Eric Ntabo & Company Advocates v Trident Insurance Company Limited; Safaricom Plc (Garnishee) (Miscellaneous Civil Application E026 of 2024) [2025] KEHC 9676 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9676 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

MISCELLANEOUS CIVIL APPLICATION E026 OF 2024

E OMINDE, J

JUNE 25, 2025

BETWEEN

ERIC NTABO & COMPANY ADVOCATES ..... APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED ..... RESPONDENT

AND

SAFARICOM PLC ..... GARNISHEE

RULING

1. By a Notice of Motion dated 26/08/2024, brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya and Order 23 Rules 1, 2, 8 and 9, Order 49 Rule 1, 2, 5 and 7 and Order 50 Rule 1 of the *Civil Procedure Rules* and all enabling provisions of the law, the Applicant prays for orders:

    1. Spent.

    2. Spent.

    3. That the 1st, 2nd, 3rd, 4th ,5th , 6th, 7th and 8th Garnishees herein, Kenya Commercial Bank Ltd, Safaricom PLC, M Oriental Commercial Bank Limited, NCBA Bank Kenya PLC, I &M Bank, Stanbic Bank Kenya Limited, Prime Bank Ltd (Kenya) and Middle East Bank Kenya Ltd respectively do attend Court on a date to be fixed to show cause why they should not pay to the decree-holder the sum of Kshs.297,464/= from monies held on behalf of the Judgment-debtor from the above mentioned account or so much thereof as may be sufficient to satisfy the decree herein.

4. That this Honourable Court be pleased to make a Garnishee Order Absolute that the sum of Kshs.297,464/= such sums or debts as are sufficient to answer the decree obtained by the Decree-holder against the Judgment-Debtor, or the unsatisfied part thereof owing or accruing due to from the Garnishees, Kenya Commercial Bank Ltd, Safaricom PLC, M Oriental Commercial Bank Limited, NCBA Bank Kenya PLC, I &M Bank, Stanbic Bank Kenya Limited, Prime Bank Ltd (Kenya) and Middle East Bank Kenya Ltd to the Judgment-Debtor be attached to answer the decree passed herein against the Judgment-Debtor.

5. That costs of this application be borne by the Judgment-Debtor.

2. The motion is premised on the grounds on the body of the application and the Supporting affidavit of Victor Otieno, Advocate of the High Court of Kenya, sworn on 11/11/2024. He deposed that there is no dispute that an Advocate Client relationship exists between the Applicant and the Respondent who retained the Applicant herein as their advocates and that the Respondent failed to pay the agreed upon legal fees prompting the Applicant to file the Advocate Clients Bill of Costs being Eldoret HCCC Miscellaneous Application No. E026 of 2024. In addition, he deposed that the Applicant served the Advocate Client Bill of Cost together with the Notice of Taxation upon the Respondent, however, despite service, the Respondent failed to enter appearance and respond hence the Bill remained unopposed and that the Bill was taxed in the absence of the Respondents by Hon. R. K. Onkoba and subsequently a Certificate of Taxation was issued.

3. He deposed that subsequently, the Applicant filed the Garnishee Application dated 28/08/2024 being Miscellaneous Application No. E005 of 2024, consolidated with the other files which was duly served upon the Respondent. That the said Application dated 28/08/2024 was compromised via a consent order dated 30/08/2024 in Miscellaneous Application No. E005 of 2024. He added that the Respondent intimated that they would settle the bills within a week but they have never settled the same to date and neither have they challenge the said bills at any stage. That the Application together with the hearing notice was duly served upon the Respondent physically at their offices and also through their email address but they once more failed to enter appearance and defend the application.

4. He further deposed that the Applicant subsequently filed an Application dated 20/09/2024 seeking that the attached Certificate of Taxation be converted into judgment and an order of the Court. He contended that despite service of this Application together with the Hearing and/ or Mention Notice with mentions slated for 9/10/2024 and 31/10/2024, the Respondent still failed to act and as such, the Application was allowed as prayed and the Applicant was issued with a decree dated 31/10/2024 against the Respondent/Judgement- Debtor herein. He stated that the said decree remains unsettled.

5. He further stated that despite being aware of the instant suit including the consent order dated 30/08/2024 as recorded in Court, the Respondent has failed to settle the same and there has been no communication from at all on their proposed mode of settling the decretal sum. In light of all these developments, the Applicant is apprehensive that the Judgment-Debtor is not willing to settle the amounts due thereby preventing it from reaping the fruits of its judgement and that justice delayed is justice denied.

