

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT VOI

MISC. APPLICATION NO. E041 OF 2024

FREDRICK T. MUSUNGU T/A

MUSUNGU PEKKE & CO. ADVOCATES.....

APPLICANT

=VERSUS=

AFRICA MERCHANT ASSURANCE CO. LTD (AMACO).....

RESPONDENT

=AND=

SIDIAN

BANK

LTD.....GARNISHEE/INTERESTED PARTY

RULING

1. The application coming for consideration in this Ruling is the one dated 25th November 2025 brought under Section 38 of the Civil Procedure Act, Order 22 Rule 40, Order 23 Rules 1, 3 and 10 of the Civil Procedure Rules 2010 and all other enabling provisions of the law seeking the following prayers:-

- (i) That this application be certified urgent and heard ex parte in the first instance.**

- (ii) That pending hearing and determination of this application, Sidian Bank Ltd be enjoined to this application as an Interested Party.**
- (iii) That pending hearing and determination of this application garnishee order be and are hereby issued, directing the Garnishee/Interested Party, Sidian Bank Ltd not to release any money held by the said Bank in Account No. 01033020009727, Moi Avenue Branch, Account Name African Merchant Assurance Co. Ltd (AMACO) and the said monies be attached to answer the order of the garnishee proceedings totaling to Kshs. 670,988.04/= arising from the decretal sum of Kshs. 588,586/= and a further sum of Kshs. 82,402/= being accrued interest in satisfaction of the decree of this Honourable Court issued on 5.11.2025.**
- (iv) That upon hearing and determination of this application garnishee order be and is hereby issued, directing the Garnishee/Interested Party, Sidian Bank Ltd not to release any money held by the said bank in Bank Account No. 01033020009727, Moi Avenue Branch, Account Name African Merchant Assurance Co. Ltd (AMACO) and the said money be attached and**

immediately transferred to the Applicant Advocate's Bank account at Musungu Pekke & Co. Advocates Ltd, KCB Bank Ltd, Kimathi Branch, Account No. 1279642378, to answer the order of the garnishee proceedings totaling to Kshs. 670,988.04/= arising from the decretal sum of Kshs. 588,586/= and a further sum of Kshs. 82,402/= being accrued interest in satisfaction of the decree of this Honourable Court issued on 5.11.2025.

(v) That a further amount totaling to Kshs. 1,546,487/= less accrued interest be frozen and withheld in the said bank account for subsequent settlement of the following taxed whose payment date is long overdue for payment to the Applicant's bank account:

(a) The sum of Kshs. 528,394/= arising from HCC Misc. Application No. E042 of 2024 - Voi, involving same parties whose certificate of taxation was issue don 21.5.2025.

(b) Kshs. 530,105/= arising from HCC. Misc. Application No. E044 of 2024 -Voi, involving same parties whose certificate of taxation was issued on 21.5.2025.

(c) 487,988/= arising from HCC. Misc. Application No. E051 of 2024-Voi, involving same parties whose certificate of taxation was issued on 21.5.2025.

(vi) That the costs of this application be borne by the Respondent.

2. The application is based on the following grounds:-

(i) That there is urgent need to issue interim garnishee orders pending inter partes hearing of the application herein against the Respondent's bank account for reasons that there is unpaid total sum of Kshs. 670,988.04/= arising from the decretal sum of Kshs. 588,586/= and a further sum of Kshs. 82,402/= being accrued interest which has not been paid by the Respondent despite having knowledge of the decree which was served but has not been paid.

(ii) That the aforementioned amount arises from the decree of this Honourable Court issued on 5.11.2025 plus accrued interest arises from a taxed Advocate-Client bill of cost that was taxed by consent of both parties on 21.5.2025.

(iii) That to date, the Respondent has not paid the decretal sum despite being served with the decree

on 20.11.2025 and having prior knowledge that taxed amount was to be paid within a period of 30 days as per the mutual consent of both parties.

- (iv) That there is high probability that the Respondent who has declined to pay the decretal amount holds various bank accounts among them bank account at Sidian Bank, Account No. 01033020009727, Moi Avenue Branch, Account Name African Merchant Assurance Co. Ltd (AMACO) which account has sufficient funds to pay the decretal amount plus accrued interest to the Applicants.**
- (v) That from the foregoing it is fair and in the interest of justice that the aforesaid bank account believed to belong to the Respondent be attached to offset payment of the amount due to the Applicant herein.**
- (vi) That it is in the interest of justice that orders sought be granted to enable the Applicants enjoy the fruits of his judgment and expeditiously bring this matter to its logical conclusion and**
- (vii) That it is in the interest of justice that prayers sought be granted.**

