

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS-CIVIL DIVISION**  
**CIVIL APPEAL NO. E1379 OF 2024**

**APA INSURANCE LIMITED..... APPELLANT**

**VERSUS**

**SAFARICOM PLC LIMITED..... RESPONDENT**

**(BEING AN APPEAL AGAINST THE RULING/ORDER OF THE CHIEF MAGISTRAT'S**  
**COURT AT MILIMANI DATED ON THE 12<sup>TH</sup> DAY OF NOVEMBER 2024 BY**  
**HON. BECKY CHELOTI MULEMIA (Ms) IN MILIMANI MCCC NO 4063 OF 2019)**

**BETWEEN**

**ELIZABETH WAMUYU MUCHEMI.....1<sup>st</sup> PLAINTIFF/JD**

**JOSEPH KAHHU STEPHEN.....2<sup>nd</sup> PLAINTIFF/JD**

**VERSUS**

**APA INSURANCE LIMITED..... DEFENDANT/DECREE**  
**HOLDER**

**AND**

**SAFARICOM LIMITED PLC.....1<sup>st</sup> GARNISHEE**

**SPIRE BANK LIMITED.....2<sup>nd</sup>**  
**GARNISHEE**

**J U D G M E N T**

**A. Introduction**

1. This appeal arises from the Ruling of **Hon. Becky Cheloti Mulemia (Ms)** dated 12<sup>th</sup> November 2024, where she dismissed the Appellants, Chamber summons application dated 31<sup>st</sup> May 2024, where they had sought to attach any money held in the Mpesa accounts of the plaintiffs/Judgment debtors in the primary suit, which sum stood at **Kshs.213,918.60/=** plus interest thereon and costs of the said application estimated at **Kshs.20,000.00/=**.
2. Being aggrieved by the said decision, the appellant filed their memorandum of appeal dated 27<sup>th</sup> November, 2024, and raised nine (9) grounds of appeal, namely: -
  - a) ***That the learned trial magistrate erred in law in failing to find that the Garnishee Order Absolute do issue against the 1<sup>st</sup> garnishee to settle the sums due to the Appellant being Kshs.213,918.60/= plus accrued interest and the costs of making the application therein.***
  - b) ***That the learned magistrate erred in law and in fact by failing to find that the Garnishee order Nisi provided for the attachment of all the monies held by the 1<sup>st</sup> Garnishee as deposit or otherwise included telephone number 0716041281 registered in the names of the 1<sup>st</sup> Plaintiff (ELIZABETH WAMUYU MUCHEMI).***

**c) The learned Magistrate erred in law and in fact in failing to find that the 1<sup>st</sup> Garnishee was in default of compliance with the said Garnishee Order nisi, as required in law.**

**d) The learned Magistrate erred in law and in fact in finding as she did that “very little information” was provided to the 1<sup>st</sup> Garnishee/Respondent to ensure that it did not breach anyone’s right to privacy.”**

**e) That the learned Magistrate erred in law and in fact in failing to find that as soon as the Garnishee Order Nisi was served upon the 1<sup>st</sup> Garnishee, it acted as an injunction preventing the 1<sup>st</sup> Garnishee from paying Ksh.342,716.98/= found in the 1<sup>st</sup> plaintiff’s Mpesa account 0716041281 until the Garnishee order Nisi is made absolute or until the 1<sup>st</sup> Garnishee is discharged by the court.**

**f) That the learned Magistrate erred in law and in fact in failing to find that the 1<sup>st</sup> Garnishee knew and/or ought to have known that the sums in the Mpesa account 0716041281 were withdrawn by the 1<sup>st</sup> plaintiff/judgment debtor with the full**

**knowledge of the 1<sup>st</sup> garnishee/respondent thereby defeating the course of justice.**

**g) That the learned Magistrate erred in law and in fact as she did, by failing to accept guidance by the very persuasive submissions by the Appellant.**

**h) That the learned Magistrate erred in law and in fact by basing her decision on extraneous matters and failing to base her said decision on the facts, evidence on record and the principle of stare decisis.**

**i) That the learned Magistrate therefore acted in error by failing to properly appreciate and evaluate facts and the legal issues raised by the Appellants Garnishee application and thus reaching an erroneous decision to dismiss the said application.**

3. The Appellant thus prayed that this Appeal be allowed, and a Garnishee order absolute do issue against the respondent to settle the sums due of **Kshs.213,918.60/=** plus accrued interest and costs of making the said application. They also sought to be awarded the costs of this Appeal.

## **B. Analysis and Determination**

4. I have considered this appeal, submissions, and the impugned Ruling. I have also considered the decisions relied on and perused the trial court's record. This being a first appeal, it is by way of a retrial, and this court, as the first appellate court, must re-evaluate, re-analyze, and re-consider the evidence afresh and draw its conclusions on it. The court should, however, bear in mind that it did not see the witnesses as they testified and give due allowance for that. (see **Selle v Associated Motor Boat Co Ltd & Others [1968] EA 123**) & **Peters Vs Sunday Post Limited (1968) EA 123**

5. A first appellate court is also the final court of fact, and litigants are entitled to full, fair, independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of **section 78 of the Civil Procedure Act**, a court of first appeal can appreciate the entire evidence and come to a different conclusion. See **Kurian Chacko Vs Varkey Ouseph AIR 1969 Kerala 316**

6. The only issue arising for determination in this Appeal, is whether the trial magistrate erred in not issuing a Garnishee order absolute, against the 1<sup>st</sup> Garnishee/ respondent herein,

with respect to sums held on the 1<sup>st</sup> plaintiff/Judgment debtor phone Number **0716041281**, through which the said plaintiff/judgment debtor transacted a total of **Kshs.347,635.00/=** for the period between 24<sup>th</sup> July 2024 to 1<sup>st</sup> September 2024.

