



**Otieno v Chemeli Sugar Company Ltd (Cause E013 of 2023)
[2025] KEELRC 1775 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1775 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E013 OF 2023**

JK GAKERI, J

JUNE 19, 2025

BETWEEN

FRANCIS ODUOR OTIENO CLAIMANT

AND

CHEMELI SUGAR COMPANY LTD RESPONDENT

RULING

1. Before the court for determination is the Ex parte Applicant's Notice of Motion dated 30th April 2023 filed under Certificate of Urgency seeking orders that: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. The costs of the Application be borne by the Judgment Debtor to be deducted from its accounts held at the Garnishee by the Judgment Debtor.
2. The Notice of Motion is expressed under Order 23 Rules 1, 2 and 3 of the Civil Procedure Rules, is based on the grounds on its face and the Supporting Affidavit of Juliet Dima Advocate sworn on 30th April 2025 who deposes that by a Ruling recorded on 17th February 2025 the Judgment Debtor was obligated to settle the decree by paying a first instalment of Kshs. 339,092.00 on or before 17th March 2025 and thereafter Kshs. 300,000 on or before the 17th of every succeeding month until settlement in full and in default execution was to issue. Counsel further deposes that she had information that the Judgment Debtor had an account of the Garnishee in Account Number 110XXXX307 and other accounts which hold sums that can satisfy the Decree.



3. The Notice of Motion is also based on the ground that Judgment was entered against the Judgment Debtor in the sum of Kshs. 3,937,342.20 and costs at Kshs. 301,731 and interest on the Judgment had risen to Kshs. 1,102,455.90.0.
4. That although the Judgment Debtor paid the 1st instalment of Kshs. 339,092.20, it defaulted on the subsequent instalments.

Garnishee's Response

5. The Replying Affidavit sworn by Alphonse Owino Gowa states that he is the Branch Manager of Kenya Commercial Bank Ltd, Muhoroni Branch and in charge of Management and Administration of all accounts held by the bank and thus conversant with the issues at hand and had authority to swear the affidavit.
6. The affiant further deposes that the Judgment Debtor held and operated Account Number 110XXXX307 under the name: Chemelil Sugar Company Ltd and the available amount was Kshs. 3,808,910.40.
7. The affiant admits having been served with and received on 6th May 2025 a Garnishee order Nisi seeking the sum of Kshs. 5,002,436.90 from the Judgment Debtor.
8. Finally, the affiant expressed readiness and willingness to release the sum of Kshs. 3,808,910.40 in settlement of part of the sum sought after deduction of the Garnishee costs of Kshs. 20,000.00 from the Judgment Debtor's Account number 110XXXX307.
9. In a Further Affidavit sworn on 13th May 2025, and filed without leave of the court, Juliet Akinyi Dima Advocate deposes that depones that investigation had revealed that the Judgment Debtor had another account Number 118XXXX716 at the Muhorini Branch.
10. The affiant deposes that the Garnishee Order Nisi required the Garnishee to disclose the sums held to the Respondent's credit in any other account operated with the Garnishee captured in prayer No. 2 of the ex parte Notice of Motion dated 30th April 2025.
11. That the affiant had inadvertently failed to annex a copy of letters dated 6th May 2025 received from the respondent and the Judgment Creditor was keen on conclusion of the proceedings and was not agreeable to the postponement of the Garnishee Order Nisi.
12. In addition, by a Supplementary Affidavit sworn on 26th May 2025, Mr. Alphonse Owino Gowa deposes that the Garnishee Order Nisi dated 5th May 2025 served on 6th May 2025 was restricted to Account Number 110XXXX307 in the name of the respondent at the Kenya Commercial Bank and the Garnishee disclosed the details of the account.
13. The affiant further deposes that the Garnishee cannot disclose the details of Account Number 118XXXX716 without the consent of the Judgment Debtor or court order, by virtue of the provisions of Article 30 and 31 of the Constitution of Kenya and the Garnishee was ready and willing to abide court orders as regards the account.
14. The affiant further deposes that the Garnishee was served with an order dated 8th May 2025, suspending the Garnishee Order Nisi dated 5th May 2025 and the restriction on the account was lifted but returned after the suspension was lifted on 14th May 2025.
15. That the Account was transacted between 8th May 2025 and 14th May 2025 and by 26th May 2025, the aggregate balance was Kshs. 496,361.55 which is insufficient to settle the sum sought by the Decree



Holder but the Garnishee was willing to release the sum of Kshs. 496,361.55, less the Garnishee's charges of Kshs. 20,000.00

Parties did not file submissions.

