



Eric Ntabo & Co Advocates v Trident Insurance Co Ltd; Safaricom Plc (Garnishee) (Miscellaneous Civil Application E231 of 2023) [2025] KEELRC 2220 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2220 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION E231 OF 2023**

BOM MANANI, J

JULY 24, 2025

BETWEEN

ERIC NTABO & CO ADVOCATES APPLICANT

AND

TRIDENT INSURANCE CO LTD RESPONDENT

AND

SAFARICOM PLC GARNISHEE

RULING

1. Through the instant miscellaneous cause, the Applicant moved the Taxing Master of the court for taxation of its Advocate-Client Bill of Costs against the Respondent. In a ruling delivered on 15th November 2024, the Taxing Master assessed the Applicant's fees in the primary suit (Nairobi CMELR 982 of 2019) at Ksh. 210,937.50. A Certificate of Taxation was accordingly issued on 11th December 2024.
2. The Applicant subsequently filed an application dated 27th January 2025, in which it sought for entry of judgment in its favour in terms of the taxed costs of Ksh. 210,937.50 together with interest at 14% per annum. It also prayed for costs of the application.
3. Although the Respondent was served with the application, it did not respond to it. As such, the court allowed the motion on 30th April 2025 in the following terms:-
 - a. That judgment be and is hereby entered for the Applicant for Ksh. 210,937.50 together with interest at 14% per annum in terms of the taxation order dated 15th November 2024.
 - b. Costs of the application are granted to the Applicant to be assessed by the Deputy Registrar.
4. The Applicant subsequently filed the application dated 9th May 2025 seeking the following orders:-



- a. Spent.
 - b. That an Order Nisi restraining any debiting of Safaricom Mpesa Pay Bill number xxx held by the Garnishee and/or any other Pay Bill account held by the Judgment Debtor with the Garnishee do issue and the same be served upon the Garnishee and the Judgment Debtor at least seven days before hearing of the application.
 - c. That the Garnishee, Safaricom Plc, do attend court on a date to be fixed to show cause why it should not pay to the Decree Holder the sum of Ksh. 254,708.50 from monies held on behalf of the Judgement Debtor from the above mentioned account or so much thereof as may be sufficient to satisfy the decree in the cause.
 - d. That the court be pleased to make a Garnishee Order absolute to the effect that the sum of Ksh. 254,708.50 or such sum or debt as is sufficient to answer the decree obtained by the Decree Holder against the Judgment Debtor or the unsatisfied part thereof owing or accruing due from the Garnishee, Safaricom Plc, to the Judgment Debtor be attached to answer the decree passed in the cause against the Judgment Debtor.
 - e. That the costs of the application be assessed at Ksh. 50,000.00 and be borne by the Judgment Debtor.
5. The basis of the application is that the Respondent has failed to pay the Applicant's costs as ascertained through taxation of the Applicant's Bill of Costs dated 8th November 2023. As such, the Applicant seeks to attach the deposits on the Respondent's Pay Bill account held by the Garnishee to satisfy the outstanding decree.
 6. The court record shows that the garnishee application was served on the Respondent on 30th June 2025. A Hearing Notice informing the Respondent that the application was scheduled for hearing on 17th July 2025 was also served on 30th June 2025.
 7. Despite this, the Respondent did not file a response to the application. Neither did it attend court on 17th July 2025 when the motion came up for hearing.
 8. On its part, the Garnishee filed the affidavit dated 21st May 2025 in response to the application for garnishee orders. In the affidavit, the Garnishee essentially stated that the Respondent was the holder of Pay Bill No. xxx. It further confirmed that it was holding Ksh. 6,919,161.53 on the Pay Bill account on behalf of the Respondent as at 21st May 2025.
 9. The Garnishee indicated its willingness to release part of the funds on the said Pay Bill account to settle the decretal sum in the cause. It further prayed for costs of the application.
 10. On 17th July 2025 when the garnishee application came up for hearing, the Respondent was not in attendance. The Applicant prayed for the orders in the application. On its part, the Garnishee restated its position on the matter as expressed in its affidavit alluded to above. The court reserved its ruling on the application to 24th July 2025.

Analysis

11. The garnishee application was filed pursuant to Order 23 rules 1, 2, 8 and 9, Order 49 rules 1, 2, 5 & 7 and Order 50 rule 1 of the Civil Procedure Rules as read with sections 1A, 1B & 3A of the *Civil Procedure Act*. Order 23 of the Civil Procedure Rules permits enforcement of decrees through garnishee proceedings. As such, the instant motion is competent.



