



Mutira v Metropolitan National Sacco Limited; Co-operative Bank of Kenya Limited & 2 others (Garnishee) (Cause E708 of 2022) [2025] KEELRC 2238 (KLR) (25 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2238 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E708 OF 2022**

**AK NZEI, J
JULY 25, 2025**

BETWEEN

DENNIS NYAGA MUTIRA APPLICANT

AND

METROPOLITAN NATIONAL SACCO LIMITED RESPONDENT

AND

CO-OPERATIVE BANK OF KENYA LIMITED GARNISHEE

KENYA COMMERCIAL BANK LIMITED GARNISHEE

NATIONAL BANK OF KENYA GARNISHEE

RULING

1. The application before me for determination is the Claimant/Decree Holder's Notice of Motion dated 18th March, 2025, expressed to be brought under Sections 3A, 6, 1A and 1B of the *Civil Procedure Act*, and Order 23 Rule 1(4) & Rule 4 of the Civil Procedure Rules. The Applicant seeks Orders:-
 - a. That the application be certified urgent, service dispensed with and be heard ex parte at the first instance.
 - b. That the Court be pleased to issue an Order Nisi against the Garnishee directing that all money it holds in the following accounts:-
 - i. Account Name: Metropolitan National Sacco Ltd
Bank: Co-operative Bank of Kenya
Branch: Kiambu



Account Numbers: 0110006311xxxx, 01100063114xxx, 011000631xxxxx, 011000631xxxx3, 011200631xxxxx, 011200631xxxxx, 01120063114803, 0112007302xxxx and 0112007302xxxxx.

ii. Account Name: Metropolitan National Sacco Ltd

Bank: Kenya Commercial Bank

Branch: Kiambu

Account Numbers: 110193XXXX, 1101939xxx, 111419xxxx and 111682xxxx.

iii. Account Name: Metropolitan National Sacco Ltd

Bank: National Bank of Kenya

Branch: Kiambu

Account Numbers: 01009050990700, 01037099718700 and 01009099718700 be attached in satisfaction of the decretal sum of Kshs.1,484,000/= together with garnishee costs of Kshs.30,000/= (a total of Kshs.1,514,000/=) pending hearing and determination of the application.

c. That this Court do issue an ORDER ABSOLUTE against the Garnishee directing that all money it holds in the account numbers listed in (b)(i), (ii) and (iii) above be attached in satisfaction of the decretal sum herein of Kshs.1,484,000/= together with garnishee costs of Kshs.30,000/= (a total of Kshs.1,514,000/=).

d. That costs of the application be provided.

2. The application sets out on its face the grounds on which it is based, and is anchored on the Applicant/ Decree-Holder's supporting affidavit sworn on 5th February, 2025. It is deponed in the said affidavit that Judgment in the suit herein was delivered on 30th September, 2024 and a decree subsequently issued on 16th January, 2025 for Kshs.1,484,000/=, that the Applicant has not enjoyed the fruits of his Judgment; and has established that Respondent/Judgment Debtor holds the bank accounts listed in the application to its credit. That deposits in the said bank accounts should be attached in satisfaction of the decretal sum amounting to Kshs.1,484,000/= plus garnishee costs of Kshs.30,000/= (a total of Kshs.1,514,000/=).
3. The application came up in Court on 2nd April, 2025, and, in the presence of Counsel for the Applicant and for the 1st, 2nd and 3rd Garnishee Banks named in the application herein, I issued an order nisi over all the Respondent/Judgment Debtor's bank accounts enumerated in the application.
4. The three Garnishee Banks, Co-operative Bank of Kenya Limited (1st Garnishee), Kenya Commercial Bank (2nd Garnishee) and National Bank of KENYA (3rd Garnishee) filed affidavits in response to the application.
5. The 1st Garnishee filed a replying affidavit sworn by Benson Kilonzi on 29th April, 2025. The 1st Garnishee confirmed that the Judgment Debtor holds and operates with it the bank accounts listed in prayer (b) (i) in the application, and indicated that one of those accounts had been closed, one had a credit balance and that the rest had negative balances. It is further deponed on behalf of the 1st Garnishee that on 17th May, February, 2019 and 7th February, 2023 respectively, the 1st Garnishee advanced loan facilities of Kshs.5,288,054,000/= and Kshs.153,500,000/= respectively to the Judgment Debtor, payable in 156 and 12 equal monthly instalments respectively.