Analysis and determination

16. The singular issue for determination is whether the Ex parte applicant's Notice of Motion dated 30th April 2025 is merited.
17. Judgment in this case was delivered on 11th July 2024 and the court awarded Kshs. 3,937,342.00 and costs were taxed at Kshs. 301,751.00 on 29th October 2024.
18. Subsequently, by a Notice of Motion dated 25th November 2024, the Judgment Debtor sought a stay of execution and a temporary stay was granted.
19. On 17th December 2024, none of the counsels appeared in court for the hearing, though Mr. Oyuko for the respondent logged in after the court had already issued directions with a mention on 28th January 2025 when only Mr. Oyuko for the Judgment Debtor was present.
20. Counsel informed the court that the Judgment Debtor was ready to liquidate the sum by instalments and was ready to pay a deposit of Kshs. 339,092.20 and the balance by instalments of Kshs. 300,000 per month.
21. Hearing of the application was slated for 17th February 2025 when the applicant's counsel was absent.
22. The court granted the Judgment Debtor's application dated 25th November 2024 that the amount owed be liquidated as proposed by the Judgment Debtor's counsel, provided that in the event of default the claimant was at liberty to execute.
23. The instant application was filed under Certificate of Urgency on 5th May 2025 and the court granted prayer Number 2 of the Notice of Motion.
24. Garnishee Order Nisi in respect of Account Number 110XXXX307 at Kenya Commercial Bank and hearing slated for 8th May 2025 when both counsels were present. Mr. Oyuko informed the court that the respondent had paid the deposit as agreed and was ready and willing to pay the balance by instalments but had not paid the instalment for April 2025 and promised to deliver the cheque to counsel for the Applicant on the same day and agreed that the Garnishee Order Nisi be suspended for 30 days to enable the respondent transact business but by an application dated 9th May 2025, the applicant sought the lifting of the suspension of the Garnishee Order Nisi citing misrepresentation by the respondent's counsel and after hearing counsels on 14th May 2025, the court lifted the suspension with a mention on 19th May 2025 when counsel for the Garnishee informed the court that they received a Further Affidavit from the Applicant and sought leave to respond and hearing slated for 26th May 2025 when parties were accorded 2 days each to file and exchange responses and submissions and a ruling slated for 19th June, 2025.
25. The foregoing is a brief context of the instant application before and after its filing.
26. The essence of garnishment was aptly captured by Mativo J. (as he then was) in *Mengich t/a Mengich & Co Advocates & another V. Joseph Mabwai & 10 others* (2018) eKLR as follows:

“Garnishee proceedings otherwise known as garnishment is a judicial process of execution or enforcement of monetary judgment whereby money belonging to a judgment debtor in



the hands or in possession of a 3rd party known as “Garnishee” (usually a bank) is attached or seized by a Judgment Creditor, the “Garnisher” in satisfaction of a judgment sum or debt. By its name Garnishee proceedings is “sui generis” and different from other court proceedings although it flows from the judgment that pronounced the debt. Generally, Garnishee proceedings is done in two different stages. The first stage is for Garnishee Order Nisi while the second state is for the Garnishee Order absolute”.

27. The law of garnishment is provided for under Order 23 of the Civil Procedure Rules, 2010. Rule 1 provides:

1. A court may, upon the ex parte application of a 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 the salary or allowance 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 the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court 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.

28. Similarly, Order 23 Rule 4 provides that:

“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.

29. The effect of a Garnishee Order Nisi was aptly captured by Olel J. in *Safaricom Ltd V. Kingoo & another* KEHC 4698 (KLR) (2004) in the following words: -

“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 it is discharged as the case may be. It binds the debt in the hand of the garnishee and creates a charge in favour of the Judgment Creditor. What Garnishee Order does is to freeze the sum in the hands of the bank until the Garnishee Order is made absolute or discharged. If the said order is made absolute, then the Garnishee Bank becomes liable to pay the Decree-holder. See *Joachimson V Swiss Bank Corporation* (1921) 3KB 110 at 131 (1921) ALLER 92 at 102 per Atkin LJ”

30. Clearly Garnishment enables a Judgment Creditor or Decree-holder recover the amount due to it from the Judgment debtor which is in the hands of a 3rd party, the garnishee, so as to satisfy the decree.

31. In the instant case, the Garnishee Bank admits that the Judgment Debtor herein has an account with it and the same had a balance of Kshs. 3,808,910.40 which it was ready and willing to release in part payment of the amount owed by the Judgment Debtor less its cost of Kshs. 20,000.



32. In relation to Account number 1180XXXX716 mentioned by the Applicant's Further Affidavit, Mr. Alphonse Owino Gowa deposes that the Garnishee Order nisi was specific to Account Number 110XXXX307 which the respondent held with the Garnishee Bank and was bound to maintain confidentiality.
33. The court is in agreement with the Garnishee's deposition that the order applied for was specific to a particular bank account and the same was granted as prayed. If the applicant suspected or knew that the respondent had other accounts with the Garnishee Bank, nothing prevented him from including them or adding that the Garnishee Order Nisi sought would encompass all other accounts under the respondent's name.
34. In determining the issue herein, the Court is guided by the sentiments of Mativo J. (as he then was) in *Mengich t/a Mengich & Co. Advocates & another V Joseph Mabwai & 10 others (supra)* as follows:
- “Seventh, the order contemplated by Order 23 is discretionally and the court may refuse to pass such order if it is inequitable. The discretion, however, must be exercised judicially. Where the court finds that there is a bona fide dispute against the claim and the dispute is not false or frivolous, it should not take action under this rule...”
35. Finally, and as adverted to above, the Garnishee order Nisi decreed on 5th May 2025 was specifically in respect of Account Number 110XXXX307.
36. From the foregoing, the court is satisfied that the Ex-parte Applicant's Notice of Motion dated 30th April is merited and the Garnishee Order Nisi decreed on 5th May 2025 be is hereby made Garnishee Order absolute in respect of the Judgment Debtor's Account No. 110XXXX307, less the Garnishee costs of Kshs. 20,000.00.
37. Costs to the Applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 19TH DAY OF JUNE, 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 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 *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