3. The application is supported by the affidavit of the Applicant sworn on 25th November 2025 as follows;

- (i) The deponent, an Advocate of the High Court of Kenya trading as Musungu Pekke & Co. Advocates, stated that he was well versed with the facts of the case and therefore competent to swear the affidavit.
- (ii) He explained that his law firm had represented the Respondent in several civil cases, resulting in an Advocate-Client bill of costs that was taxed by consent of both parties on 12th May 2025, with the taxed amount to be paid within 30 days, that is, on or before 30th June 2025.
- (iii) Following that consent order, a certificate of taxation was extracted and served on the Respondent on 23rd May 2025, together with a forwarding letter containing bank account details for payment.
- (iv) The Respondent did not pay, prompting the Applicant to apply to the court to codify the certificate of taxation into a decree, which was issued on 5th November 2025 for a total of Kshs. 670,988.04, comprising Kshs. 588,586 as the decretal amount and Kshs. 82,402 as accrued interest; the decree was duly served on the Respondent and its Advocate.
- (v) The deponent further stated that there was a high probability that the Respondent, who had refused to pay the decretal amount, held various bank accounts, including one

at Sidian Bank, Moi Avenue Branch, Account Name African Merchant Assurance Co. Ltd (AMACO), Account No. 01033020009727, which had sufficient funds to satisfy the decree plus accrued interest.

- (vi) He contended that it was fair and in the interest of justice for that bank account to be attached to offset the amount due.
- (vii) Additionally, the deponent noted that the Respondent owed a further sum of Kshs. 1,546,487, excluding accrued interest, arising from three other bills of cost in related matters: HCCC Misc. Application Nos. E042, E044, and E051 of 2024-Voi, with certificates of taxation issued on 21st May 2025 for Kshs. 528,394, Kshs. 530,105, and Kshs. 487,988 respectively.
- (viii) The Applicant had already filed applications to codify those certificates into decrees, with hearing dates set for 8th December 2025.
- (ix) Given the Respondent's previous conduct and reluctance to pay, the deponent argued that it was just to issue a further order against the garnishee freezing the additional sum of Kshs. 1,546,487 pending satisfaction of those certificates.
- (x) He concluded that granting the orders sought would enable the Applicant to enjoy the fruits of his judgment and bring

the matter to a logical conclusion, and that it was in the interest of justice for the prayers to be granted.

4. The Garnishee filed a Replying Affidavit dated 18th December 2025 as follows;

- (i) The deponent, a male adult of sound mind serving in the Legal Department at Sidian Bank Kenya Limited (the Garnishee), stated that he was competent and duly authorized to swear the affidavit.
- (ii) He affirmed that he was fully aware of the facts and circumstances of the case and was deposing based on his own knowledge unless stated otherwise.
- (iii) He confirmed that the Respondent held account number 01033020009727 with the Garnishee.
- (iv) As of the date the Garnishee Order Nisi was served, the account had a balance of Kshs. 18,382,682.58.
- (v) However, he explained that these funds were not payable to the decree holders because, prior to being served with any pleadings in this matter, the account had already been frozen under other garnishee orders served upon the Garnishee.
- (vi) He listed ten separate court orders from various matters, with issuance dates ranging from 26th May 2025 to 15th December 2025, which had frozen the account.

(vii) Consequently, the Garnishee was unable to satisfy the Garnishee Order Nisi issued by the court.

(viii) He further asserted that the Garnishee, as a creditor of the Respondent, had a lien over the funds in the account.

(ix) He concluded that it was clear the Garnishee was incapable of satisfying the court's orders and should therefore be discharged from the proceedings, with costs to be borne by the Respondent

5. The parties filed written submissions as follows;The Applicant, Fredrick T. Musungu t/a Musungu Pekke & Co. Advocates, submitted that there is an unpaid decretal sum of Kshs. 560,419 plus accrued interest of Kshs. 78,456.66, totaling Kshs. 638,877.77, arising from a taxed advocate-client bill of costs consented to on 21 May 2025 and a decree issued on 5 November 2025, served on the Respondent on 20 November 2025 but still unpaid.

6. Under Section 38(b) and (f) of the Civil Procedure Act and Order 23 rule 1 of the Civil Procedure Rules, the Applicant submits that a court may attach debts owed by a third party to a judgment debtor.

7. Although the bank raised concerns about numerous prior garnishee orders on the same account, the Applicant's further affidavit of 27 February 2026 argues that the account holds an

estimated Kshs. 12,157,327.85, far exceeding the Applicant's total claim of Kshs. 1,938,574.56 across three related files.

8. The Applicant breaks down prior garnishee orders totaling Kshs. 23,320,358, then deducts amounts affected by a cap under the Fatal Accident Act (reducing one claim to Kshs. 3 million) and a pending appeal with stay orders (Kshs. 8,895,474.35), arriving at a revised attached amount of Kshs. 14,424,883.65.
9. Further deductions include amounts recoverable from a Safaricom till number (Kshs. 1,800,893.80 and another Kshs. 466,662), leaving Kshs. 12,157,327.85 in the account, which is more than sufficient to cover the Applicant's claim.
10. The Applicant contends that the bank failed to prove the total liability from previous orders, how much had been settled, or the outstanding balance, and also did not account for funds in other accounts or Safaricom till numbers.
11. Relying on Section 107(1) of the Evidence Act, the Applicant argues it has proved its case on a balance of probabilities and therefore seeks costs of the application.
12. The garnishee, Sidian Bank Ltd, submitted that they should be discharged from the proceedings because they cannot legally release the funds sought by the applicant.
13. The bank explains that before the applicant's garnishee order nisi was served on 28th November 2025, the identified

account had already been frozen under multiple prior garnishee orders from other courts, the earliest dating back to 26th May 2025.

