



Akuma v Kebeno & another; CEO Faulu Kenya Limited (Legal Department Judgment Debtor: Garnisheed Money in Account – Kshs. 869, 241/=) & 4 others (Garnishee) (Civil Appeal 53 of 2020) [2025] KEHC 7070 (KLR) (Family) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

CIVIL APPEAL 53 OF 2020

HK CHEMITEI, J

MAY 26, 2025

BETWEEN

EVANS NYAMBENGA AKUMA JUDGMENT CREDITOR

AND

ZIPPORAH NYAMBEKI KEBENO 1ST JUDGMENT DEBTOR

**REBECCA GETUBA KEBENO MASESE (WITH LEAVE OF COURT
JOINT) 2ND JUDGMENT DEBTOR**

AND

**CEO FAULU KENYA LIMITED (LEGAL DEPARTMENT JUDGMENT DEBTOR:
GARNISHEED MONEY IN ACCOUNT – KSHS. 869, 241/=) GARNISHEE**

**CEO SANLAM INSURANCE COMPANY LIMITED (LEGAL DEPARTMENT
JUDGMENT DEBTOR: GARNISHEED MONEY IN ACCOUNT – KSHS. 504,
000/= & KSHS. 75, 157/=) GARNISHEE**

**CEO HAZINA SACCO (LEGAL DEPARTMENT JUDGMENT DEBTOR:
GARNISHEED MONEY IN ACCOUNT – KSHS. 424, 066 & KSHS. 672, 000/
=) GARNISHEE**

CEO NATIONAL BANK OF KENYA LIMITED GARNISHEE

**CEO KENYA COMMERCIAL BANK (MANAGER – MACHAKOS
BRANCH) GARNISHEE**



RULING

1. This ruling relates to the application dated 14th June, 2024 filed by the Judgment Creditor/Decree Holder – Garnishor (hereinafter “the Applicant”), Evans Nyambenga AKuma; seeking for ORDERS THAT:
 1. Spent.
 2. This honourable court do issue an order granting leave to the decree holder that this execution be and is hereby issued against the garnishee directing it to pay the amounts in account of Kshs.10,040,700/= and 14% interest since 17th June, 2024 totaling debt accrued as liquid payment in terms of matrimonial property distributions as agreed by consent letter dated 25th May, 2012 in considering of closing this matter now in default or in breach of by the defendant is so much thereof towards the satisfaction of the decree and costs of these garnishee proceedings to Garnishor – Sidian Bank Account, Customer 1207359 xx xx xxx xxx xx 88 Main Paybill Number 1110999 – is hereby allowed to seeks reasons for the garnishee as to why it cannot be effected and complied with.
 3. C.E.O. Faulu Bank Kenya Limited (Legal Department Judgment Debtor Garnisheed money in account – Kshs. 869, 241/=) is hereby garnisheed.
 4. C.E.O. Sanlam Insurance Company Limited (Legal Department Judgment Debtor Garnisheed money in account – Kshs. 504,000/= & Kshs.75,157/=) is hereby garnisheed.
 5. C.E.O. Hazina Sacco (Legal Department Judgment Debtor Garnisheed money in account – Kshs. 424,066/= & Kshs. 672,200/=) is hereby garnisheed.
 6. The court be pleased to allow garnishee a decree of Kshs. 10, 140,700/= in which the judgment creditor – Garnishor sough decreed amount of Kshs. 10,140,700/= as a debt from the judgment debtor and garnishee as to any consequential interim order/orders pending the determination of the garnishee application.
 7. The ruling and/or decision delivered herein on notice to show cause dated 17th May, 2024 by the honourable Deputy Registrar, on the basis of the decree – holder is hereby allowed as it has not been appealed or reviewed. The application as it stands is therefore not a good gesture for a collateral attack on a valid judgment of the court.
 8. Having reached this conclusion, it is unnecessary to touch on the issues that took place prior to the judgment or consider the application on its merits as the court has all powers of jurisdiction to proceed in the manner proposed by the decree of Kshs.10.140,700/= in which the judgment creditor Garnishor sought decreed amount of Kshs. 10,140,700/= as a debt from the judgment debtor and garnishee.
 9. Upon being served, the Chief Executive Officer – Kenya Commercial Bank/Legal Department Headquarters – stops in the interim, any withdrawing/flags all monies and allows deposits only in Zipporah Nyambeki Kebeno Judgment Debtor at Machakos Kenya Commercial Bank branch pending further directions of this honourable court.
 - 10) It 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.



