



**Akun & another v Africanline Terminal Logistics; Equity Bank
(Kenya Limited) (Garnishee) (Cause E073 & E074 of 2023
(Consolidated)) [2025] KEELRC 1071 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1071 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E073 & E074 OF 2023 (CONSOLIDATED)**

M MBARŪ, J

APRIL 3, 2025

BETWEEN

JULIUS ODHIAMBO AKUN APPLICANT

AND

JAMES THUMAINI CLAIMANT

AND

AFRICANLINE TERMINAL LOGISTICS RESPONDENT

AND

EQUITY BANK (KENYA LIMITED) GARNISHEE

RULING

1. The claims herein are consolidated, Cause No. E073 and E074 of 2023. Both had a joint judgment delivered on 25 January 2024, and due costs should have been assessed in the common file. A joint ruling herein is imperative—the lead file in E073 of 2023.
2. The claimant filed an application dated 17 February 2025 under the provisions of Order 23, Rules 1 and 2 of the Civil Procedure Rules, Section 1A, 1B, 3A of the *Civil Procedure Act*, seeking orders,
 - a. Spent.
 - b. The court be pleased to make a Garnishee Order Nisi against the Equity Bank (Kenya Limited), the garnishee herein ordering that all monies deposited, lying and being held in deposit by the Garnishee in Account No. 12002 08 to the credit of the African Line Terminal & Logistics Limited the respondent be attached to answer the decree issued on 3 February 2025 together with interest accrued from the date of issue plus further costs as awarded to the claimant.



- c. The above named Equity Bank Limited do attend court on the scheduled date to show cause why they should not pay the decree holder monies held in the credit of the respondent/ judgment debtor to so much thereof as may be sufficient to satisfy the said claimant now standing at ksh.549,053 plus costs of this garnishee proceedings.
 - d. The order nisi be made absolute and the garnishee herein, namely Equity Bank Limited, be ordered to pay the claimant's advocate the sum of Ksh.549, 053 or such other sums held by them as ordered by the court to satisfy the decree of this court.
 - e. Costs of this application be provided for.
3. The claimant supports the application through his affidavit and avers that unless the order of attachment is issued, the respondent will withdraw the funds held by the garnishee to his detriment. There is a judgment herein that has not been satisfied.
 4. The claimant avers that the judgment herein awarded him compensation of Ksh.129, 000 and general damages of Ksh.387, 000 plus costs. The costs due were assessed at Ksh.160, 090 through the party and party bill of costs.
 5. On 3 February 2025, a decree was issued for Ksh. 561,000 plus costs at Ksh. 156,791.
 6. The respondent paid Ksh. 127,037 through a cheque dated 13 February 2025, leaving a balance of Ksh. 549,053. The respondent has a bank account with the garnishee, which should be used to pay the decree sum.
 7. In reply, the respondent filed the Replying Affidavit of Elisha Mwangala, the executive accountant, with the respondent. It avers that in 2023, the claimant filed Petition No. E002 of 2023, and in a ruling delivered on 25 January 2025, the court determined it with costs to the respondent at Ksh. 684,141.
 8. Following the determination in Petition E002 of 2023, the respondent filed Misc. Appl. E009 of 2024 against the claimant, resulting in a ruling dated 19 September 2024. The court awarded the respondent costs of Ksh. 549,053.
 9. The respondent has paid the claimant the judgment sum less the costs awarded in Petition E002 of 2023. The matter is fully settled, and the application herein is filed in abuse of the court process.
 10. The garnishee attended and filed the Affidavit of Joseph Njiru the operations manager of the garnishee who avers that the respondent maintains the cited account. The garnishee confirms that the respondent has sufficient funds to settle the decretal sum in the noted account. The garnishee seeks to remain neutral and take court directions to save the costs for the proceedings at Ksh. 30,000 will be paid.
Parties attended and made oral submissions.
 11. The claimant submitted that the respondent had not satisfied the decree herein for Ksh. 459,053. Upon applying, the respondent issued a cheque for Ksh.127, 037, which is not a full settlement.
 12. The garnishee has admitted to holding sufficient funds for the respondent, and an order absolute should be issued for full payment.
 13. The set-off proposed by the respondent does not arise. The respondent should execute for its costs under the correct file and not apply proceedings herein to deny the claimant the decretal sum.
 14. The respondent submitted that the decretal sum is fully settled upon payment of Ksh.127, 037 to the claimant. There were previous proceedings between the parties in Petition No. E002 of 2023, where the court awarded costs that were taxed and have been offset from the decree herein.



15. The claimant has failed to render an account of the matter from the decree of Ksh. 676, 090 less Ksh. 549 053. The payment of Ksh. 127, 037 settles the claims between the parties. Given the payments received by the claimant, the proceedings herein were not necessary, and the application should be dismissed with costs.

Determination

16. 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.

Order 23 Rule 4 of the Civil Procedure Rules provides;

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.

17. In this case, the decree against the respondent as the judgment debtor is contested. The garnishee has verified that the judgment debtor maintains a bank account with a sufficient balance to fully settle the decretal sum.
18. Should the monies held by the garnishee for the respondent be applied to settle the decretal sum?
19. The background to the instant application is a petition filed by the claimant and others against the respondent in Mombasa Petition No. E002 of 2023. On 8 June 2023, the court struck out the petition with costs to the respondent.
20. It is a common cause that the respondent filed Misc. Application E009 of 2024 against the claimant and awarded costs of Ksh. 549, 053 through a ruling delivered on 19 September 2024. A Certificate for Costs was issued on 7 March 2025.
This background is not contested.
21. On 13 February 2025, the respondent paid the claimant Ksh. 127, 037. According to the respondent, this payment was less than what the claimant owed the respondent in costs awarded through the Certificate of Costs dated 7 March 2025.
22. In this case, the claimant obtained a judgment and a decree dated 3 February 2025 for Ksh. 561,000 plus a Certificate for Costs at Ksh. 156,971.
23. The claimant has admitted to receiving Ksh. 127, 037 from the respondent. However, the claimant contests that this is not in full payment, and a balance of Ksh. 549, 053 remains unpaid.
24. Proceedings herein are separate and distinct from proceedings under Petition E002 of 2023. Although the parties and backgrounds are similar, the motions under each file should be allowed to conclude separately for orderly proceedings. This would bring orderly closure of each file.
25. However, the claimant has admitted to being paid Ksh. 127,037 by the respondent. The garnishee proceedings considered that invoking such a procedure was not necessary unless this was initiated to escalate costs. Given the background of the abovementioned matter, the respondent has made an effort to put context and make a payment.



26. The respondent is also not without blame. Proceedings under Petition No. E002 of 2023 should be closed. The proposed set-off ought to be for matters herein.
27. Taking the set off would have served both parties well. The escalated costs would have been unnecessary. For orderliness, each matter should be addressed separately.
28. On the due costs to the garnishee, the claimant, and the respondent shall each meet the costs due. The claimant shall pay Ksh. 20,000 and the respondent Ksh. 10,000.
29. Accordingly, the application dated 17 February 2025 is allowed in the following terms;
 - a. The respondent shall pay the decretal sum in full within 14 days, after which the sum shall accrue interest at court rates until paid in full. The respondent is at liberty to pursue payment of due costs under Petition E002 of 2023.
 - b. The garnishee is hereby discharged subject to the claimant paying the due costs of Ksh. 20,000, and the respondent pays ksh. 10,000.
 - c. For this application, the claimant and respondent are to meet their costs.
Orders herein to apply in the consolidated file, Cause No. E073 of 2023.

DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davis Wekesa

