



**Kilakoi v Olkejuado Water and Sewerage Company; Cooperative Bank (Garnishee)
(Cause 2138 of 2016) [2025] KEELRC 644 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 644 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2138 OF 2016
SC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

ELIJAH TORET KILAKOI CLAIMANT

AND

OLKEJUADO WATER AND SEWERAGE COMPANY RESPONDENT

AND

COOPERATIVE BANK GARNISHEE

RULING

1. By a Notice of Motion dated 17th October 2023, brought under Order 23 Rules 1,2, & 3 of the [Civil Procedure Rules](#) and all enabling provisions of the law, the Claimant/Decree Holder prays for orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to issue an order directing the Garnishee to appear before this court on an appointed date and time to show cause why they should not pay the Judgment Creditor the sum of Kshs. 2,977,291/= being the decretal sum plus interest from the date of judgment until payment in full.
 - d. That the costs of and incidental to this motion be provided for.
2. The Motion is premised on the grounds set out in the Application and the Supporting Affidavit of Elijah Toret Kilakoi, the Decree Holder herein. Mr. Kilakoi avers that on 10th February 2023, judgment was entered in his favour against the Judgment Debtor for the sum of Kshs. 2,977,291/=together with interest at Court rates from the date of judgment until payment in full.



3. Despite having been furnished with the demand for payment, the Judgment Debtor has failed and/or refused to make payment of the decretal sum and interest thereon notwithstanding the fact that there are funds held to their credit at the Garnishee bank in a/c Numbers (particulars withheld).
4. It is Mr. Kilakoi's deposition that the Judgment Debtor's refusal to settle the outstanding decretal sum and accrued interest is deliberate and calculated to frustrate him into abandoning the pursuit of the fruits of his judgment.
5. He is aware that his Advocate on record instructed Upstate Kenya Auctioneers to proceed to execute Warrants of attachment and Sale but the said Auctioneers were unable to execute the same as the Judgement Debtor did not have any movable assets registered in its name to enable them proceed with the same.
6. Mr. Kilakoi further deposes that unless the orders sought herein are granted, the Judgment Debtor may divert the funds held in its accounts making the sums inaccessible and thereby leaving him without legal remedy.
7. The Application is opposed by the Garnishee through the Replying Affidavit sworn on 15th January 2025 by Lucy Muthama who describes herself as the Garnishee's Legal Officer. Ms. Muthama avers that the subject accounts do not hold sufficient funds to satisfy the Decree Holder should the same be made absolute as the balance in the subject amount is Kshs. 0.00/= with the Judgment Debtor having outstanding loans owed to the Garnishee.
8. She further avers that the Judgment Debtor's account does not have money as the same is a loan account. Ms. Muthama adds that the Garnishee has a claim against the Judgment Debtor's account since there is a loan that has not been paid.

Analysis and Determination

9. The law governing garnishee proceedings is Order 23 Rule 1(1) of the *Civil Procedure Rules* which provides as follows: -
 1. A court may, upon the ex parte application of the 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 salary or allowances 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 costs of the garnishee proceedings; and by the same or 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 judgement-debtor or so much thereof as may be sufficient to satisfy the decree together with costs aforesaid.
10. With respect to case law, the Court (Mabeya J) in *Otieno Ragot & Co. Advocates vs City Council of Nairobi* [2015] eKLR, held as follows:

“Garnishee proceedings are in their very nature proceedings whereby the Garnishee is required to prove whether or not the garnishee is indebted to the judgment-debtor. Ordinarily, the judgment creditor only makes allegations of the Garnishee's indebtedness based on sound evidence whereby the burden of proof shifts to the Garnishee to prove otherwise. In this regard, to discharge that burden, the Garnishee has to produce strong,



sufficient and convincing evidence that the funds in its hands or the debt is not due or payable.”

11. In the case herein, the thread running through the Replying Affidavit of the Garnishee, is that there are insufficient funds in the Judgment Debtor’s account to settle the decretal sum. The Garnishee has further posited that the subject accounts are loan accounts, hence it is the Judgment Debtor that owes it money and it cannot therefore comply with the orders of this Court.
12. In support of its position, the Garnishee annexed to the Replying Affidavit of Lucy Muthama, copies of bank statement for each account cited in the Application.
13. It is evident from the said bank statements, that the Judgment Debtor has overdrawn two of the accounts as they bear a negative balance. With respect to the third account, it is clear that the funds held are not sufficient to pay the judgment debt and the costs of the Garnishee proceedings.
14. For the foregoing reasons, it is apparent that to grant the orders sought in the Application will be an exercise in futility.
15. Accordingly, the Notice of Motion dated October 17, 2023 is disallowed with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

No appearance for the Claimant/Decree Holder

No appearance for the Respondent/Judgement Debtor

Mr. Kamau for the Garnishee

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

