

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT VIHIGA**  
**CIVIL MISC. E023 OF 2024**

**OCHARO KEBIRA & CO. ADVOCATES .....**  
**DECREE-HOLDER/APPLICANT**

**VERSUS**

**AFRICA MERCHANT ASSURANCE CO. LTD. ....**  
**..... JUDGEMENT-DEBTOR/RESPONDENT**

**AND**

**SAFARICOM PLC.....1<sup>ST</sup>**  
**GARNISHEE**

**BANK OF AFRICA.....2<sup>ND</sup>**  
**GARNESHEE**

**Coram: Before Justice R. Nyakundi**

**Eric Ntabo & Co. Advocates**

**Legal Officer Africa Merchant Assurance & Co. Ltd**

**RULING**

1. Before this Court is notice of motion dated 31<sup>st</sup> day of March 2026 expressed to be brought under Order 23 Rule 1, 2, 8 & 9, Order 49 Rule 1, 2, 5 & 7, Order 50 Rule 1 of the Civil Procedure Rules, Section 1A, 1B & 3A of the Civil Procedure Act and all enabling provisions of law. The Applicant is seeking for the following orders:

*a. Spent.*

*b. THAT an Order Nisi, restraining any debiting of Safaricom Mpesa Till number 6716100 and Mpesa Till number 545400 held by the 1<sup>st</sup>*

- garnishee and Bank Account No.01011220001 held by the 2<sup>nd</sup> garnishee and/or any other account held by the Judgment-Debtor with the Garnishees, do issue and the same be served upon the Garnishees and the Judgment-Debtor at least SEVEN (7) DAYS before hearing hereof.*
- c. THAT the Garnishees herein, SAFARICOM PLC & BANK OF AFRICA do attend Court on a date to be fixed to show cause why they should not pay to the decree-holder the sum of Kshs 203,194.20 being the decretal sum plus costs from monies held on behalf of the Judgment-Debtor from the above-mentioned account or so much thereof as may be sufficient to satisfy the decree herein*
  - d. THAT this honorable Court be pleased to make a Garnishee Order absolute that, the sum of Kshs. 203,194.20 such sums or debts as are sufficient to answer the decree obtained by the Decree-holder against the Judgment-Debtor, or the unsatisfied part thereof owing or accruing due from the Garnishees, SAFARICOM PLC and BANK OF AFRICA, to the Judgment-Debtor be attached to answer the decree passed herein against the Judgment-Debtor.*
  - e. THAT costs of Kes 50,000/= of this garnishee application be borne by the Judgment-Debtor/Respondent.*
2. The application is based on the following grounds:
- a. The Respondent retained the Applicant as their advocates and failed to pay the requisite legal fees prompting the Applicant to file Advocate Client Bill of Costs herein.*
  - b. The Respondent was duly served who later in turn appointed the Firm of Olubayi Mwashimba Advocates LLP to defend their interest culminating to the taxation by consent of both parties and a certificate of taxation issued to that effect.*

- c. *The Applicant subsequently filed application dated 15/4/2025 seeking that the attached Certificate of taxation be converted into judgement and an order of the Court*
- d. *The Application dated 15/4/2025 was unopposed by the Respondent's Counsel despite service as evidenced by the Court documents.*
- e. *The Applicant has since extracted a decree of the Court which decree remains unsettled despite the Respondents Counsel participating in the proceedings*
- f. *The decree herein is for the sum of Kshs 203,194.20 together with costs which amounts continue to attract interest and remain unsatisfied.*
- g. *The Respondent has been previously notified of all Court proceedings as the same are discernible from the Court record and as such the Respondent is very unlikely to pay.*
- h. *The Applicant intends to execute by way of Garnishee through attaching the judgment debtor's accounts held by Garnishee since the judgment debtor has no attachable properties known to the Applicant.*
- i. *The garnishee has accruing in their accounts, credit deposits on behalf of the judgment debtor in, Safaricom Mpesa Till number 6716100 and Mpesa Till number 545400 held by the 1<sup>st</sup> garnishee and Bank Account No. 01011220001 held by the 2<sup>nd</sup> garnishee on behalf of garnishees*
- j. *It is only just and fair that the credit deposits be attached to satisfy the decretal sum and enable the decree-holder to recover what is due to it*
- k. *The decree holder is apprehensive that if the application is not heard as a matter of urgency, the Respondent may move to dispose*

*of the amounts in the aforementioned accounts in order to defeat the execution process.*