14. Those earlier orders remain valid and binding, and under the principle of priority in garnishee proceedings, earlier attachments take precedence over later claims.

15. The bank is a neutral custodian and cannot choose which court order to obey; complying with the applicant's request would force it to breach existing orders and risk contempt proceedings.

16. The applicant has not provided any discharge, variation, or proof that the prior orders have ceased to operate.

17. The submissions further contend that the applicant's request to freeze additional funds based on an anticipated decree is premature, as garnishee proceedings are execution proceedings requiring a valid, crystallized debt.

18. Since the bank has shown a clear legal impediment to payment, it has established sufficient cause to be discharged, with costs to be borne by the judgment debtor rather than the bank.

19. I have carefully considered the application dated 25th November 2025, the rival affidavits, and the submissions of both the Applicant and the Garnishee.

20. The sole issue for determination is whether a Garnishee Order Absolute should be issued in the face of competing prior attachments.
21. Under Order 23 of the Civil Procedure Rules and Section 38 of the Civil Procedure Act, garnishee proceedings are a specialized form of execution that allows a judgment creditor to reach money belonging to the judgment debtor held by a third party.
22. However, for such an order to be made absolute, the debt must be "**due or accruing**" and must not be subject to prior legal encumbrances that exhaust the available funds.
23. The Garnishee has admitted holding Account Number 01033020009727 on behalf of the Respondent, with a balance of Kshs. 18,382,682.58 as at the date of service of the Garnishee Order Nisi.
24. The Garnishee further admitted that the account had been frozen under ten separate court orders from various matters, with issuance dates ranging from 26th May 2025 to 15th December 2025.
25. The critical legal question is whether these prior garnishee orders preclude the Applicant from recovering his decretal sum.
26. In the persuasive authority of **Nyagwa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd; NCBA Bank Kenya**

PLC & another (Garnishee) [2021] KEHC 12886 (KLR) , the court confronted an almost identical situation where a garnishee admitted holding funds but claimed they had already been attached by earlier orders.

27. The court, per Hon. Charles Kariuki J, held at paragraphs 16 as follows;

"I would grant the application making the garnishee order nisi absolute, however, in view of the 1st Garnishee's response and the evidence presented, it is apparent that there are other Garnishee Orders absolute which rank in priority to the Applicant's, as such, the liability of the 1st Garnishee would be limited to the extent of the balance in the account once the other garnishee orders have been settled."

28. In the instant case, the Garnishee has not provided a detailed breakdown of the specific amounts claimed under each of the ten prior garnishee orders, how much of those claims have been settled, what amounts remain outstanding, or what balance, if any, remains available for the Applicant's claim.

29. The Garnishee listed the orders but failed to discharge its evidentiary burden under Section 107(1) of the Evidence Act to demonstrate precisely why it cannot satisfy the Applicant's decree.

30. The Applicant, in his further affidavit of 27th February 2026, has provided a detailed calculation suggesting that after accounting for the previous attachments, a substantial balance of Kshs. 12,157,327.85 remains in the account, which is more than sufficient to cover his total claim of Kshs. 1,938,574.56 across three related files.

31. In the premises, the applicant's application is allowed and this court makes orders as follows;

- (i) The Garnishee Order Nisi issued on 25th November 2025 is hereby made ABSOLUTE, but limited to the balance remaining in the Respondent's account after satisfying all prior garnishee orders that were served upon the Garnishee before service of the Applicant's Order Nisi.**
- (ii) The Garnishee shall, within fourteen (14) days from the date of this Ruling, file and serve upon the Applicant an affidavit providing a detailed breakdown and a complete list of all garnishee orders served upon the Garnishee in respect of the Respondent's Account No. 01033020009727, including the date of service for each order.**
- (iii) The Garnishee shall show the amount claimed under each such order, the amount paid or settled under**

each such order to date, the outstanding balance under each such order and the current available balance in the said account after accounting for all prior attachments.

(iv) The Garnishee shall thereafter pay to the Applicant from the said account the outstanding decretal sum of Kshs. 670,988.04 (comprising Kshs. 588,586 plus accrued interest of Kshs. 82,402), subject to the priority of earlier served garnishee orders and limited to the extent of the available balance after satisfaction of those prior orders.

32. The costs of this application shall be borne by the judgment debtor.

33. The parties shall take a date before the Deputy Registrar for mention within thirty (30) days to confirm compliance with the garnishee's disclosure obligations and for further directions on payment.

34. The order to abide in E040 and E043 of 2024 involving the same parties.

35. Orders accordingly.

Dated, signed and delivered this 30th day of April 2026 in open court at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

..... **for the Applicant**

..... **for the Respondent**

..... **for the**
Garnishee/Interested Party

ORIGINAL