



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Dak v Eldoret College of Profesisonal Studies & another (Constitutional
Petition 13 of 2020) [2025] KEHC 5176 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION 13 OF 2020
RN NYAKUNDI, J
APRIL 29, 2025**

BETWEEN

GABRIEL TURIC DAK APPLICANT

AND

ELDORET COLLEGE OF PROFESISONAL STUDIES 1ST RESPONDENT

UNIVERSITY OF ELDORET 2ND RESPONDENT

RULING

1. The application pending before this court is the applicants' Notice of motion dated 03/02/2025 seeking the following orders;
 - a. Spent
 - b. A garnishee order nisi do issue against the garnishee attaching the sum of Kshs. 1,179,280.00 together with costs of this application at Kshs 50,000.00 or any other available sum be it lesser being held in credit in account number 1090263442001 held by the garnishee in the name of the Judgment debtor or in any other account maintained by the 1st respondent/ judgment debtor at the garnishee's bank pending hearing and determination of this application interparty.
 - c. The garnishee order nisi be made absolute by directing the garnishee to pay Aloo Romanus & Company Advocates sum of Kshs 1,179,280.00 together with costs of this application at Kshs 50,000 or any other available sum be it lesser being held in credit in account number 1090263442001 held by the garnishee in the name of the Judgment debtor or in any other account maintained by the respondent/ judgment debtor at the garnishee's bank.
 - d. Costs for the application be provided for.



2. The application is premised on the grounds on the face of it and the averments of Aloo Romanus, Counsel for the applicant, in the supporting affidavit.
3. The applicant deponed that on 23/12/2022, this court delivered its judgment on the subject case and directed that the 1st respondent pays the petitioner/ applicant Kshs 1,000,000.00 as general damages and bear the costs of the suit. Subsequently on 14th August, 2024, the court awarded the applicant a certificate of costs to the tune of Kshs 179,280.00 and therefore, it is clear that the 1st respondent is to pay the claimant a total of Kshs 1,179,280 but failed and neglected to do so despite being served with all the documents and a demand for payment.
4. Counsel urged that it is clear that the respondent is not interested in paying the money hence the court should come to the aid of the applicant to realize the fruits of the judgment. Further, that the applicant came to know of the respondent account details reason being it's the account number given to students to pay fees. He stated that it is only fair and just that the respondents are compelled to satisfy the decree by payment of costs in full in the first instance.
5. There is no response from the respondents on record despite the affidavit of service filed by the applicant as proof of service.

Analysis & Determination

6. The issue that arises for determination is; Whether the garnishee order should issue
7. The word garnishee proceedings is defined in the Black's Law Dictionary, 4th Edition as follows: -

“a statutory proceeding whereby a person's property, or credit in possession or under control of, or owing by, another are applied to payment of former debt to third person by proper statutory process against debtor and garnishee.”
8. Garnishee proceedings are governed by Order 23 Rule 1(1) of the Civil Procedure Rules which provides;

“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 such third person} (hereinafter called “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 costs aforesaid.”
9. A garnishee has the right to oppose a garnishee application. In the case of M & E Consulting Engineering Limited v Lake Basin Development Authority [2008] eKLR the court held:

“My view of this issue is as follows. Under Order 22, rule 1 of the Rules, a garnishee is entitled to show cause why he should not pay to the decree-holder the debt due from him to the judgment-debtor. In other words, the garnishee has the right to oppose a garnishee application.



Even if there was no right provided in Order 22 of the Rules for a garnishee to resist a garnishee application, I would still have allowed the Garnishee herein to challenge the consent order of 13th September, 2006 for the following reasons. The Judgment-Debtor is a public body; the decree against it had apparently been compromised and settled as compromised, yet it was now required to pay a very huge additional sum of money upon the same decree; and the Garnishee was in a fiduciary capacity with the Judgment-Debtor and the funds it held to its credit appeared to be public funds designated for another specific purpose. It was therefore proper for the Garnishee's suspicions to be aroused and for it to approach the court."