6. The Applicant stated that the Judgment-Debtor has Account Numbers 112xxxxxxx held at Kenya Commercial Bank, High Court Branch, Safaricom Mpesa Pay Bill Number 985850, Account Number 008xxxxxxx held at M. Oriental Commercial Bank Limited, Account Number 7912xxxxxx held at I & M Bank, Yaya Towers Branch, Account Number 100xxxxxxxxx held at Stanbic Bank Kenya Limited, Kenyatta Avenue Branch, Account Number 300xxxxxx held at Prime Bank Ltd (Kenya), Riverside Drive Branch and Account Number 1003xxxxxxxxx held at Middle East Bank Kenya Ltd Milimani Branch which accounts remain active and sufficiently credited.

7. He further maintained that owing to the wilful neglect and/or refusal of the Judgment-Debtor in satisfying the costs despite being duly served with the decree, it is only fair and just that the court allows these Garnishee Proceedings for reasons that the Judgment-Debtor's other movable and immovable assets remain unknown to him and so it is in the interest of justice that this Honourable Court exercises it discretion in his favour and allows the prayers sought.

8. In conclusion, he deposed that it is apparent that if the orders sought are not granted, the Applicant stands to suffer extensive and irreparable damage.

Response

9. The Application is opposed by the Judgment- Debtor/Respondent by way of a Replying Affidavit sworn on 2/12/2024 by James Onjoro who describes himself as the Respondent's, Legal Officer. He contended that the Applicant has suppressed material facts to this Court which facts the Respondent discovered from its department of accounts.

10. He deposed that the Applicant was paid in advance over Kshs. 7,000,000/= which sum remains unaccounted for. That the said fact came to the knowledge of the Respondent after the consent was recorded in Court and that it is paramount that the Applicant be directed to account for the said payment and that the same then squarely settles the amount claimed herein. That with the leave of Court, the Respondent intends to adduce more evidence of payment by way of cheques,

Rejoinder

11. The Applicant filed a further Affidavit dated 27/12/2024 sworn by the said Victor Otieno.

12. The Applicant deposes that the Respondent's Replying Affidavit is incompetent, frivolous and an abuse of Court process and it ought to be struck out. Therein, he reiterated his earlier averments made in the Affidavit in support of the Application noting that there is no proof before this Honourable Court that Kshs. 7,000,000/= was paid in advance. He deposed that the payments referred to by the Judgment-Debtor were paid in respect of different transactions and particularly not for this case as legal fees and that is the reason why the payments were made to him in personal capacity in the name of Eric Nyarangi Ntaboand not Eric Ntabo & Co Advocatesand that the Court need not to waste its judicious time to scrutinize the same.

13. He further deposed that the document filed and branded "payments unaccounted" speaks for and can clearly show how the Respondent is taking this court into unnecessary protracted proceedings specifically because there is no connection of the payments made to Falcony Recovery, Adhi Chepkwony & Co. Advocates, Stephen Kimani Gitiche and the Oyugis SRMCC No. 23 of 2020 all annexed in page 12, 25, 30 and 31 respectively with this particular matter. That equally, the document branded "payment for the work done" also demonstrates the afterthought and ill intention of the Respondent to deny the Applicant the fruits of his judgement, in that the narration of the payments made in page 67 to 71 is in respect of Kisii CMCC No. 471 of 2016 wherein a decision was made in the year 2019 even before the filing of the suit. That the same case applies to the payments made in page 109 in respect of two matters being Nos. 667 & 668 all of 2012. That for this reason, it is clear that the Respondent is trying to mix up the court with an intention of bringing confusion for the court to call for scrutiny in a matter which does not pass the test of scrutiny ab initio.