11. Accordingly, this honourable court does order that the garnishee order nisi be made on 14th June, 2024 be and is hereby made absolute.
 12. This execution be and is hereby issued against the garnishee directing it to pay the amounts in account of Kshs. 10,140,700/= so much thereof towards the satisfaction of the decree and costs of these garnishee proceedings to Garnishor Sidian Bank Account Customer 1207359 01 xx xxx xxx xx xx Main Paybill Number 1110999.
 13. The garnishee shall recover its costs from the sums in the said accounts. The judgment creditor shall recover the costs of these garnishee proceedings from the said accounts.
 14. As to the consequences of this finding that the honourable deputy registrar hereby allow this application with costs to be agreed if not so be assessed.
2. The application is based on the grounds on its face thereof and supported by affidavit and further affidavit sworn by Evans Nyambega Akuma on 14th June, 2024.
 3. He avers inter alia that the letter dated 6th June, 2024 is shrouded in secrecy and contravenes Articles 165 (6) and 165 (7) of *the Constitution* of Kenya, 2010. It is contrary to the rules of justice as there is no re – joinder of replying affidavit under oath hence is a mere denial and has failed to lay any basis for stopping the notice to show cause dated 17th May, 2024 and that the funds in the subject accounts are valid for attachment and recovery as to pay slips of April, 2024.
 4. It is in exercise of its administrative mandate and cannot vary, set aside or review decisions of the letter dated 3rd June, 2024 that affect his legal rights and interests who has a right, under Section 4 (1) and (2) of the *Fair Administrative Action Act*, to administrative action that is reasonable and procedurally fair, and have a right to be given written reasons for any administrative action taken against them.
 5. Sections 107 and 108 of the *Evidence Act* provides that he who alleges must prove and as the Applicant has disclosed all the valid grounds for the said letter dated 3rd June, 2024, it is possible to objectively interrogate the alleged reasonableness and propriety of the same as given so as to conclude that the actions of the Applicant as litigations must come to an end and this letter dated 3rd June, 2024 is not actuated by malice and abuse of this court’s process.
 6. We must ask the question whether litigants are using courts to promote the administration of justice or frustrate it. Pursuing a claim of the letter dated 6th June, 2024 based on bad and with no genuine belief in its merits, or for an improper ulterior motive is an abuse of the process of the court.
 7. The court has the right to protect itself against the abuse of its processes. He is suffering unnecessary financial hardship and the operation of the garnishee orders sought in the application will allow him the means to provide to his reasonable expenses. He has demonstrated that the undue hardship far outweighs the risk of the subject properties from being destroyed or transferred.
 8. The application is opposed vide grounds of opposition filed by Zipporah Nyambeki Kebeno on 26th November, 2024.
 9. She avers inter alia that she opposes the current application and any other applications filed by Evans Nyambega Akuma. She argues that the application is frivolous, legally flawed, procedurally improper, lacking merit, and a misuse of the court process. It is also considered an abuse of court resources and should be dismissed outright.
 10. The Respondent contends that the Applicant is improperly seeking to enforce a judgment that is currently under appeal, effectively trying to benefit from both the judgment and its appeal. She



emphasizes that the appeal should first be scheduled for directions, and no execution of the judgment should proceed in any court until the appeal is fully resolved.

