. Munya & 148 others case [supra]**, the Employment and Labour Court noted that the garnishee is not the judgment debtor and that the attachment being levied is against the judgment debtor's property in the custody of the garnishee.

20. The court also observed that: -

“Upon payment of the decretal sum to the extent demanded, the garnishee shall remain discharged from his obligations to

the judgment debtor to the extent of the amount garnished.”

21. The court also recognized that as an agent, the garnishee: -

“would not ordinarily bear any personal responsibility for the principal unless it can be shown that he acted outside his mandate as an agent.”

22. Other courts have held that in the case of non-compliance by the garnishee, the proper procedure to pursue would have been contempt of court, not attachment of the garnishee’s personal property.

23. The House of Lords in **Société Eram Shipping Co Ltd & Others v Compagnie Internationale de Navigation [2003] All ER 465**, observed that: -

“15. It is clear from the learned Judge’s order that the decretal sum and the costs of the suit plus garnishee proceedings were payable from an already identified source. There was therefore no need to attach the garnishees personal property even if that was lawful. The claimant and the auctioneer complained of some delay by the garnishee to honour the court order and therefore triggered the executions by way of attachment of the

garnishee's personal property. However as observed above the garnishee was not a judgement debtor. The decree was not issued against it hence there was no lawful basis for attachment of the garnishee's personal property. If there was delay or refusal to obey the order of the court by the garnishee, the proper procedure to pursue would have been contempt proceeding and not attachment." (With emphasis)

24. To my mind, through garnishee proceedings there is an obligation on the part of the garnishee to comply with a garnishee order *nisi* by attaching the funds held and a garnishee order absolute by remitting to the decree holder the money held on behalf of the judgment debtor. The garnishee is only discharged from this obligation by demonstrating that the debt is disputed or that it is not in possession of funds held on behalf of the judgment debtor.

25. **Order 23 Rule 4** is the prevailing and binding law but its application has been explained in case law including the **Société Eram Shipping Co Ltd** case which is persuasive. It is an enforcement tool provided in law.

26. Except, however, the court's power to order execution against the person and goods of the garnishee should be used sparingly and in clear cases where the garnishee deliberately or out of sheer disobedience fails to comply with the garnishee order *nisi* or absolute with the aim of defeating the garnishee order. Contempt of court may be the preferred or first option but not the only option or a means to render **Order 23 Rule 4** of **the Civil Procedure Rules** otiose or redundant. An appropriate illustration, for instance, where a garnishee deliberately allows dissipation of funds in an account subject to, in order to defeat the garnishee order. I will be slow to make a hard and fast rule that the only option is contempt of court. The court should be able to tap from the available legal tools to fashion appropriate redress or remedy that suits the facts and circumstances of each case.

Sufficient reason

27. Turning back to the question of review, the situation obtaining in this case is that the

garnishee disputes that it holds an amount sufficient to settle the entire decretal sum.

28. The garnishee produced a copy of the judgment debtor's account statement as of 24.10.2025 showing a balance of Kshs. 1,502,368.65/-.

29. Although the Decree claimed that a huge sum of money passed through the account during the subsistence of the garnishee order, there was no proof provided thereto. There is nothing to show that the garnishee holds more than Kshs. 1,502,368.65/- in the account as claimed by the D/H.

30. Therefore, the garnishee has demonstrated a sufficient reason for the review of the garnishee order absolute.

Disposal

31. The garnishee order absolute issued on 9.10.2025 is varied to the extent that: -

- (1) **The garnishee shall only remit to the decree holder the sum of Kshs. 1,502,369.65, being the amount proven to have been held in the judgment debtor's account as at 24.10.2025, less Kshs.**

35,000 on account of the garnishee's costs of the present application.

(2) The balance of the decretal sum shall remain recoverable from the judgment debtor.

Dated, signed and delivered at Nairobi through Microsoft Teams online application this 9th day April, 2026

F. Gikonyo M

Judge

In the presence of: -

Olwande for Plaintiff

Muhizi for Garnishee

CA - Ivan/Aggrey