- l. It is in the interest of justice that this Application is heard on priority and the Garnishee Order Nisi be issued accordingly.*
  - m. If the orders sought are not granted, the decree holder stands to suffer extensive and irreparable harm.*
  - n. This application only seeks to enable the realization of the decretal sum.*
  - o. THAT costs of Kes 50,000/= of this garnishee application be borne by the Judgment-Debtor/Respondent*
  - p. Such other and further grounds to be adduced at the hearing*
3. In support of the application is the affidavit sworn by Eric Ntabo who deponed as follows:
- a. That I am the advocate in conduct of this matter hence competent to swear thus affidavit.*
  - b. THAT there is no dispute that an Advocate Client relationship exists between the Applicant and the Respondent who retained the Applicant herein as their advocates.*
  - c. THAT the Respondent failed to pay the agreed upon Legal Fees prompting the Applicant to file Advocate Client Bills of Costs herein.*
  - d. THAT the Applicant served the Advocate Client Bills of Costs together with the Notices of Taxation upon the Respondent and consequently the Respondent appointed the firm of Olubayi Mwashimba Advocates LLP to act for them.*
  - e. THAT the Court proceeded to tax the bill of costs by consent by Hon. Beryl Omollo and subsequently Certificate of Taxation was issued*
  - f. The Applicant subsequently filed application dated 15/4/2025 seeking that the attached Certificate of taxation be converted into judgement and an order of the Court.*

- g. The Application dated 15/4/2025 was allowed as prayed on 3rd February,2026 noting that the Respondents Counsel was served as evidenced by the Court documents but failed to file any responses.*
- h. THAT the Applicant has since extracted a decree of the Court against the Respondent/judgment debtor herein which decree remains unsettled.*
- i. The Respondent has been previously notified of all Court proceedings as the same are discernible from the Court record and as such the Respondent is very unlikely to pay.*
- j. THAT I am apprehensive that the judgment debtor is not willing to settle the amounts due preventing the Applicant from reaping the fruits of justice and justice delayed is justice denied.*
- k. THAT following decree holder's investigations, I have been informed which information, I verily believe to be true that the judgment -debtor has Safaricom Mpesa Till number 6716100 and Mpesa Till number 545400 held by the 1<sup>st</sup> garnishee and Bank Account No.01011220001 held by the 2<sup>nd</sup> garnishee which accounts remain active and sufficiently credited.*
- l. THAT owing to the willful neglect and/or refusal of the Judgment-Debtor in satisfying the costs despite being duly served with the decree, it is only fair and just to allow the garnishee proceedings.*
- m. THAT the Judgment-Debtor's other movable and immovable assets remain unknown to me and the Applicant.*
- n. THAT it is in the interest of fair administration of justice that this Honorable Court exercises its discretion in favor of the prayers sought.*
- o. THAT undeniably, it is apparent that if the orders sought are not granted, the Applicant stands to suffer extensive and irreparable damage.*
- p. THAT I swear the affidavit in support of the application.*

4. In response to the application is the replying affidavit sworn by Grace Chege who deposes as follows:
  - a. *That I am the 2<sup>nd</sup> Garnishee's Head of Institutional Banking, duly authorized and competent to swear this affidavit.*
  - b. *THAT I have read the Notice of Motion application dated 6<sup>th</sup> March, 2026 and having understood the contents thereof, do wish to respond to the application based on information and records held by the Garnishee.*
  - c. *THAT the Applicant seeks to have the funds, if any, held in the Judgement debtors account to be garnishees to settle the decretal sum due or part thereof as the case may be.*
  - d. *THAT it is not in dispute that the Judgement Debtor is the holder of the account number 01011220001 domiciled at the Garnishee's Westlands Branch.*
  - e. *THAT I am aware upon perusal of the statement of account that the Judgment Debtor has not operated the account for a long while, in which case the account is not only in dormant state but does not also hold any fund.*
  - f. *THAT the Garnishee consequently prays to be discharged from these proceedings with costs being payable as may be directed by the Honorable Court.*
5. In response to the application is the replying affidavit sworn by Stella Mutindi Mutua who deposes as follows:
  - a. *That am a female adult of sound mind, currently employed as the Senior Merchant Officer in the Enterprise Channels Department- M-PESA Services, within Lipa na M-PESA, under Fintech Operations Division, for the 1<sup>st</sup> Garnishee.*
  - b. *THAT I am conversant with the facts herein, duly authorized, and competent to swear this affidavit.*