11. The current application mirrors another unprocedural application filed in the lower court in Milimani CMCC No. 7533 of 2010, which has been stayed by the magistrate pending the outcome of this appeal. The lower court matter was resolved through a consent order dated 15th May, 2012 and marked as settled on 18th June, 2012.
12. This consent did not include any monetary award to the Applicant, and there have been no subsequent court orders reviving or modifying that settlement. The Respondent asserts that there is no valid judgment or decree requiring her to pay any amount to the Applicant, and therefore no legal basis for any form of execution, including garnishment or arrest.
13. She states that the judgment relied upon by the Applicant was set aside in 2011, and that the matter was later conclusively settled by mutual consent. Nonetheless, the Applicant continues to pursue various unlawful enforcement actions, including salary garnishment and arrest warrants, despite the absence of any valid court orders.
14. The Respondent also points out that the Applicant originally sued for Kshs. 210, 000/= but is now improperly attempting to execute for over Kshs. 10 million, which is unjustified and contrary to legal principles such as the in duplum rule. She adds that the garnishee order obtained on 3rd October, 2024 was secured by misleading the court and used to freeze her salary account unlawfully.
15. The Respondent accuses the Applicant of continuously filing incoherent and baseless court applications to harass her. She alleges that the Applicant is driven by personal vendetta, stemming from a failed romantic relationship that ended in June 2010. During their relationship, he was once listed as her next of kin. After the breakup, she removed him from that position, which led to a series of retaliatory legal actions from him.
16. She lists multiple cases filed by the Applicant over the years, including: attempts at private prosecution (unsuccessful); multiple civil suits for breach of contract and dissolution of marriage (all settled or dismissed); attempts to claim custody over a child who is not his; appeals that were either abandoned, withdrawn, or based on misleading claims.
17. The Respondent highlights that none of these actions have resulted in any valid judgment or order requiring her to pay the Applicant or surrender her assets. She claims to have suffered severe emotional distress and financial loss due to the Applicant's persistent legal harassment, requiring her to retain numerous lawyers, many of whom withdrew after realizing the frivolous nature of the cases.
18. In conclusion, she asks the court to dismiss the notice of motion dated 13th June, 2024 with costs and to proceed with setting the main appeal for directions
19. The application is opposed vide replying affidavit sworn by Martha Mwakio on 15th November, 2024.
20. She avers inter alia that she is a legal officer at Faulu Microfinance Bank Limited - the 1st Garnishee. They were served with a garnishee nisi order dated 3rd October 2024. Upon reviewing the court file, they noted they had not been served with Evans Nyambenga Akuma's applications dated 14th June, 2024 and 2nd October, 2024, which seek similar orders - namely, garnishment of accounts and redirection of Zipporah Nyambeki Kebeno's salary deductions from a loan repayment to Evans.
21. Faulu confirms that Zipporah holds an account with them, No. 1003712008, but it is overdrawn due to an outstanding loan of Kshs. 1,018,000/=, with a current balance of Kshs. 579,377. 29 as of 15th October, 2024. Therefore, the account cannot satisfy Evans' claimed amount of Kshs. 869,241/=.



