



**Mwangi v President Football Kenya Federation; KCB Bank Kenya Limited
(Garnishee) (Cause 299 of 2016) [2025] KEELRC 1095 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1095 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 299 OF 2016
AN MWAURE, J
APRIL 4, 2025**

BETWEEN

ELVIS GICHERU MWANGI CLAIMANT

AND

THE PRESIDENT FOOTBALL KENYA FEDERATION RESPONDENT

AND

KCB BANK KENYA LIMITED GARNISHEE

RULING

Introduction

1. The Garnishee/Applicant filed a Notice of Motion dated 7th January 2025 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. The Honourable Court be pleased to suspend, and/or stay the execution of the Garnishee Order Absolute given on 24th April, 2019, against the Garnishee/Applicant, and all consequent orders arising therefrom, pending the hearing and determination of this application
 3. This Honourable Court be pleased to set aside, vacate and/or lift, the Garnishee Order Absolute given on 24th April, 2019, together with all consequential orders thereto.
 4. The Garnishee be granted leave or opportunity to ventilate its position, regarding the Claimant/Decree Holder's Garnishee Notice of Motion upon service, and the said application be heard de novo, on merit.
 5. Costs of the application be provided for.



2. The application is expressed to be brought under Order 22 Rule 22(1), Order 23 Rule 1(1), 5, 9 and 10, Order 51 Rule 1 of the Civil Procedure Rules, section 1A (1), 3A and 63(e) of the Civil Procedure Act and all other enabling provisions of the law.

Garnishee's/Applicant's case

3. The application is supported by the affidavit sworn by Purity Gathiru, the Garnishee's Manager, Service, Quality and Compliance dated on even date as the application.
4. The Garnishee avers that it is seeking orders to be issued for stay of execution of the Garnishee Order Absolute given by the Honourable Court (Mbaru J) on 24th April 2019.
5. The Garnishee avers that on 19th December 2024, the Claimant/Decree-holder served a Garnishee Order Absolute upon it, calling for the settlement for Kshs.214,822.50/=.
6. The Garnishee avers that after being served with the Order Absolute, it instructed the law firm of Gathara Mahinda & Co. Advocates to peruse the court file and ascertain the circumstances under which the court issued the Order Absolute.
7. The Garnishee avers that thereafter, its advocates, Gathara Mahinda & Co. Advocates, filed a Notice of Appointment dated 19th December, 2024 to come on record and upon perusing the court file and checking the e-filing system, the advocates noted that the Decree's holder application and Order Nisi given on 14th March 2019 were not uploaded.
8. The Garnishee also avers that there was no affidavit of service on record to confirm that the Decree holder or his Advocates were indeed served with the application dated 4th March 2019.
9. The Garnishee further avers that it was not aware of the existence of these proceedings until 19th December 2024, when the Order Absolute was served upon it.
10. The Garnishee avers that it is unable to comply with the Order Absolute as the Respondent/Judgment Debtor's account number [particulars withheld] does not have any funds and attached a copy of the bank statement marked as annexure PG3 confirming that there are no funds in the account and the same was closed in the year 2020.
11. The Garnishee avers that if the Garnishee Order Absolute is not set aside or varied, it will suffer great prejudice since the Claimant/Decree-holder shall proceed to institute contempt proceedings and/or obtain warrants of attachment against it, which will compel it to pay decretal amount on behalf of the Respondent/Judgment Debtor yet it does not hold sufficient funds in the subject account.
12. The Garnishee avers that paying the total amount under the current Garnishee Order Absolute to the Claimant/Decree Holder, the outcome that appears imminent unless stopped would further complicate the matter which it expressed concern that the Decree-holder might disappear immediately after receiving the funds, making it impossible to recover the money.
13. The Garnishee avers that the Claimant/Decree-holder has no asset or resource base causing concern that the Claimant/Decree Holder will not be in a position to refund the money should it be paid out.
14. The Garnishee avers that it stands to suffer the loss of Kshs.214, 822.50/= which are the amounts over and above what it currently holds in the Respondent/Judgment Debtor's account unless an order for stay of execution is granted.



15. The Garnishee avers that it should be safeguarded against execution and potential losses, emphasizing that Garnishee proceedings are intended to facilitate the attachment of funds in the Respondent/Judgment Debtor's account, provided there is a credit balance, rather than to penalize the Garnishee.
16. The Garnishee urged this Honourable Court to allow the application dated 7th January 2025 as prayed.
17. At the time of writing this ruling, the Claimant/Decree Holder despite being served with the application, he did not put in any response to oppose the said application dated 7th January 2025.