14. He contended that the Respondent as filed similar Reponses to their Advocate/Client Bill of Costs in Nairobi High Court Miscellaneous Nos. E1089, E1087, E1086, E1085, E1084, E1083, E1082, E1081, E1080, E1079. E1078, E1077, E1076, E1075, E1074 & E1073 OF 2024 all dated 11/12/2024 and

further deposed that through a retainer, the Applicant represented the Respondent in various High Court Stations in the Country; Nairobi, Kisumu, Malindi, Nyeri, Bomet, Bungoma, Busia, Embu, Garisssa, Hombay, Kajiado, Kakamega, Kapenguria, Kericho, Kerugoya, Kiambu, Kisii, Kitale, Kitui, Machakos, Makueni, Marsabit, Meru, Migori, Mombasa, Muranga, Naivasha, Nakuru, Nanyuki, Narok, Nyamira, Voi, Thika, Iten, Kapsabet, Kwale, Nyahururu & Eldoret and as such the annexed alleged payments amounting to Kshs.7,000,000/= cannot be said are for Eldoret station unless the Respondent proves the same.

15. According to the Applicant, the Respondent is acting in bad faith and is only out to frustrate the Applicant as already demonstrated in the depositions made in his Affidavit in support of the Application and that yet still the judgement debtor has not set aside the Order-Nisi of issued by the court but has chosen instead to file a response to the application seeking that the Order-Nisi be made absolute. That this does not amount to setting aside the Order-Nisi. That further, the law is clear on garnishee proceedings that a judgement debtor cannot leverage on the said proceedings by way of a Replying Affidavit as the Judgement Debtor has done when they ought to have filed the necessary applications to challenge the amount taxed vide the Certificate of Taxation issued which as per section 52(1) of the *Advocates Act* is final.

16. According to the Applicant, the Judgment-Debtor abdicated on its duty by failing to settle the taxed amounts, set aside the Bill as taxed or file a reference and more importantly he did not file an application seeking the setting aside of the Garnishee *Order-Nisi*. That as such the Judgment-Debtor has no locus standi to air its concerns through the Replying Affidavit as the Judgment-Debtor is not a party to the Garnishee proceedings because the same is between the Judgment-Creditor and the Garnishee regardless of the fact that the Judgment-Debtor may be examined before or after the making of an order for attachment for debts.

17. Counsel further deposed that granting a Judgment-debtor an opportunity to be heard in garnishee proceedings will defeat the very purpose of the proceedings as it has no role in the proceedings and that it is the Garnishee to show cause why the Garnishee Order-Nisi should not to be made absolute. He added that Order 23 Rule 4 provides that it is not obligatory to examine the Judgment Debtor. That in the instant case, the Garnishee has confirmed the existence of sufficient funds to settle Kshs. 275,213/= together with interest ad costs of this garnishee proceedings and what follows therefore is for the court to make the order of Nisi Absolute.

18. On the Responses filed by the 1st, 3rd – 8th Garnishes, it is only the 2nd Garnishee Safaricom PLC that confirmed that they were holding funds in the account that they were operating on behalf of the Judgement Debtor that was sufficient to satisfy the decretal amount. By way of a Replying Affidavit sworn 22nd November 2024, by one Stella Mutindi Mutua who describes herself as the Garnishee's Senior Merchant Officer in the Enterprise Channels Department- Mpesa Services, within Lipa na M-PESA, under Fintech Operations Division, she deposed that they have a collection point being Pay Bill Number 985850 which indeed is held and operated by the Respondent/Judgment-Debtor.

19. She further deposed that she therefore accessed the MPESA G2 portal specifically to extract the statement for the Special Utility Account over MPESA Pay Bill Number 985850 for the period of 22nd November 2024 and that the said Account had the following balance as at the date of 22nd November 2024;

Special Utility Account on MPESA Pay Bill Number 985850	Balance (KSHS)
Special Utility Account	32,302,682.91/=

20. She therefore deposed that the sums withheld are sufficient to satisfy the entire unpaid decree following the taxed Advocate/Client Bill of Costs of Kshs. 297,464/- as at 31/10/2024 exclusive of the Garnishee Costs that will abide the outcome the Garnishee proceedings. She deposed that the Garnishee is entitled to its costs on the Applicant's Application and urged that the Garnishee be granted costs. In conclusion, she deposed that the Garnishee shall within 4 days upon service of the Garnishee Order Absolute release the unpaid decree following the taxed Advocate/Client Bill of Costs as well as accrued interests and costs of the Garnishee proceedings less its costs.

21. In light of this deposition by the 2nd Garnishee, the Court granted the prayers of the 1st, 3rd- 8th Garnishees that they be awarded their costs which are to be paid from the accounts that they held on behalf of the Judgement Debtor and thereafter discharged them from participating in these proceedings. The Application was canvassed by way of written submission which the parties appropriately filed as directed by the Court.