6. It is further deponed on behalf of the 1st Garnishee that the Judgment Debtor executed a charge on all cash deposits and funds held by the 1st Garnishee on its behalf, including the Garnished accounts, due to the outstanding loan liabilities owed to the 1st Garnishee Bank by the Judgment Debtor. That funds held in the garnished accounts are not available for attachment as the Judgment Debtor is still indebted to the 1st Garnishee; and that the 1st Garnishee should be discharged from the proceedings herein.
7. Documents annexed to the said replying affidavit are copies of bank statements on the listed bank accounts as at 15th April, 2025 and copies of duly executed legal charge documents dated 17th May, 2019 and 7th February, 2023 respectively.
8. The 2nd Garnishee, responded to the application vide a replying affidavit sworn by Gladys Anne Wanjiru on 25th April, 2025; admitting that the bank accounts listed in the application (at prayer (b)(ii) are in its records and that out of the 3 listed accounts, 2 accounts (Nos. 1101939xxx and 111419xxxx) had NIL balance as at 3rd April, 2025, while account No. 110193XXXX held a credit balance of Kshs.52,488.14 as at the said date. That the 2nd Garnishee's costs of Kshs.25,000/= should be paid out of the said credit balance, and that the remaining Kshs.27,488.14/= should be released in partial settlement of the decree upon service of a Garnishee Order Absolute.
9. The 3rd Garnishee responded to the Decree Holder's said application vide a replying affidavit sworn by Fredrick Ngugi on 1st April, 2025, confirming that the Judgment debtor is the holder of the bank accounts listed in prayer (b)(iii) in the application herein. That 2 of the listed accounts had Kes. 0/= balance as at 1st April, 2025, while one account, No. 01037099718700 had a negative credit balance of Kshs.11,313.54. That the 3rd Garnishee should be discharged from these proceedings. Copies of account statements on the bank accounts are annexed to the said replying affidavit.
10. The application was orally argued in Court, and Counsel for the three garnishee banks re-stated the depositions made in the aforestated replying affidavits.
11. Having considered matters deponed to in the replying affidavit sworn on behalf of the 3rd Garnishee Bank (National Bank of Kenya), and having perused copies of account statements annexed to the said replying affidavit, I hereby discharge the 3rd Garnishee Bank from these garnishee proceedings, and order that its legal costs of these garnishee proceedings be paid by the Judgment Debtor.
12. Regarding the 2nd Garnishee Bank (Kenya Commercial Bank), the bank's legal costs for these garnishee proceedings shall be paid by the Judgment Debtor out of the Kshs.52,488.14/= held by the bank. The 2nd Garnishee is discharged from these proceedings.
13. The issue for determination regarding the 1st Garnishee (Co-operative Bank of Kenya Limited) is whether the credit balance held in the Judgment Debtor's account No. 0112007302xxxx is available for attachment in view of the legal charge instruments shown to have been executed by the Judgment Debtor in favour of the 3rd Garnishee on 17th May, 2019 and 8th February, 2023 respectively.
14. Clause 9 of the Charge shown to have been executed on 17th May, 2019, preambled "security", states as follows:-

“9. The facility(ties) shall be secured by the following (the “Security Documents”):-

