



**Kenya Hotels and Allied Workers Union v Praying Mantis Limited (Octopus Club) (Cause 129 of 2013) [2025] KEELRC 801 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 801 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 129 OF 2013  
JK GAKERI, J  
MARCH 12, 2025**

**BETWEEN  
KENYA HOTELS AND ALLIED WORKERS UNION ..... CLAIMANT  
AND  
PRAYING MANTIS LIMITED (OCTOPUS CLUB) ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the Applicant's Notice of Motion dated 4<sup>th</sup> December filed under Certificate of Urgency seeking Orders that: -
  1. Spent.
  2. Spent.
  3. The Honourable Court be pleased review the Garnishee Order absolute to the extent of limiting the 3<sup>rd</sup> Garnishee's liability to the actual balance within the Judgment Debtor's bank account.
  4. Costs of this application be provided for which are to be recovered from the Judgment Debtor's bank account.
2. The Notice of Motion is expressed under Order 23 Rule 5 and Order 45 Rule 1 of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit of Godfrey Mengwa sworn on 4<sup>th</sup> December, 2024, who deposes that pursuant to the ruling dated 14<sup>th</sup> November, 2024, the applicant received a Garnishee Order absolute against the 3<sup>rd</sup> respondent in answer for the decretal sum of Kshs.2,593,704.50 together with costs and interest in respect of the Judgment Debtor's bank account No.1260283125533 held by the 3<sup>rd</sup> Garnishee.
3. The affiant further disposes that the actual balance in the Judgment Debtor's account is Kshs.51,656 as at 3<sup>rd</sup> December, 2024 which is insufficient to satisfy the decretal sum and the Garnishee absolute



exposes the 3<sup>rd</sup> Garnishee to disproportionately higher liability by requiring it to pay the full decretal sum with the attendant risk of execution against it and thus seeks a review of the Garnishee Order absolute for Orders that the court rectifies the 3<sup>rd</sup> Garnishee's absolute liability in the proceedings in light of the actual balance and be discharged in the matter.

### **Response**

4. By a Replying affidavit sworn on 30<sup>th</sup> December, 2024, Mr. Erick Ngame deposes that Order 23 Rule 4 confers upon the court discretion to Order execution against the 3<sup>rd</sup> Garnishee where it fails to attend court to show cause why the Judgment Debtor's account should not be attached and the 3<sup>rd</sup> Garnishee had not indicated why it failed to attend court upon proper service and therefore its application does not meet the threshold for review under Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
5. The affiant further depones that the 3<sup>rd</sup> Garnishee proceedings are not sufficient for the court to allow its discharge from the proceedings as Garnishee on the premise that the account of the respondent are progressive in the face of the limited accounts exhibited by the applicant for the period 28<sup>th</sup> August, 2024 to 16<sup>th</sup> September, 2024.
6. That the 3<sup>rd</sup> Garnishee deserves no cost for the application made after issuance of the Garnishee absolute.
7. The affiant deposes accounts that the accounts at the 3<sup>rd</sup> Garnishee are active and the applicant should be Ordered to negotiate with the Judgment Debtor on how further proceeds from the respondent shall be recovered and paid to the claimant on behalf of the aggrieved employees.
8. By the time the court retired to prepare this ruling on 25<sup>th</sup> February, 2025 the applicant had not filed submissions notwithstanding the fact that directions on the filing and exchange of submissions were given on 20<sup>th</sup> January, 2025.

### **Respondent/claimant's submissions**

9. As to whether the 3<sup>rd</sup> Garnishee has met the threshold for review of the Garnishee Order absolute, the claimant union submits that it had not demonstrated the relevant rule.
10. Reliance was made on the sentiments of the court in Sharon Jemutai Cherop V Mathew Bowen Civil Case No. E009 of 2022 where the court cited Evan Bwire V Andere Nginda on an application for review, to contend that the 3<sup>rd</sup> Garnishee's application does not meet the threshold for review.
11. On discharge of the 3<sup>rd</sup> Garnishee, the claimant union relies on the sentiments of the court in Unicon Ltd V Diamond Trust Bank & Another [2020] eKLR on disclosure by the applicant to urge that the 3<sup>rd</sup> Garnishee had not discharged the legal burden placed on it by Section 107 and 176 of the [Evidence Act](#).

### **Analysis and determination**

12. It is common ground that the claimant union obtained Judgment against the respondent on 13<sup>th</sup> November, 2020 for the sum of Kshs.1,950,790.00, costs were assessed at Kshs.50,000.00.
13. A subsequent application by the respondent for stay of execution pending an intended appeal was rejected for non-disclosure.



