



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL APPEAL E276 OF 2025

AFRICA MERCHANT INSURANCE COMPANY LTD.....
APPELLANT

-VERSUS-

MOMBASA HIGHWAY TRANSPORTERS LIMITED.....
RESPONDENT

RULING

1. By Notice of Motion dated 23rd October 2025 the Appellant prays for reliefs as hereunder; -

1. Spent.

2. Spent.

3. THAT the firm of NAMBALU WAMAITHA & OKINYI ADVOCATES LLP be granted leave to come on record for the Appellant/Applicant.

4. Spent.

5. THAT pending the hearing and determination of this Application and Appeal, this Honourable Court be pleased to issue an order restraining

and/or barring the garnishee from releasing, transferring, or depositing any funds held in the Appellant's account to the Decree Holder on his Advocates, pursuant to the Garnishee Order Absolute issued on 22nd October, 2025.

6. THAT this Honourable Court be pleased to set aside the Garnishee Order Absolute issued on 22nd October 2025 against the accounts held and operated by the Garnishees on behalf of the Judgement Debtor/Applicant.

7. THAT the costs be provided for.

2. The Application is supported by an affidavit sworn by the Appellant's Advocate (**Teresia Wamaitha**). She *inter alia* avers that the Appellant was aggrieved by the lower court's Ruling delivered on 22nd October 2025 in **Nakuru Magistrate's Court Civil Case Number 944 of 2016** and brought this Appeal to challenge a Garnishee Order issued by the court. According to Counsel, the Respondent had obtained Judgement on 16th April, 2018 in the lower court for the sum of Kshs. 6,960,000/= against the Appellant.
3. In execution of the ensuing decree, the Respondent is said to have filed a Garnishee Application seeking to attach the Appellant's funds held in an account operated by Safaricom

PLC, the Garnishee. The Appellant filed a replying affidavit and grounds of opposition to the Application but also offered to pay “a maximum statutory limit of Kshs. 3,000,000/=” by monthly instalments of Kshs. 300,000/=.

4. The Appellant laments that despite its maximum statutory liability limit being Kshs. 3,000,000/= the lower court erroneously issued a Garnishee Order absolute in respect of the entire decretal sum of Kshs. 14,457,439/=. The lower court is faulted for failing to comply with the law by issuing a Garnishee Order in respect of a sum in excess of the Appellant’s maximum legal liability limit of Kshs. 3,000,000/=.
5. It is further contended that compelling the Garnishee to release the attached funds would be in violation of **Section 5(b)(iv) of the Insurance (Motor Vehicle Third Party Risks Act)** which preserves financial stability of insurance companies so that they are able to meet financial obligations owed to their policy holders.
6. The Appellant therefore states that it would suffer irreparable loss if the reliefs sought are not granted, adding that it has an arguable appeal.

7. The Respondent opposes the Application *vide* an affidavit in reply and a Notice of Preliminary Objection dated 5th November 2025. Its Transport and Operations Manager (**Ibrahim Mjomba**) avers in the affidavit on advice of their Legal Counsel that this Appeal and Application offend the provisions of **Order 9 Rule (5) and (9) of the Civil Procedure Rules 2010**. According to the Respondent, the Applicant also required leave to appeal the impugned order as **Order 23 of the Rules** does not confer an automatic right of appeal. The Appeal and Application before the court are therefore said to be incompetent, this court is being bereft of jurisdiction.
8. On the merits of the Application, the Respondent's witness deposes *inter alia* that when seized with Garnishee proceedings under **Order 23 of the Civil Procedure Rules** the court is not concerned with how a relevant decree or order was arrived at but only executes the decree/order as it is. Questions as to the extent of the judgement debtor's liability may only be raised in appeal, adds the Respondent. It is pointed out that an appeal against the judgement had been

lodged *vide* **High Court Civil Appeal number 41 of 2018.**

The Appeal is said to have been dismissed for non-prosecution on 25th February 2025 and so the Judgement subsists.

9. The Preliminary Objection is premised on the same points of law.
10. On 12th November 2025, the Court directed both the Application and preliminary point to be argued together. I have perused the rival arguments including written submissions filed by learned Counsel for the parties. I will first determine whether the Appellant's Advocates should be given leave to come on record for the Appellant as sought in prayer 3 of the Application. **Order 9 rule 9(a) and (b) of the Civil Procedure Rules 2010** provides that where there is change of advocate after judgement has been passed in a matter, such change shall only be effected upon and application with notice to all parties or upon a consent between the outgoing and proposed incoming advocate. As per Rule 10, such Application shall be determined before any other relief sought by the Applicant.

11. The Respondent was served with this Application and has not opposed the proposed change of Advocates sought in prayer 3. That relief is thus granted.
12. Regarding the contention as to whether the Applicant is required leave to appeal, leave to appeal is governed by **Section 75(1) (h) of the Civil Procedure Act**. This enactment does not provide for appeal as of right in respect of a Garnishee Order such as issued by the lower court. Furthermore, the Garnishee Order made by the lower court does not arise from a claim by a third person for which an appeal would lie as of right by dint of **Order 43 Rule 1 of the Civil Procedure Rules**.
13. An Appeal against a Garnishee Order shall therefore only lie with leave of the court. Having not sought and obtained leave to appeal the court has no jurisdiction.
14. Were the court to determine the merits of the Application, the Application would still fail. The Applicant has not offered to deposit security for costs which is a condition precedent to grant of stay pending Appeal as per **Order 42 Rule 6 Civil Procedure Rules 2010**. It has not also established a *prima*

facie case that the Respondent would not refund the sum in issue if paid out and the Appeal later succeeds. It is not therefore demonstrated that substantial loss would be occasioned to the Applicant.

15. The court further takes into account the Respondent's uncontested claim that the Appellant previously failed to comply with directions given *vide* the lower court's Ruling dated 12th July 2019 on an Application for stay of execution of the Judgement of 16th April 2018. A previous **Appeal Number 41 of 2018** challenging was dismissed for want of prosecution. The Appellant has not therefore demonstrated necessary *bonafides* to entitle it to exercise of this court's discretion in its favour.
16. In the end, this Appeal and the Application dated 23rd October 2025 are struck out with costs for want of jurisdiction.

J. M. NANG'EA - JUDGE.

Judgement Delivered virtually this 21st day of April, 2026.

In the presence of:

Appellant's/Applicant's Advocate, Ms Waweru.

Respondent's Advocate, Mr. Akang'o.

Garnishee's Advocate, Mr. Ojong'a.

Court Assistant (Mr Ng'eno).

J.M. NANG'EA - JUDGE.

ORIGINAL