



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mindi v Gachomba & another; Co-operative Bank (Garnishee) (Civil Appeal E004 of 2023) [2025] KEHC 7346 (KLR) (Civ) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7346 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA**

**CIVIL**

**CIVIL APPEAL E004 OF 2023**

**KW KIARIE, J**

**MAY 29, 2025**

**BETWEEN**

**DAVID GITHENYA MINDI ..... APPELLANT**

**AND**

**PAUL MWANGI GACHOMBA ..... 1<sup>ST</sup> RESPONDENT**

**SATIMA CO-OPERATIVE SOCIETY LTD ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CO-OPERATIVE BANK ..... GARNISHEE**

*(Being an Appeal from the ruling and order in Engineer Senior Principal Magistrate's Civil Case No. 42 of 2023 by Hon. H.O. Barasa –Senior Principal Magistrate)*

**JUDGMENT**

1. On the 3<sup>rd</sup> day of October 2023, Hon. Barasa delivered a ruling on the application dated the 14<sup>th</sup> day of June 2023.
2. The appellant was aggrieved by the ruling and filed this appeal. The firm of Mwaura Kamau & Company Advocates represented him. He raised the following grounds of appeal:
  - a. The learned honourable magistrate erred in law and in fact in finding that the account of the 2<sup>nd</sup> respondent with the 1<sup>st</sup> garnishee could not be attached.
  - b. The learned magistrate erred in law and fact by failing to hold that the 2<sup>nd</sup> respondent was a lawful legal entity capable of suing and being sued, and that its accounts were separate and distinct from those of its members and, therefore, capable of being attached.



- c. The learned honourable magistrate erred in law and fact in failing to find that the 2<sup>nd</sup> respondent's account with the 1<sup>st</sup> garnishee that was being attached belonged to the 2<sup>nd</sup> respondent and not its members.
  - d. The learned honourable magistrate erred in law in holding that the funds in the account of the 2<sup>nd</sup> respondent with the 1<sup>st</sup> garnishee belonged to the members, yet there was no evidence to support the same.
  - e. The learned honourable magistrate erred in law and fact in concluding contrary to the evidence and the law.
  - f. The learned honourable magistrate erred in law and fact in failing to hold that the 2<sup>nd</sup> respondent was a distinct legal entity separate from its members.
  - g. The learned honourable magistrate erred in law and fact in holding that the funds in the 2<sup>nd</sup> respondent's account with the 1<sup>st</sup> garnishee could not be attached since it belonged to the members, yet no member had objected to the attachment.
3. The 2<sup>nd</sup> respondent did not file any response or submissions.
  4. This Court is the first appellate court. I understand my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage in seeing the witnesses testify and observing their demeanour. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] EA 123, where it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and make its conclusions in the matter.
  5. Satima Co-Operative Society Ltd., the 2<sup>nd</sup> respondent, has the legal capacity to sue and be sued. This was not in issue before the learned trial magistrate. The contention was whether the monies held in a Bank account in the name of the second respondent were liable to be attached to settle a claim by the 2<sup>nd</sup> respondent.
  6. The second respondent claimed that the monies belonged to individual co-operators and produced a list tabulating the amount of each member. The total is Kshs. 3,817,230. This was the amount the appellant sought to attach, but the court declined to authorize it.
  7. A cooperative society is a legal entity, but remains distinct. Membership is generally open to anyone who shares a common interest and is willing to participate and adhere to the society's rules and principles. This uniqueness was demonstrated when the list of the members and their worth was exhibited. I find it simplistic for the appellant to argue that neither member objected to the attachment. The members were not invited to give their input.
  8. The decision of the learned trial magistrate cannot be faulted.
  9. I, therefore, dismiss the appeal with costs.

**DELIVERED AND SIGNED AT NYANDARUA THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**KIARIE WAWERU KIARIE.**

**JUDGE.**