Existing Securities:-

1. Existing legal charge of Kshs.25,000,000/= over Kiambu Block II/319.



2. Irrevocable instructions from the Sacco to TSC to remit both bosa and fosa check-off through Co-operative bank.
 3. Existing acknowledged irrevocable instructions from the sacco to other employers (Kenya Kazi Services Ltd, Naivas Supermarket, Wells Fargo, Tuskys Supermarkets, Fargo Courier, Archievo Ltd) to continue remitting the sacco's check-off through Co-op bank.
 4. Lien over deposits held in the following accounts:-
011000631xxxxx – Kshs.10,010,614/=, 01246063114800 – Kes.715,602/=, 01246063114801 – Kes.59,793,452/=.
 5. Lien over deposits of Kes.334,000,000/= to be taken over from KCB.
 6. Proposed all assets debenture aggregation to Kes. 6 billion over all assets of the borrower.
 7. Security Agreements over all and any movable assets offered as collateral (where applicable). . . . Unless otherwise agreed by the Bank, any security that is presently held by the Bank for other banking facilities will also serve as security for these Facilities and no property of the Borrower which is subject to a mortgage, charge, pledge or lien in favour of or vested in the Bank shall be redeemed except on payment not only of all money secured by the Mortgage or Charge but also of all monies secured under this letter.”
15. It is clear from the foregoing that the Judgment Debtor's bank account No. 0112007302xxxx, which is shown to have had a cleared credit balance of Kes.3,706,579.69/= and a book balance of Kes.5,220,579.69/= as at 11th April, 2025, is not one of the Judgement Debtor's bank accounts and bank deposits securing the loan facility advanced by the 1st Garnishee to the Judgment Debtor vide the legal charge executed on 23rd May, 2019.
 16. Further, the Judgement Debtor's said bank account and the deposit therein is not shown to have been given and/or offered to secure the loan facility of Kshs.153,500,000/= advanced to the Judgment Debtor by the 1st Garnishee vide the legal charge instrument dated 7th February, 2023 and shown to have been executed on 8th February, 2023.
 17. Clause 10 of the said legal charge instrument, preambled “security” states that the Facility(ties) shall be secured by the following (“security Document's”), to be procured/created by the Borrower(s) and/or Guarantor(s) in favour of the bank:-

“Property: Existing Legal charge of Kshs.25 million over Kiambu Block 11/319.

Check-off: Existing, irrevocable instructions from the Sacco to all employers to continue remitting both Bosa and Fosa Check-off through Co-op Bank Ltd.

Debenture: An all assets debenture aggregation to Kes.3 Billion over all assets of the borrower plus further debenture of Kes.3 Billion.”
 18. The loan facilities advanced by the 1st Garnishee to the Judgment Debtor are clearly shown to be term loans, secured with specified cash deposits held in specified bank accounts, assets and debentures.



Credit cash deposits held in the Judgment Debtor's bank account No. 0112007302xxxx is not shown to have been given as one of those securities.

19. Having demonstrated the foregoing, I come to the inevitable finding that the Judgment Debtor's credit deposit in its bank account No. 0112007302xxxx held in the 1st Garnishee bank is available for attachment in satisfaction of the decree herein.
20. Consequently, and having considered oral submissions made by Counsel, the Decree Holder's Notice of Motion dated 18th March, 2025 is hereby allowed in the following terms:-
 - a. A Garnishee Order Absolute is hereby issued attaching the credit deposits held in the Judgment Debtor's bank account No. 0112007302xxxx held in the 1st Garnishee bank, and directing the 1st Garnishee bank to pay, out of the attached cash deposit, a sum of Kshs.1,480,000/= being the decretal sum, to the Claimant/Decree Holder in satisfaction of the decree herein; plus Kshs.30,000/= being costs of the Garnishee proceedings herein (a total of Kshs.1,514,000/=).
 - b. The attachment order over the aforesaid attached bank account shall stand lifted upon payment to the Claimant/Decree Holder of the said total sum of Kshs.1,514,000/=.
21. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Mwhaki for the Claimant/Applicant

No appearance for the Respondent/Judgement Debtor

Mr. Muya for 1st Garnishee

Miss Wangari for 2nd Garnishee

Mr. Mwangi holding brief for Miss Yala for 3rd Garnishee