12. A perusal of Order 23 of the Civil Procedure Rules demonstrates that an order for Garnishee Absolute ought to be preceded with an order for Garnishee Nisi. In the court's view, this requirement is meant to serve two purposes. First, it is to give the Garnishee the opportunity to contest the request for an order of Garnishee Absolute. Second, it is to give the Judgment Debtor the opportunity to either contest the Garnishee proceedings or to settle the decretal sum without the need for attachment of the amounts held by the Garnishee.
13. It appears from the record that when the application for garnishee was placed before the court at the ex-parte stage on 14th May 2025, it (the court) did not issue the order of Garnishee Nisi. It only certified the motion as urgent and directed that it be placed before the trial court on 3rd June 2025 for directions.
14. The court is satisfied from the evidence on record that the Applicant has a decree against the Respondent for Ksh. 210,937.50. The said decree emanates from the ruling of the Taxing Master of this court which was issued on 15th November 2024.
15. Under section 51(2) of the *Advocates Act*, the Taxing Master's Certificate of Costs that was issued on 11th December 2024 following his aforesaid ruling of 15th November 2024 constitutes the final pronouncement on the fees that is due to the Applicant unless it is varied or set aside by the court. The record does not show that the Respondent applied to vary or set aside the said Certificate of Costs. As such, it represents the final statement on the fees that is due to the Applicant.
16. Being the final statement on the fees that is due to the Applicant, this court entered judgment in favour of the Applicant for the amount of Ksh. 201,937.50 as set out in the said Certificate of Costs. The judgment was granted pursuant to the uncontested application of the Applicant dated 27th January 2025 and the provisions of section 51(2) of the *Advocates Act*.
17. The Applicant avers that the Respondent has not paid the decretal amount. The Respondent has not controverted this averment despite having been served with the garnishee application. As such, the court is satisfied that the amount in the decree remains unsatisfied and is amenable to recovery through garnishee proceedings.
18. The Applicant seeks payment of Ksh. 254,708.50. Yet, the amount in the Certificate of Costs and subsequent decree is Ksh. 201,937.50.
19. It is true that the court awarded the Applicant interest on the sum of Ksh. 210,937.50. However, there is no evidence that the quantum of interest due on the amount has been ascertained.
20. It is also true that the court awarded the Applicant costs of the application for entry of judgment. However, the quantum thereof was to be assessed by the court's Deputy Registrar and or Taxing Master but there is no evidence that this has been done.
21. It may be that the sum which the Applicant prays for over and above the sum that was awarded in the Certificate of Costs is intended to cover the above two items. However, it (the Applicant) is not entitled to simply come up with an arbitrary figure and seek that it be paid to cover costs and interest. As such, the court can only grant a garnishee order limited to recovery of the sum of Ksh. 210,937.50.

Determination

22. The upshot is that the court makes the following orders:-
 - a. An order for Garnishee Nisi is hereby issued to freeze withdrawal of funds from Pay Bill account No. xxx managed by the Garnishee, Safaricom Plc, on behalf of the Respondent for a period of thirty (30) working days from the date of this order.



- b. That during the aforesaid window of thirty (30) working days from the date of the order, the Respondent is directed to pay the Applicant the sum of Ksh. 210,937.50 as set out in the decree dated 30th April 2025 or make any application as may be appropriate.
- c. If the Respondent does not pay to the Applicant the aforesaid funds as directed or apply as may be appropriate within the period specified above, the order of Garnishee Nisi issued herein shall automatically convert into an order of Garnishee Absolute and the Garnishee shall be obligated to remit to the Applicant the sum of Ksh. 210,937.50 from the Respondent's Pay Bill account No.xxx held by the Garnishee.
- d. The Applicant is granted costs of the application dated 9th May 2025 and is at liberty to pursue payment of costs for the various applications on record which have been granted to it and interest on the decretal sum once the quantum thereof has been determined by the court's Deputy Registrar and or Taxing Master.
- e. The Garnishee is permitted to recover costs of the application dated 9th May 2025 once the same have been determined by the court's Taxing Master.
- f. The Applicant is directed to extract and serve this order on the Respondent physically within five (5) working days of this ruling.
- g. For the avoidance of doubt, remittance of the decretal sum by the Garnishee to the Applicant shall be conditional on proof of service of the order on the Respondent within the timelines provided herein and the failure by the Respondent to make payments or otherwise apply as directed herein.
- h. The matter shall be mentioned before the court's Deputy Registrar on 25th August 2025 for purposes of confirmation of compliance by the Applicant with the directions in clause 22 (f) and (g) herein before the Garnishee can release payments as ordered.

DATED, SIGNED AND DELIVERED ON THE 24TH JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant/Judgment Creditor

.....for the Respondent/Judgment Debtor

.....for the Garnishee

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

