



**Otieno v Chemelil Sugar Company Limited (Cause E013 of 2023)
[2025] KEELRC 1974 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1974 (KLR)

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

JK GAKERI, J

JULY 2, 2025

BETWEEN

FRANCIS ODUOR OTIENO CLAIMANT

AND

CHEMELIL SUGAR COMPANY LIMITED RESPONDENT

RULING

1. Before the court for determination is the applicant's Notice of Motion dated 16th June, 2025 filed under Certificate of Urgency seeking Orders that: -
 1. Spent.
 2. A Garnishee Order Nisi do hereby issue against Kenya Commercial Bank Limited attaching all sums held to the credit of Judgment Debtor herein in all the Accounts with the Garnishee generally and more specifically Accounts Numbers XXXXXXXXXXX, XXXXXXXXXXX at their Muhoroni Branch, XXXXXXXXXXX held in the name of Chemelil Sugar Academy at their Kisumu Branch and Account Number XXXXXXXXXXX at their Nandi Hills Branch to answer the Decree here in the sum of five million two thousand four hundred and thirty six shilling and ninety cents (5,002,436.90).
 3. Spent.
 4. Costs of this Application be borne by the Judgment.

Garnishee's response

2. By a Replying Affidavit dated 24th June 2025, Mr. Alphonse Owino Gowa deposed that the Judgment Creditor had not even attached a certified copy of the decree or certificate of costs issued by the court and thus the Garnishee was unable to ascertain the veracity of the amount claimed by the Decree Holder.



3. The affiant confirmed that the Judgment Debtor, Chemelil Sugar Co. Ltd held and operated accounts No. XXXXXXXXXX which had Kshs.18,801.35 and account No. XXXXXXXXXX which had Kshs.268,331.00.
4. That a Garnishee Order absolute had already been issued in respect of account number XXXXXXXXXX on 19th June, 2025 in respect of the same matter and the funds would be released on 25th June, 2025 leaving the account with no funds.
5. The affiant further deposed that the Judgment/Debtor had neither held nor operated an account by the name Chemelil Sugar Academy Account No. XXXXXXXXXX or Account Number XXXXXXXXXXXXX and as a consequence the Garnishee was incapable of satisfying the decretal sum in relation to the said accounts.
6. That the only account held by the Garnishee for the Judgment/Debtor capable of garnishment was account Number XXXXXXXXXX and the funds held by the Garnishee in the Judgment/Debtor accounts are incapable of satisfying the decretal sum as the account had only Kshs.18,801.35 and the Garnishee costs stood at Kshs.20,000.00.
7. Finally, the affiant deposed that the Garnishee ought to be discharged from the instant proceedings as it did not hold any monies in Account Number XXXXXXXXXX and Account Number XXXXXXXXXX.

Respondent's Response

8. The respondent's Legal Service Officer deponed that Account No. XXXXXXXXXX KCB Muhoroni Branch which the Decree Holder intended to attach belonged to Chemelil Academy Secondary School as opposed to Chemelil Sugar Co. Ltd, a distinct and separate entity from the Sugar Company and was not party to the instant suit and was not the Judgment Debtor and its accounts cannot be attached in execution of the Decree.
9. The affiant deposed that the instant application was unmerited.

Applicant's Further Affidavit

10. In a further affidavit, counsel for the applicant deposes that Chemelil Sugar Academy Secondary School and Chemelil Sugar Academy Junior School were registered private schools and shared a postal address with the sponsor of the school and were not incorporated as companies and thus belonged to the Judgment Debtor and it ran the two schools.

Analysis

11. The only issue for the court to determine is whether the applicant's Notice of Motion dated 16th June, 2025 is merited.
12. Needless to belabour, garnishment or garnishee proceedings allow a Judgment Creditor to attach and recover sums of money held by the Garnishee, typically a bank, on behalf of the Judgment/Debtor, in satisfaction of a decree. The essence of these proceedings is for the Garnishee to show why the sums it is holding on behalf of the Judgment-debtor should not be paid over to the Decree-holder in satisfaction of the decree.
13. The foregoing was exquisitely captured by Mativo J in Mengich t/a Mengich & Co. Advocates & another V Joseph Mabwai & 10 others [2018] eKLR .



14. The law on garnishment is provided for under Order 23 of the Civil Procedure Rules, 2010. Under this Order the Judgment Creditor/Decree holder is required to make an ex parte application for a Garnishee Order nisi which the court may grant and whose effect is to prevent the Garnishee from paying monies out of the Judgment Debtor's account until the Order is made absolute or discharged.
15. A Garnishee Order nisi puts on ice monies in hands of the Garnishee until a final determination of the matter is made. A Garnishee Order Nisi is discretionary.
16. In this case, the applicant's argument is that Account numbers XXXXXXXXXX, XXXXXXXXXX at KCB Muhoroni Branch and Account Number XXXXXXXXXX KCB Kisumu Branch and Account Number 1102196609 KCB Nandi Hills Branch in the name of Chemelil Sugar Academy had sufficient funds to pay the amount owed by the respondent to the Decree-holder.
17. The Garnishee confirms that while Account Numbers XXXXXXXXXX and XXXXXXXXXX are held in the name of the respondent and had the sums of Kshs.18,801.35 and Kshs.268,331.00 respectively, and the latter was already subject to Garnishee Order absolute issued on 19th June, 2025 vide ruling delivered on even date, the funds in account number XXXXXXXXXX were insufficient.
18. Concerning the accounts held by Chemelil Sugar Academy, the applicant suggests that since the respondent is the sponsor of the schools and owns them, and makes a significant contribution to the school which impacts on academic, financial and infrastructural development of the schools and had an annual budget of Kshs.70 million for the two schools, they belonged to the respondent and could be subject to Garnishee proceeding in respect of an obligation owed by the respondent.
19. While the applicant did not attach documents on the registration of the schools to prove ownership, the respondent attached a copy to its Replying Affidavit which shows that the Chemelil Sugar Academy Secondary School is a private school in Nyando District, a double stream school form 1 – 4 with a maximum of 320 students and was registered on 2nd July, 2003.
20. The Chemelil Sugar Academy Junior School was registered on 18th November, 2024. It is a mixed day and boarding secondary school and respondent was the sponsor.
21. From these documents, it is discernible that Chemelil Sugar Academy Secondary School is an unincorporated association and as correctly averred by the respondent, it was not a party to the instant suit and although the Judgment-Debtor is the sponsor, the applicant adduced no evidence to prove that monies in the schools accounts belonged or to the Judgment Debtor.
22. In the court's view, the Account name *per se*, shows that the school's monies and the Judgment Debtor's monies are different and the Schools money cannot 'therefore be used to liquidate the Judgment-Debtor liabilities.
23. Equally, the applicant did demonstrate that the schools rely on the Judgment/Debtor and had no other source of income and that all students were sponsored by the Judgment Debtor.
24. In the circumstances, the court lacks a legal basis on which it can Order garnishment of the Schools' bank account for purposes of satisfaction of the Judgment-Debtor liabilities.
25. In the upshot, it is the finding of this court the applicant's Notice of Motion dated June 16, 2025 is unmerited and it is accordingly dismissed.

Parties shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 2ND DAY OF JULY, 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.