14. Subsequently, and after several years, Garnishment proceedings were instituted vide Notice of Motion dated 12<sup>th</sup> August, 2024 and Garnishee Order Nisi was decreed on 26<sup>th</sup> August, 2024 and absolute vide ruling dated 14<sup>th</sup> November, 2024 against the Garnishees for the accrued sum of Kshs.2,593,704.00.
15. The ruling was subsequently rectified at the instigation of the claimant union in relation to the respondent's a/c held by the 3<sup>rd</sup> Garnishee from A/C No.1260282135533 to A/C No. 1260283125533.
16. The 3<sup>rd</sup> Garnishee's application hinges on the ground that since the Judgment Debtor's account had Kshs.51,656.00 as at 3<sup>rd</sup> December, 2024, its liability be limited to that balance as it is otherwise exposed to further liability for the decretal sum hence the application for review of the Ruling delivered on 14<sup>th</sup> November, 2024.
17. The claimant/respondent's case is that since the Judgment Debtor's Account held by the 3<sup>rd</sup> Garnishee, the two should agree on how monies in the account should be payable to the claimant union as and when it is deposited and as such the 3<sup>rd</sup> Garnishee cannot be discharged.
18. The pith and substance of the 3<sup>rd</sup> Garnishee's Notice of Motion is undoubtedly the scope of a Garnishee Order absolute.
19. Section 16 of the *Employment and Labour Relations Court Act* confer upon the court power to review its judgments, awards, orders or decrees in accordance with the rules. Rule 74 of the Employment and Labour Relations Court (Procedure) Rules 2024 sets out the circumstances in which an application for review may be made.
20. It is trite law that an application for review of a judgment, ruling, Order or decree must be based on at least one of the grounds set forth under Rule 74(1), such as discovery of new and important matter of evidence which was unknown or could be produced at trial, some mistake or error apparent on the face of the record, clarification of judgment or ruling and any other sufficient cause.
21. Regrettably, the applicant has not hinged its application on any of the grounds set forth under Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024.
22. However, it is clear that the applicant seeks the limitation of its liability under the Garnishee Order absolute to the monies in the Judgment Debtor's Account, the sum of Kshs.51,656.00.
23. In determining this issue, the court is guided by the sentiments of the court in *Safaricom Ltd. V King'oo & Another* [2024] KEHC 4698 (KLR) where Olel J stated as follows:

It is trite law that as soon as the Garnishee Order Nisi is served on the bank, it operates as an injunction. It prevents the bank/Garnishee from paying money 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".
24. The purpose of Garnishee proceedings is to enable the judgment creditor recover the amount due from the judgment debtor which is in the hands of the Garnishee to satisfy the decree.



25. Under Order 23 Rule 4 of the Civil Procedure Rules;

If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee proceedings; and the Order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.

26. The purpose of Garnishee Order nisi is to require the Garnishee to appear in court as directed to explain why it should not be called upon to pay the amount owed by the Judgment Debtor to the Judgment Creditor.

27. The garnishee is afforded the opportunity to state its case.

28. In the instant case, the Garnishee Order nisi was issued on 26<sup>th</sup> August, 2024 and hearing slated for 7<sup>th</sup> October, 2024. Strangely, the 1<sup>st</sup> and 3<sup>rd</sup> Garnishee had not responded to the Garnishee Order nisi and directions on the disposal of the application were given with a mention on 24<sup>th</sup> October, 2024 to confirm compliance. However, only the counsel holding brief for Mr. Maundo, for the 2<sup>nd</sup> Garnishee attended court.

29. A ruling date was given and the same was delivered on 14<sup>th</sup> November, 2024.

30. The 3<sup>rd</sup> Garnishee filed the instant Notice of Motion on 5<sup>th</sup> December, 2024, which is not unreasonably long after the Ruling.

31. Order 23 Rule 5 of the Civil Procedure Rules states that:

If the garnishee disputes his liability, the court, instead of making an order that execution be levied, may order that any issue or question necessary for determining his indebtedness be tried and determined in the manner in which an issue or question in a suit is tried or determined.

32. In urging its case, the 3<sup>rd</sup> Garnishee attached the Judgment Debtor's statement under the name suqomuqo Enterprises Ltd A/C No. 1260283125533 showing a balance of Kshs.51,656.48.

33. Although the claimant submitted that the Account is progressive, it did not demonstrate the nature or extent of the alleged progressiveness or the basis on which the 3<sup>rd</sup> Garnishee and the Judgment Debtor can enter into an arrangement to pay sums deposited in the latter's account to the claimant, which would appear to suggest that the Judgment Debtor had capacity to pay the debt by instalments.

35. Puzzlingly, and as deposed by the claimant union, the 3<sup>rd</sup> Garnishee made no attempt to exculpate itself from liability for non-attendance of court for the Garnishee proceedings since 7<sup>th</sup> October, 2024, yet service was effected on 28<sup>th</sup> August, 2024.

36. Be that as it may, since the Garnishee Order nisi dated 26<sup>th</sup> August, 2024 froze the Judgment Debtor's Account holding the sum of Kshs.51,656.40, it is only fair that the 3<sup>rd</sup> Garnishee's liability be limited to the actual amount of Kshs.51,656.40 as reflected by the Judgment Debtor's account No. 1260283125533. See the sentiments of the court in *Lesinko Njoroge & Gathogo Advocates V Invesco Assurance: Co. Co-operative Bank of Kenya (Garnishee) [2020] eKLR* on the burden of proof of the funds in the Garnishee's possession.



37. The court expressed similar sentiments in *Diamond Trust Bank V Fredester Logistics Ltd & 2 Others* [2022] KEHC 17061 (eKLR).
38. In the end, the court's ruling delivered on 14<sup>th</sup> November, 2024 and rectified on 22<sup>nd</sup> November, 2024, be and is hereby reviewed to limit the liability of the 3<sup>rd</sup> Garnishee to the actual balance in the Judgment Debtor's account as at the date of the Garnishee Order nisi as per the court Order dated 14<sup>th</sup> November, 2024.
39. Since the Notice of Motion is partially successful parties shall bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 12<sup>TH</sup> DAY OF MARCH, 2025.**

**DR. JACOB GAKERI**

**JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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.

**DR. JACOB GAKERI**

**JUDGE**

**DRAFT**