7. It is not contested that the trial court, did issue a Garnishee order Nisi on 1<sup>st</sup> July 2024, directing the respondent to forthwith attach any monies held on the judgment debtors phone numbers **0721374117** and **0725527835** or any other of their telephone numbers, pay bill and/or Mpesa till Numbers held under their names.
8. The said order was served upon the respondent herein on 24<sup>th</sup> July 2024 and in response, they filed their replying affidavit dated 9<sup>th</sup> August 2024, attaching Mpesa statements which revealed that the balance held of Phone Number **0721374117** was **Kshs.862.97/=**, while Phone Number **0725527835** had no transaction on Mpesa during the period under review.
9. The Mpesa statements of the 1<sup>st</sup> judgment debtor, also revealed that she also owned phone number **0716041281**, and upon discovery of this information, the appellant insisted that the respondent must also avail the Mpesa statement for the said phone number since the order Nisi, extended to any other

telephone numbers maintained and run by the said judgment debtors in the primary suit. Through their supplementary affidavit dated 30<sup>th</sup> September 2024, the respondent did file the Mpesa statement of this phone number for the period 24.07.2024 to 30.09.2024, which showed that the said account had transacted a total of **Kshs.342,716.98/=** and had a closing balance of **Kshs.1,782/=**.

10. The appellant therefore urged the trial court to find that the respondent had failed to enforce the Garnishee order Nisi and/or had deliberately failed to make full and frank disclosure with regard to the 1<sup>st</sup> judgment debtor phone Number **0716041281** and therefore had not discharged its obligation under the said order Nisi. They thus urged the trial court to confirm the Garnishee order in their favour and direct the respondent to released the decretal sum owed to them.

11. In response, the respondent insisted that they had fully discharged their obligation under the order Nisi, issued on 01.07.2024, but formally served on them on 24.07.2024 and had filed the true statement of accounts in regard to the Mpesa accounts sought to be garnisheed. The accounts were all underfunded, hence not capable of satisfying the decretal sum sought by the Appellant.

12. They also emphasized that the order Nisi did not expressly seek to attach funds held under Mpesa account of phone

number **0716041281** and blamed the appellant for not providing sufficient information under the principal of specificity to enable them accurately comply with orders issued. The respondent therefore urged the court to find that they did not hold sufficient sums capable of satisfying the entire decretal sum of **Kshs.213,918.60/=** and urged the court to dismiss the garnishee proceedings filed as against them.

13. Garnishee proceedings are governed by **Order 23 Rule 1(1) of the Civil procedure Rules**, which provide that;

***A court may, upon 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 the decree-holder the debt due from him to the judgment-debtor or so much therefore as maybe sufficient to satisfy the decree together with the costs aforesaid.**

14. It is trite law that as soon as the Garnishee order Nisi is served on the bank/garnishee, it operates as an injunction and prevents the bank/Garnishee from paying out the money held to its customer until the garnishee order is made absolute, or is discharged, as the case maybe. It binds the debt in the hands of the garnishee, and creates a charge in favour of the judgment creditor. What Garnishee order Nisi does is to freeze the sum in the hands of the bank until the Garnishee order is made absolute or is discharged. If the said order is made absolute, then the Garnishee bank becomes liable to pay the Decree holder. See **Joachimson Vs Swiss Bank Corp (1921) 3KB 110 at 131, (1921) All ER Rep 92 at 102 per Atkin Lj.**

15. The key question for consideration in this Appeal and which the Garnishee was called to unburden is the fact as to whether they were indebted to the Judgment debtor and if not, if they provide sufficient and convincing evidence that they do not have enough funds in their hands to settle the decree due. See; **Ecobank Kenya ltd Vrs True North construction Company limited & Another (2018) eKLR & International Air Transport Association (IATA) & Another Vrs Akarim Agencies**

**company limited & 2 others; Equity Bank limited (Garnishee)(2021).**

16. The garnishee/ respondent herein was not indebted to the judgment debtor and by the replying affidavit/ supplementary affidavit filed disclosed the true state of affairs, financial status or standing of the amounts held by both judgment debtors as at 24<sup>th</sup> July 2024, when they were served with the garnishee order Nisi. The amount held on phone number **0721374117** was **Kshs.862.97/=**, **0725527835** had no transaction, and phone number **0716041281** as at the said date had a closing balance of **Kshs.2.88** as at 21:36.27 when the last transaction was done.

17. The law is also clear that the garnishee will only be held liable to account for sums held on behalf of the judgment debtor as at the *time of service of the garnishee order Nisi*. As already established the 1<sup>st</sup> judgment debtor Mpesa account for phone number **0716041281** did not have any significant sum of money capable of being fully or partially attached to settle the decree as at 24.07.2024, and therefore the trial magistrate cannot be faulted for arriving at the same conclusion.

**C. Disposition**

18. This Appeal therefore lacks merit and the same is dismissed with no order as to costs.

19. It is so ordered.

**Dated, signed, and delivered** in open court at **MARSABIT**  
this **21<sup>st</sup>** day of **APRIL, 2026**.

**FRANCIS RAYOLA OLEL**  
**JUDGE**

Delivered on the virtual platform, Team this **21<sup>st</sup>** day of  
**APRIL ,2026**.

**In the presence of: -**

.....N/A.....Appellant

.....N/A.....Respondent

.....JULIE.....Court Assistant