- c. *THAT the contents of the Applicant's/Decree Holder's Ex parte Notice of Motion Application dated 31<sup>st</sup> March 2026 as well as the Supporting Affidavit sworn on even date have been read and explained to me by the 1<sup>st</sup> Garnishee's Advocate.*
- d. *THAT further, the import and implication of the Ex parte Notice of Motion Application dated 31<sup>st</sup> March 2026 and a Garnishee Order Nisi issued and served upon the 1<sup>st</sup> Garnishee whose import require the Garnishee to attach all monies in Till Number 6716100 and 545400 in satisfaction of the decretal sum amounting to KShs 203,194.20/- inclusive of accrued interest and costs has been explained to me by the 1<sup>st</sup> Garnishee's Advocate and I make this affidavit in response thereto.*
- e. *THAT the Respondent/Judgment Debtor operates Till Number 4106404 aggregated under the short code 6716100. Therefore, funds paid to Till Number 4106404, ordinarily reflect in the organizational short code 6716100 and is sufficiently funded.*
- f. *THAT I am advised by the 1<sup>st</sup> Garnishee's Advocates on record, Messer's Meritad Law Africa LLP which advise I verily believe to be true that the 1st Garnishee is entitled to its costs on the Applicant's/Decree Holder's Application, and as such we pray that the 1<sup>st</sup> Garnishee be granted costs.*
- g. *THAT the 1<sup>st</sup> Garnishee shall within 7 days upon service of the Garnishee Order Absolute shall release the unpaid decretal sum amounting to Kshs. 203,194.20/- that will abide the outcome of the Garnishee proceedings, less its costs.*
- h. *THAT I swear this Affidavit in response to the Applicant's/Decree Exparte Notice of Motion Application dated 31<sup>st</sup> March 2026 and a Garnishee Order Nisi issued and served upon the 1<sup>st</sup> Garnishee and pray that the 1<sup>st</sup> Garnishee be discharged from the proceedings upon determination.*

6. The Court on 26<sup>th</sup> March 2026 adopted the Bill of Costs as taxed by the Taxing Master and a decree of the Court was drawn upon entry of judgment with the following particulars in place:

Principal amount.....	Kshs 125,775.00/=
Interest at 14% P.A (from 26/07/2024 to 03/02/2026)	Kshs 26,919.20/=
Costs of extracting Decree.....	Kshs 500.00/=
Total amount.....	Kshs 153,194.20/=

7. The Applicant judgment was now ripe for execution.

### **Decision**

8. This application is based on the garnishee proceedings provided for under Order 23 of the CPR. This rule focuses on the attachment of debts, specifically funds held by banks or mobile money providers like Safaricom Mpesa or Airtel Money for judgment debtors. The High Court in its power and jurisdiction exercisable under the CPR has emphasized that these proceedings are a separate, rapid mode of execution designed to prevent private alienation of funds not to create security.

9. The following cases demonstrates the now developed principles applicable on this mode of execution generally referred to as garnishee proceedings:

- ***Safaricom PLC (Garnishee) (Miscellaneous Civil - Kenya Law [2026] eKLR) (2026/909):*** The Court confirmed that M-Pesa Till Numbers and operator short codes can be attached to satisfy decretal sums.
- ***Application No. E051 of 2023 - National Land Commission v Prof. Ojienda & 2 Others:*** A garnishee order absolute was issued against the NLC's bank accounts to satisfy a decretal amount of over Kshs. 397 million, highlighting the attachment of state organ accounts held by banks.

- **Milimani High Court Civil Appeal No. E451 of 2025 - Ecobank Kenya Limited (2026):** Addressed the liability of a bank (garnishee) that allowed debits to a debtor's account after being served with a garnishee order nisi, leading to an order absolute.
- **High Court at Embu Miscellaneous Application No. E038 of 2019 (2020) eKLR:** Explains that garnishee proceedings are separate and that the burden shifts to the garnishee to prove they do not hold sufficient funds.
- **Diamond Trust Bank Kenya Ltd (Garnishee) MKS HC Misc. Civil App. No. 405 of 2017 [2020] eKLR:** Established that the onus is on the garnishee to show that the account is in debit (not credit) or that a lien exists, in order to be discharged.
- **Abbey Resort Limited v The County Government of Kajiado (2020) eKLR:** The Court ruled that garnishee proceedings against a County Government/State organ must comply with the Government Proceedings Act (not just Order 23 of the Civil Procedure Rules) and improper attachment should be lifted.

10. From the legal perspective on garnishee proceedings upon service on the garnishee certain orders follow to give effect to Rule 23 of the CPR. The discretion of the Court is exercised upon satisfying itself that this circumstances exist dependent on certain facts which includes the following:

- **No Debt Due:** The garnishee successfully proves that there are no cash assets or receivables belonging to the judgment debtor.
- **Prior Liens/Debits:** The garnishee proves they have a prior legal lien over the funds, or that the account is already a "debit/deficit account" due to other Court orders.
- **Failure to Properly Serve:** The garnishee order nisi was not properly served, making the proceedings procedurally flawed.

- **Satisfaction of Debt:** *The debt has been fully satisfied, or in cases where multiple garnishees exist, a specific bank is found to have no funds, leading to its discharge.*

11. I have therefore reviewed the evidence before this Court pursuant to Order 23 Rule 4 of the CPR and a garnishee order Nisi having been issued by this Court, the decretal sum be paid into Court or to the Creditor as confirmed by the Garnishee a validation of discharge does take effect to facilitate transfer of funds held in the account of the Judgment Debtor to that of the Judgment Creditor. It is so ordered.

**SIGNED, DATED AND DELIVERED AT VIHIGA THIS 13<sup>TH</sup> DAY OF MAY  
2026.**

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**R. NYAKUNDI  
JUDGE**