Applicant's Submissions

22. On whether there was any decree and/or judgment of the High Court in Eldoret High Court Miscellaneous No. E026 of 2024, Counsel cited Section 51(2) of the *Advocates Act* which provides:-

> " the certificate of the taxing officer by whom any bill has been taxed shall unless it is set aside or altered by the court, be final as to the amount of the costs recovered thereby; and the court may make such orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum of certified to be due with costs."

23. Counsel urged the Court to be guided by the case of *Lubulellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR where the court observed that:-

> " The law is very clear that once a taxing master has taxed the costs, issued a Certificate of Costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012."

24. Counsel maintained that the Ruling and Certificate of costs dated 16/08/2024 was uncontested as the Respondent has not moved any court by way of filing a Reference against the Ruling and Certificate of Costs nor has the said Ruling & Certificate been set aside, altered, varied and/or reviewed and further, no appeal been filed challenging the said Ruling. Counsel urged that this being the case, there is a decree of the Court in favour of the Applicant and therefore, the instant Garnishee Proceedings are grounded on a Decree of the court as is required under Order 23 Rule 1 of the Civil Procedure Rules (CPR). That the same has not been set aside by the judgement debtor, it is validly before court.

25. Counsel urged the Court to be guided by the decision in Morara Aplemi & Co. Advocates v Deshpal Sian Singh & 2 Others [2007] eKLR and Order 22 rule 6 and Order 23 rule 1 of the CPRs where the court noted that there must be a clear debt admitted or proved to enable the Applicant to initiate Garnishee Proceedings.

26. On whether the Respondent has locus to challenge the Garnishee proceedings by way of a Replying Affidavit, Counsel submitted that the Judgment-Debtor has no locus standi to challenge the proceedings herein for reasons that the Taxing Master's decision is final and no evidence of a reference has been presented to the court. That further, the judgment debtor has not set aside the Order-Nisi herein issued and as such he cannot purport to leverage on a Replying Affidavit to air its concerns at the instant stage. That furthermore, there is a consent judgement dated 30/08/2024 which also the judgement-debtor did not bother to set aside even as they state that they came across proof of payment. That the judgement debtor had every opportunity to air its concerns in between the consent judgement entered on 30/08/2024, the Decree Holder's Application dated 20/09/2024, the Application dated 8/11/2024 and the Order-Nisi herein issued but he did not act.

27. Counsel submitted that Order 23 Rule 4 provides that it is not obligatory to examine the judgement debtor and as such what was required was the Garnishees to show cause why the Garnishee Order Nisi should not be made absolute. In the instant case, the Garnishee Safaricom PLC has confirmed that they hold sufficient funds in the Utility Account that they operate on behalf of the Judgement Debtor to settle Kshs. 297,464/- together with interest and costs of this garnishee proceedings and what follows therefore is the order Nisi to be made absolute.

28. Counsel relied on the holding in the case of Nyandoro & Co. Advocates v National Water Conservation and Pipeline Corporation; Kenya Commercial Bank Group Ltd (Garnishee) [2021] eKLR, where the court observed as follows;

    the garnishee has confirmed willingness to comply with the court's orders. Consistent with the provisions of Order 23 Rule 4 of the Civil Procedure Rules, 2010, I find absolutely no bar either legal or equitable preventing this court from invoking the provisions of Order 23 Rule 4.

29. On whether the Respondent paid a sum of Kshs. 7,000,000/= as claimed, Counsel submitted that the said payments as alleged by the Judgement-debtor cannot be said to have been paid with reference to the instant suit and in this regard, he reiterated his depositions explaining the payments as already herein summarised. He further submits that it is unimaginable that one would pay Kshs. 7,000,000/= in advance for work payments where the Applicant has represented the judgement-debtor in all the High Courts in Kenya because this then will mean that if Counsel deducts the amount taxed of Kshs. 297,464/- from the advance payment then the Judgement debtor seeks that the Applicant refunds over Kshs. 6,500,000/=. That this kind of scenario only goes to show that the assertions cannot hold water.