Determination

18. The court has considered the application, the supporting affidavit and annexures thereto, the issue for determination is whether the application is merited. There is an affidavit of service dated 20th February 2025 to confirm the above.
19. Order 22 Rule 22(1) of the Civil Procedure Rules provides as follows:

“The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.”
20. Order 23 Rules 1(1), 5, 9 and 10 of the Civil Procedure Rules provide that a Decree-holder can request an attachment of debts owed to a judgment-debtor by a third party called a garnishee, through an ex-parte application supported by an affidavit. The court may order the garnishee to appear and show cause why the debt should not be used to satisfy the decree, including costs. If the garnishee disputes the debt, the court may determine the issue like any other legal dispute. These proceedings are tied to the original suit, and the costs of the process, including those of the decree-holder, are at the court's discretion and can be deducted from recovered amounts before settling the decree.
21. In Kenya Electricity Transmission Company Limited v Spedag Interfreight Kenya Limited & 4 others [2024] KECA 542 (KLR) the Court of Appeal held as follows:

“There are two stages in garnishee proceedings. The first stage is the ex parte stage where an order is issued attaching the debt held by the garnishee to the credit of the judgement debtor. At that stage, the garnishee is not directed to pay any money to the judgement debtor since the exact amount, if any, held by the garnishee to the credit of the judgement debtor is not known. The order made at this stage is known as a garnishee order nisi. The second stage is where the garnishee appears to show cause why he should not pay to the decree-holder the debt due from him to the judgment-debtor, or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid. It is only after the second stage that the court may direct the garnishee to settle the whole amount due under the decree if the garnishee holds to the credit of the judgement debtor a sum equal to or in excess of the decretal sum, or the sum held by the garnishee to the credit of the judgement debtor where the amount owed is less than the decretal sum. The order issued at this stage is known as garnishee order absolute.



Where the garnishee fails to appear, or appears but fails to show cause why he should not pay to the decree-holder the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs, a garnishee order absolute is made, and it is at that stage that the garnishee becomes liable to settle the decretal sum owed to the decree-holder by the judgement debtor. See *Mulji Kanji Mehta v Karsandas Pitamber & Brothers* [1958] EA 694.”

22. In *Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co; Co-operative Bank of Kenya (Garnishee)* [2020] KEHC 8931 (KLR) the court held that garnishee proceedings involve the garnishee demonstrating whether they owe a debt to the judgment-debtor. The judgment creditor typically presents allegations of the garnishee’s indebtedness backed by credible evidence. The burden of proof then shifts to the garnishee, who must provide robust, clear, and persuasive evidence to prove that the funds or debt in question are not owed or payable.
23. In this instant case, there is no dispute that the Honourable Court (Mbaru J) issued Garnishee Order Absolute on 24th April, 2019 in favour of the Claimant/Decree-holder. This Honourable Court after the issuance of the said Garnishee Order Absolute, the Claimant/Decree holder filed a notice to act in person. The Claimant/Decree holder did not file an affidavit of service to confirm that he indeed served the Garnishee and the garnishee avers they were never served with the order issued in April 2019. They therefore state they had no knowledge of this case. They say they only became aware of the matter on 19th December 2024 when they were served with order absolute.
24. The Garnishee has presented the Respondent/Judgment Debtor’s account confirming that there are insufficient funds in the said account. In *Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Company Limited; Diamond Trust Bank (Tom Mboya & Koinange Street Branches) (Garnishee)* [2020] KEHC 2393 (KLR) the court held as follows:

“It is my considered opinion that the garnishee tendered sufficient evidence to the effect that it did not have any money held in favour of the judgment debtor and which could be attached in satisfaction of the decree. This was done by exhibiting the account statement of the judgment debtor, as at the relevant date indicated on the Garnishee Order Nisi and which disclosed the true status of the account of the judgment debtor. [See the Court of Appeal of Nigeria’s decision in *Citizens International Bank Ltd. –vs- SCOA Nigeria Ltd. & Anor.* (2006) LPELR-5509 (CA)]. The Applicant failed to prove that there was a credit in the said accounts which was capable of being a sum due or accruing so as to be attachable in satisfaction of their decree.”

25. The bank statement annexed by Kenya Commercial Bank indicates there are no funds in the Respondents account as per statement dated 1st November 2020.

Flowing from the foregoing, this court finds that the Garnishee has proved that there are insufficient funds that it held on behalf of the Respondent/Judgment debtor as per the statement of the account 1180172760 which is cited as the Judgment /debtor’s account. The statement is dated 1st November 2020. The Garnishee order issued on 24th April 2019 is stayed as is evident there are no funds in the respondent’s aforesaid account.

26. The court orders each party to meet their respective costs.

Order accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 4TH DAY OF APRIL, 2025.

ANNA NGIBUINI MWAURE

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 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 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 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.

A signed copy will be availed to each party upon payment of Court fees.