22. The amount claimed appears to be based on Zipporah's salary slip, which reflects a salary loan repayment deducted at source. Faulu asserts that since they were never served with the court order allegedly made by Justice H. K. Chemitei on 31st July 2024, they cannot be held in contempt or considered non-compliant.
23. They also argue that the garnishment sought would unlawfully target salary deductions already committed to a loan agreed upon in May 2020, prior to any alleged default. Faulu requests to be discharged from the garnishee proceedings, stating they hold no attachable funds and they came on record by 13th August, 2024 after the order was issued.
24. They criticize the issuance of ex parte orders on 3rd October, 2024 and argue that Evans is engaging in forum shopping, as a similar application in Milimani CMCC 7533 of 2010 was previously rejected by Hon. Lucy Ambasi on 3rd September, 2024. Evans has since filed multiple overlapping applications instead of proceeding with a hearing. Faulu prays that Evans be declared a vexatious litigant, the application dated 14th June, 2024 be dismissed with costs and Faulu be discharged from the current proceedings.
25. The application is opposed vide replying affidavit sworn by Linda Mokaya on 3rd April, 2025.
26. She avers inter alia that she serves as the Manager – Services, Quality and Compliance at KCB - the 5th Garnishee, Machakos Branch. The account in question, No. 1176xxxxxx, is held at that branch under the name Zipporah Nyambeki Kebeno. As of the date the affidavit was sworn, the account had a ledger balance of Kshs. 32,328.70. These funds were frozen pursuant to the garnishee order nisi issued by the court. KCB has been directed to explain why it should not remit the claimed decretal amount to Evans Nyambenga Akuma. KCB asserts no interest or claim over the account's funds and is prepared to comply with any orders the court may issue regarding the money held in Zipporah's account. KCB also seeks to recover its legal costs from Zipporah Nyambeki Kebeno.
27. The application is opposed vide replying affidavit sworn by Chrispus Maithya on 28th October, 2024.
28. He avers inter alia that he is employed by National Bank of Kenya Limited - the 4th Garnishee – as the Head of Legal. It is true that Zipporah Nyambeki Kebeno holds an account with the bank, specifically account number 770xxxxxxx. However, as of 27th September 2024, the account balance was only Kshs. 1,834.70/= which is insufficient to cover the claimed amount of Kshs. 2,799,035/=. They are seeking Kshs. 30, 000/= as legal costs incurred in responding to this application.
29. The 1st garnishee has filed written submissions dated 17th April, 2025, placing reliance on the following:-
 - a. Ngaywa Ngigi and Kibet Advocates vs Invesco Assurance Company Limited; Diamond Trust Bank (Tom Mboya and Koinange Street Branches) (Garnishee) [2020] eKLR where the court held that: "It is my considered opinion that the garnishee tendered sufficient evidence to the effect that it did not have any money held in favour of the Judgment – Debtor and which could be attached in satisfaction of the decree. This was done by exhibiting the account statement of the Judgment – Debtor, as at the relevant date indicated on the Garnishee Order Nisi and which disclosed the true status of the account of the Judgment – Debtor. The Applicant failed to prove that there was a credit in the said accounts which was capable of being a sum due or accruing so as to be attachable in satisfaction of their decree."



30. The 4th garnishee has filed written submission dated 22nd April, 2025 placing reliance on the following:
- a. *Ngaywa Ngigi and Kibet Advocates vs Invesco Assurance Company Limited; Diamond Trust Bank (Tom Mboya and Koinange Street Branches) (Garnishee) [2020] eKLR* where the court set out the following two factors that an Applicant in garnishee proceedings has to prove as follows, “a) There is a decree which has been issued and is still unsatisfied to a certain amount. b) There is a debt due from the Garnishee to the Judgment – Debtor capable of being attached to answer the decree” The court further stated as follows: “It is my considered opinion that the garnishee tendered sufficient evidence to the effect that it did not have any money held in favour of the Judgment – Debtor and which could be attached in satisfaction of the decree. This was done by exhibiting the account statement of the Judgment – Debtor, as at the relevant date indicated on the Garnishee Order Nisi and which disclosed the true status of the account of the Judgment – Debtor.”

Analysis And Determination.

31. I have carefully considered the application before this court, the responses thereto and the rival submission as well as the convoluted history of the matter.
32. It appears in my view that the Applicant has put the cart before the horse by filing multiplicity of application. There is clear evidence that the substantive appeal is yet to be heard.
33. The application for execution in my view is premature and if anything, the same should have been dealt with at the trial court. If the appeal is not determined then the matter risks mutating into a legal circus with no end.
34. The Applicant’s application is difficult to appreciate and the only logical avenue is to determine the appeal once and for all. Nothing is lost to the Applicant in the event that he succeeds in the appeal.
35. It will be abrogation of duty for this court to allow him to file many other applications, some which he has had to withdraw at the great costs to the Respondents.
36. Consequently, I direct as hereunder:-
- (a) The application dated 14th June 2024 is disallowed.
 - (b) The decree nisi earlier issued is hereby set aside and all the attendant consequences.
 - (c) The Applicant is hereby directed to fix the appeal for hearing within the next 30 days from the date herein.
 - (d) The Applicant is hereby directed not to file any other application before the appeal is heard and determined without the leave of the court.
 - (e) Costs to the Respondents.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 29TH DAY MAY 2025.

H K CHEMITEI

JUDGE

