

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 650 OF 2017

JOSEPH MWANGI MAINA

PLAINTIFF

VERSUS

KENYA NATIONAL HIGHWAY AUTHORITY 1ST

DEFENDANT

**THE MINISTRY OF TRANSPORT, INFRASTRUCTURE,
HOUSING & URBAN DEVELOPMENT 2ND**

DEFENDANT

THE HON. ATTORNEY GENERAL 3RD

DEFENDANT

NATIONAL LAND COMMISSION 4TH

DEFENDANT

AND

SAFARICOM KENYA PLC

GARNISHEE

RULING

ELC CASE NO. 650 OF 2017

Ruling

1. What is before the Court for determination is the 1st Defendant's Notice of Motion application dated the 14th November 2024 where it seeks the following Orders:

a) Spent.

b) Spent.

c) That the Garnishee be directed to appear before this Honourable Court on an appointed date and time to show cause why the Garnishee order nisi so issued should not be made absolute and why they should not pay the sum of kshs.1,246,300/= to the 1st Defendant.

d) That the Garnishee Order Nisi be made absolute.

e) That costs of this application be borne by the Plaintiff.

2. The application is premised on grounds on its face and on the supporting affidavit of Peter Mumu, Advocate. He avers that this Court delivered a Ruling on 30th August 2024 taxing the

1st Defendant's Bill of costs at Kshs. 1,246,300/= and a Certificate of Taxation was subsequently issued. He claims that the Plaintiff operates a mobile phone number +254 725 936 441, with the Garnishee herein where he has an M-Pesa Mobile Wallet, which has amounts sufficient to satisfy the decree either partially or wholly.

Response

3. The Garnishee filed a replying affidavit sworn by Paul Muewa Titia, employed as its Data Analyst in its Law Enforcement Liaison, Security Department, Corporate Security Division. He confirms that the M-PESA line bearing the Number, +254 725 936 441 is registered to the Plaintiff and had a balance of Kshs.36,868.62 in the time period from 18th June 2025 to 12th November 2025. He confirms that the Garnishee is able to comply and release the said available sums in partial settlement of the decretal sum and prays that the Garnishee be discharged from the Garnishee Order Nisi issued on 17th June 2025 upon release of the available sums less its costs.

4. The application was canvassed by way of written submissions.

Submissions

5. The 1st Defendant submits that the application and Order Nisi were served upon the Garnishee on 18th June 2025 via both physical delivery that was done at noon and email, which was received by the Garnishee at 8:56 am but despite service, the Garnishee's certified statements (annexure PMT-2 of its Replying Affidavit) confirm that on 18th June 2025 at 4:02 pm, the impugned wallet balance was ksh. 151,442. However, the Garnishee permitted the Plaintiff to continue withdrawing funds, which subsequently depleted and only a balance of kshs.36,868.62 remained as of 12th November 2025. It submits that the Garnishee must therefore pay it the sum of kshs. 151,442 that ought to have been preserved on 18th June 2025.

6. To buttress its averments, the 1st Defendant relied on the following decisions: **Eric Ntabo & Company Advocates v Trident Insurance Company Limited; Safaricom Plc (Garnishee) (Miscellaneous Civil Application E029 of 2024) [2025] KEHC 9675 (KLR) (25 June 2025) (Ruling)** and **Eco Bank Kenya Limited v Nyambura & 2 others (Civil Appeal E451 of 2025) [2026] KEHC 651 (KLR) (Civ) (29 January 2026) (Judgment) Neutral citation: [2026] KEHC 651 (KLR)**.
7. The Garnishee did not file submissions.

Analysis and Determination

8. Upon consideration of the instant Notice of Motion application including the respective affidavits and submissions, the only issue for determination is whether the Garnishee Order Nisi issued on 17th June 2025 should be made absolute and if the Garnishee is liable to pay to the 1st Defendant the sum of kshs.1,246,300/=.

9. On 17th June 2025, this court issued a Garnishee Order nisi binding the

Garnishee to attach all monies deposited in Mpesa mobile wallet for mobile number, +254 725 936 441 registered in the name of the Plaintiff. The 1st Defendant contends that despite service of the orders issued on 18th June 2025, the Garnishee allowed further withdrawals from the mobile money wallet, thus it should pay it.

10. Garnishee proceedings are governed by Order 23 of the Civil Procedure Rules. Order 23, Rule 1 (1) of the Civil Procedure Rules provides 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.”

11. In Eco bank Kenya Ltd v True North Construction Company Ltd & Another [2018] eKLR, the Court stated that:

“The object of Garnishee Proceedings is to enable a Decree Holder to reach a debt due to the Judgment Debtor from the Garnishee as may be sufficient to satisfy a Decree. Crucial thereof is that the Garnishee is indebted to the Judgement Debtor.”

12. While in **Eco Bank Kenya Limited v Nyambura & 2 others (Civil Appeal E451 of 2025) [2026] KEHC 651 (KLR) (Civ) (29 January 2026) (Judgment)**, the court stated as follows:

“..A Garnishee who willfully allows withdrawal of funds after service of the decree nisi order is culpable to the extent of such withdrawals in the event whatever remains in the account is incapable of satisfying the decree. Further, the Garnishee may be liable for contempt once the Court is properly moved.”

13. Based on the facts before me noting that the Garnishee provided the MPESA statement and indicated the amount in the Plaintiff’s MPESA account that is in its custody, while associating myself with the decisions cited, I find that the 1st Defendant is entitled to the amount in the Plaintiff’s MPESA statement only.

14. In the foregoing, I find the instant Notice of Motion application merited and will allow it, in the following terms:

- i. That the Garnishee Order Nisi be and is hereby made absolute.**
- ii. That the Garnishee be and is hereby directed to pay to the 1st Defendant Kshs.36,868.62 which is in the M-PESA line bearing the Number, +254 725 936 441, registered to the Plaintiff.**
- iii. That the costs of this application and that of the Garnishee be borne by the Plaintiff.**

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
13TH DAY OF APRIL, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Mumu for 1st Defendant

Ojong'a for Garnishee

Court Assistant: Joan