30. That this only goes to buttress the Applicant's assertions that the payments made as alleged by the judgment debtor were paid in respect of different transactions and not for this particular case as legal fees hence the reason the payments were done in the name and person of Eric Nyarangi Ntaboand not Eric Ntabo& Co Advocates.He further reiterated that even if the payments were made, no evidence has been adduced to the court to specifically show that Kshs. 7,000,000/= was paid in respect to this suit where decree of the court is for Kshs. 297,464/-. Counsel therefore maintained that having abdicated on its duty of filing a reference and setting aside the decree-nisi, then the issue of payments or non-payments were made final by the decision of Taxing master hence the substance of the Judgement-Debtor's response amounts to res judicata, having being heard and finally determined by the Deputy Registrar in taxation.

31. On whether the Court can grant the order sought, Counsel for the Applicant submitted that the orders sought ought to be granted as the garnishees have not disputed the debt due, or claimed to be due from the Respondent which is in line with Order 23 Rule of the Civil Procedure Rules. Counsel maintained that the Garnishee Banks were only required to appear before the court to acknowledge that they hold sufficient funds on behalf of the Judgement Debtor to satisfy the Decretal amount. That in the present case, the Garnishee Bank filed a response confirming that they have sufficient sums and as such what remains is the court to order that the decree Nisi be made absolute.

32. In the end, Counsel urged that granting the orders sought will not in any way injure the respondent as it stands to suffer no loss or any damage as the judgement-debtor is obligated to settle the applicant's legal fees as taxed. On the contrary the applicant herein will suffer a lot of loss for being denied the fruits of her judgement if the Replying affidavit (unmerited as it is) filed by the Judgement debtor is anything to go by. Counsel relied on the holding in case of *Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd; Diamond Trust Bank (Garnishee)* [2020] eKLR, where the High Court at Machakos allowed the application dated 17/9/2019 and proceeded to make the garnishee Nisi absolute.

The Respondent's submissions

33. On whether the Applicant was paid Kshs. 7,000,000/=, Counsel for the Respondent submitted there is no dispute that a decree exists pursuant to the judgment of the Honourable court herein and that the instant application seeks to make the Garnishee Order-Nisi absolute. Further, Counsel submitted that it is not also in dispute that the Applicant was paid the said sum as evidence of the cheques paid to him have been adduced vide the said Replying Affidavit paginated as number 1 to 22.

34. Counsel urged that the Respondent opposes the Applicant's Application on the basis that he cannot be paid twice for the services he tendered as he has already paid himself through the said cheques. Counsel added that the Applicant has not impeached the said cheques, for he has failed to account for each one of them and that the Respondent has been candid enough to adduce other cheques for the work done and which is accounted for,

35. According to Counsel, the issues raised by the client on whether the Respondent has locus to challenge the Garnishee Proceedings are not within the context of the issues herein. He urged the Court to protect the Respondent herein so that she does not suffer twice. Counsel submitted that the Respondent cannot be subjected to such disadvantage incurred from two sources simultaneously.

36. Counsel further urged the Court to discharge the Garnishee herein and deduct the amount claimed herein from the said unaccounted sum and mark the case as fully settled. Counsel maintained that the Applicant is not entitled to the orders sought in the Application.

37. In conclusion, Counsel submitted that under Kenya law, double payment of legal fees is not allowed and that a client should not be charged twice for the same legal services and that the Courts can intervene to prevent this. Counsel contended that the Applicant proceeded to tax his Bill of Cots Ex-parte and that this is the only stage which the Court can intervene. Counsel relied on the decision in the case of *Muri Mwaniki & Wamiti Advocates v Draft & Develop Engineers Limited* [2022] eKLR where Lady Justice M.W. Muigai upheld the decision of the Taxing Tfficer who has taken into consideration the legal fees paid upfront by the Respondent to the Applicant as in the case herein.

Determination

38. Upon consideration of the pleadings and the submissions, it is my considered opinion that the issue for determination is whether the Garnishee Order-Nisi should be made absolute.

39. The definition the word garnishee proceedings in the *Black's Law Dictionary* which is: -

> " 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."

40. The law governing garnishee proceedings is 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 allowance coming within the provisions of Order 22, Rule 42 owing from such third person (hereinafter called the "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 the costs aforesaid.

41. Order 23 Rule 4 of the *Civil Procedure Rules* provides: -

> If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with costs of the garnishee proceedings; and the order absolute shall be in Form 17 or 18 of Appendix A, as the case may require.