10. The applicant purported to have served the application on the Garnishee through email and in accordance to Order 5 Rule 22B of the Civil Procedure (Amendment) Rules 2020. Order 5 Rule 22B provides as follows;
 - (1) Summons sent by Electronic Mail Service shall be sent to the defendant's last confirmed and used E-mail address.
 - (2) Service shall be deemed to have been effected when the Sender receives a delivery receipt.
 - (3) Summons shall be deemed served on the day which it is sent; if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be considered to have been served on the business day subsequent.
 - (4) An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the Electronic Mail Service delivery receipt confirming service.
11. A clear reading of these provisions reveals that summons 'shall' be sent to the defendants' last confirmed and used E-mail. Notably, Order 5 deals with issue and service of summons, not the service of applications or pleadings generally. Further, these provisions refer to parties who have already been participating in the suit as the advocates on record are more likely to have the addresses available for the purposes of the suit. I find that the application of Order 5 Rule 22B to this scenario is misplaced as the provisions envision that the party being served is already a party to the suit. It is my considered view that the garnishee has not been properly served.
12. Dealing with a similar issue, Justice Mativo (as he then was) expressed himself in the case of *Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee)* [2021] eKLR as follows;

Garnishee proceedings serve to facilitate the satisfaction of judgment debts. Garnishees, in this regard, often have no objections to garnishee orders being made final, so long as there is a discernible debt due and owing to the judgment debtor; once such indebtedness is established, it is inconsequential to the garnishee who the debt is paid to. However, garnishee orders are premised on indebtedness – without such indebtedness to the judgment debtor, it would be plainly unjust to order a party to pay a sum to the judgment creditor.
13. The applicant has provided the court with a copy of the judgement that awarded the petitioner Kshs. 1,000,000/- in damages. He also produced a Certificate of Costs for Kshs. 179,280/-. The applicant did not attach a copy of the decree but there is one on record in the court file. It is therefore evident that there exists a debt payable by the judgement debtor to the applicant.



14. Due to the fiduciary relationship between the garnishee and the respondents, they must be given a chance to show cause why it should not pay the judgement sums. Order 22 prescribes two steps in Garnishee proceedings, the first step is the issuance of a Garnishee Order nisi which is an order to the bank communicating that unless there is some sufficient reason why the bank should not pay the decree, it will be required to pay money held in the Judgment Debtor's account. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. If there is no sufficient reason, the garnishee order is made absolute, to pay to the Judgment-Creditor, or into court, whichever is more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if the Judgment-Debtor directed the bank to pay it.
15. In the present application, as aforesaid, I take issue with the service of the application on the garnishee. The mode of service under Order 5 Rule 22B envisions a scenario where the party being served is aware of such a matter and has provided an address for the service of relevant pleadings. To mechanically apply the provisions of said provision would be an affront to justice.
16. In the premises, I order as follows;
 - i. The applicant be properly served with the application dated 03/02/2025
 - ii. A garnishee order nisi is hereby issued ordering 1,000,000.00 being held in credit in account number 1090263442001 held by the garnishee in the name of the Judgment debtor or in any other account maintained by the 1st respondent/ judgment debtor at the garnishee's bank be attached to answer the decree issued in favour of the decree – holder on 23/12/2024.
 - iii. A garnishee order nisi is hereby issued ordering 179,280.00 being held in credit in account number 1090263442001 held by the garnishee in the name of the Judgment debtor or in any other account maintained by the 1st respondent/ judgment debtor at the garnishee's bank be attached to answer the decree issued in favour of the decree – holder on 14/08/2024.
 - iv. The Garnishee should appear before the court to show cause why they should not pay to the decree holder Kshs.1,179,280.00/= plus costs from the amount held by the respondent at their Account Number 1090263442001 at the Garnishee bank and/or any other account held by the aforesaid.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 29TH DAY OF APRIL 2025

.....

R. NYAKUNDI

JUDGE

