



Kinyua & Maingi Advocates v Trident Insurance Co. Limited (Miscellaneous Civil Application E336 of 2023) [2025] KEHC 588 (KLR) (29 January 2025) (Ruling)

Neutral citation: [2025] KEHC 588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E336 OF 2023
PN GICHOHI, J
JANUARY 29, 2025**

BETWEEN

KINYUA & MAINGI ADVOCATES APPLICANT

AND

TRIDENT INSURANCE CO. LIMITED RESPONDENT

RULING

1. Under a Certificate of Urgency, the Applicant filed a Notice of Motion dated 8th January, 2025 pursuant to Sections 1A, 1B and 3A *Civil Procedure Act*, Order 51 Rule 1 and 3, Order 22 Rule 1,11 and Order 23 Rules 1 and 10 of the *Civil Procedure Rules* Cap 21 Laws of Kenya seeking Orders:-
 - a. Spent.
 - b. Spent.
 - c. That this Honourable Court be pleased to issue Garnishee Order Nisi against the Garnishee, Safaricom Limited to attach all monies due and belonging to Trident Insurance Co. Limited in her credit or on her Mpesa Pay Bill Number 98xxxx and /or in any other Pay Bill or Till Number or so much of it as is sufficient to satisfy the decree of Kshs. 118,880/= only together with costs of this Garnishee proceedings amounting Kshs. 30,000/= totalling to KSHS. 148,880/= herein which amounts remain due and owing.
 - d. That the Garnishee, Safaricom Limited, shall upon being served with Garnishee Order Nisi by this Honourable Court, notify the Court in writing of what sum is held in the said Mpesa Pay Bill Number 98xxxx and due to the judgment Debtor Trident Insurance Co. Limited and if the Garnishee does not dispute the debt, she shall pay to M/S Kinyua & Maingi Advocates the said sum of Kshs. 118,880/= plus costs of this Garnishee application amounting Kshs. 30,000/=.



- e. That if the Garnishee, Safaricom Limited disputes holding funds and monies to credit of Trident Insurance Co. Limited in Mpesa Pay Bill Number 98xxxx then Garnishee be ordered to appear and state the same during hearing of the Applicant's application.
 - f. That the Garnishee Order Nisi be made absolute.
 - g. That the costs of this application be provided for.
2. That application is based on grounds on the face of the application supported by the Affidavit sworn by Njoki Kinyua Advocate on 8th January 2025 mainly that Respondent /judgment debtor having ignored /refused to settle the decree herein , then there is need to attach its account held by the Garnishee and that unless the Garnishee orders sought are issued forthwith , the Respondent shall withdraw the monies held in its account stated herein to defeat the ends of justice.
 3. The Garnishee filed a Replying Affidavit sworn on 17th January 2025 by Stella Mutindi Mutua in her capacity as the Senior Merchant Officer in Enterprise Channels Department – Mpesa Services , within Lipa na Mpesa under Fintech Operations Division for the Garnishee.
 4. Confirming that the Respondent indeed operates the Pay Bill Number stated herein, and having understood the Application herein and Garnishee Order, she accessed the Mpesa G2 portal specifically to suspend withdrawals and extract the statement provided by the Special Utility Account over M-Pesa Pay Bill Number 98xxxx in the period of 17th January 2025.
 5. She deponed that there was a balance of Kshs. 20,963,022.89 and therefore, the funds withheld are sufficient to satisfy the entire unpaid taxed Advocate's Client Bill of Costs amounting to Kshs. 118,880/= following the Decree issued on 3rd December 2024 exclusive of suggested costs of Kshs. 30,000/= that will abide the outcome of the Garnishee Proceedings less it costs.
 6. She urged that the Garnishee be granted the costs of the Applicant's application herein. She further deponed that within four (4) days of service of the Garnishee Order Absolute, the Garnishee shall release the entire sums sought being Kshs.148, 880/= less Garnishee costs.

Determination

7. This Court has considered the application and the annexures thereto. Indeed, there is Decree arising from the Ruling delivered by this Court on 6th November 2024 whereby judgment was entered in favour of the Applicant as against the Respondent but remains unsettled. It is also confirmed by the Garnishee that the Respondent/Judgment Debtor has sufficient funds to satisfy the decree herein.
8. Further, the Garnishee produced the Electronic Evidence Certificate by Stella Mutindi Mutua certifying that by virtue of her position, she has lawful control over use of the Computer LTEBU403, Make Lenovo Think Pd L480 S/No. PF -1GNYSF which was in regular use in the period the Statement herein was generated.
9. It is further confirmed that a Garnishee Order Nisi was issued at the first instance on 10th January 2025 and that the Garnishee has no objection to the Garnishee said Order being made absolute as sought by the Applicant save that he prays that the costs be borne by the Respondent.
10. Though duly served, the Respondent did not file any response and there is no response filed by the Respondent herein and there is no attendance either.
11. In the circumstances, the Application dated 8th January, 2025 is merited and allowed in the following terms:-



1. The Garnishee Order Nisi issued on 10th January 2025 be and is hereby made Garnishee Order Absolute.
2. The Garnishee Order Absolute be served on the Garnishee to release the sum of Kshs. 148,880/= to the Applicant forthwith.
3. The Garnishee be discharged from these proceedings upon compliance with this determination.
4. The costs of this application be borne by the Respondent/Judgment -Debtor.
5. The said costs be recovered from the Respondent's Account.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 29TH DAY OF JANUARY, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Kinyua for Applicant

Mr. Ojonga for Garnishee

N/A for Respondent

Ruto, Court Assistant