42. In *Cecilia Murango Mwenda T/A Murango Mwenda & Company Advocates v Isiolo County Government & Consolidated Bank of Kenya Ltd (Garnishee)* 2017 eKLR. Mabeya J had this to say of the Garnishee proceedings

> " 10. It is clear from the fore going that the judgement debtor must be served with the order nisi unless the court has ordered otherwise. From the record, it is clear that the court did not order otherwise. It therefore follows that it is a legal requirement that the Judgement debtor must be notified of the Garnishee proceedings.
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> 11. In my view, the requirement for such notice is to enable the judgement debtor to appear and either dispute the alleged amount of decree or put any defence that it may have in respect of the decree holder's claim. This is so because, there may be a defence to the decree holder's claim, for example that the decree is statute barred or any other defence.
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> 12. Accordingly, my view is that although the Garnishee proceedings are between the decree-holder and the Garnishee, there is nothing in Order 23 that bars the judgement debtor from being heard. In any event, it is the cardinal principal

of the rule of law that unless expressly provided for, no adverse orders should be made without such party being heard."

43. In the present suit, I associate myself fully with the Judgement of Mabea J in the case of *Cecilia Murango Mwenda T/A Murango Mwenda & Company Advocates v Isiolo County Government & Consolidated Bank of Kenya Ltd (Garnishee)* 2017 eKLR wherein the Learned Judge observed that the requirement for a notice of Garnishee Proceedings being issued to a judgement debtor is so as to enable the said judgement debtor to appear and either dispute the alleged amount of decree or put any defence that it may have in respect of the decree holder's claim. That this is so because, there may be a defence to the decree holder's claim, for example that the decree is statute barred, or any other defence and that although the Garnishee proceedings are between the decree-holder and the Garnishee, there is nothing in Order 23 of the *Civil Procedure Rules* that bars the judgement debtor from being heard because in any event, it is the cardinal principal of the rule of law that unless expressly provided for, no adverse orders should be made against a party without the party being heard.

44. In this regard, and in compliance with the dictates of basic principles of the rules of natural justice that no man should be condemned unheard, now that the judgement debtor has put in an explanation by way of the Replying Affidavit, suffice it to say that I have considered the facts deposed therein. I have also considered the rebuttal of the same by the Applicant as deposed in their Further Affidavit dated 27th November 2024. I note that the explanation given by the Applicant of the circumstances in which the amount of Ks. 7, 000, 000/- was paid by the Respondent to the Applicant and the purpose to which they were put to use has not been contradicted and/or denied by the Respondent. In applying my mind to this and the other explanations therein given, I am satisfied that the said explanations on a balance of probabilities satisfactory.

45. But of greater significance, over and above this finding, it is my very well considered opinion that all these issues raised by the Respondent in the Replying Affidavit ought to have been raised at the point of the taxation of the Advocates- Client Bill of Costs by the Deputy Registrar. That in my view was the right forum for the judgement debtor to state that even as Counsel was claiming so much, a deposit on account of this much had been made, demonstrate how that amount was reconciled with the fee notes presented for every case handled by showing how the fees charged was utilized as against the said deposit and thereby convince the Taxing Master that no further amounts were owed for work done.

46. At this stage, in consideration of the fact that there has been no Reference filed on the decision of the Taxing Master, that the relevant Ruling has not been set aside and that no Appeal so far has been preferred against the said decision, then as envisaged under Section 51 of the *Advocates Act*, the decision of the Taxing Master is final and this therefore is not the forum for the judgement debtor to ventilate the issue of what is owing as between the Advocate and the themselves.

47. The said Section 51 at Sub Section (2) provides as follows;

Section 51. General provisions as to taxation

(1) .....

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

48. In this regard, I am satisfied that the Applicant's Application has merit and the same is accordingly allowed in its entirety as follows;

a. That a Garnishee Order Absolute is now hereby made in favour of the Applicant and against Respondent that the sum of Kshs. 297,464/-, such sums or debts as are sufficient to answer the decree obtained by the Decree-holder against the Judgment-Debtor, or the unsatisfied part thereof owing or accruing due from the Garnishee Safaricom PLC to the Judgment-Debtor be attached to answer the decree passed herein against the Judgment-Debtor.

b. That costs of this application together with the costs of the Garnishee Safaricom PLC be borne by the Judgment-Debtor.

READ DATED AND SIGNED AT ELDORET ON 25TH JUNE 2025.

E. OMINDE

JUDGE