

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NUMBER 1251A OF 2019**  
**IN THE MATTER OF THE ESTATE OF MUSA MAGODO**  
**KENYA (DECEASED)**

**ALICE INGAIZA MAGOGO. ....**  
**ADMINISTRATOR/APPLICANT**

**VERSUS**

**KIMETO & ASSOCIATES ADVOCATES. DECREE**  
**HOLDER/1<sup>ST</sup> RESPONDENT**

**ADAM W NGETHE T.A**  
**GARAM INVESTMENTS ACUTIONEERS. ....**  
**2<sup>ND</sup> RESPONDENT**

**R U L I N G**

Kimeto & Associates Advocates the applicant represented the Estate of Musa Magodo Keya in filing the petition in this cause. On 17<sup>th</sup> June, 2024 the applicants' services were terminated by the administrators of the estate who are the respondents in this application. The applicant's services were taken over by the firm of Antony Musili & Co. Advocates.

On 2<sup>nd</sup> September, 2024 the applicant filed bill of costs which was taxed by the Deputy Registrar on 28<sup>th</sup> May, 2025 at

Kshs.16,914,156.00. The administrators filed reference which was heard by Nyaundi, J who delivered a ruling dated 7<sup>th</sup> March, 2025 affirming the taxed bill of costs. The applicant then filed application dated for adoption of the Bill of costs and entry of judgment. By ruling dated 15<sup>th</sup> May, 2025 this court entered judgment for the applicant against the estate of the deceased for Kshs.16,866,656.00 with costs.

The administrators having had notice and having failed to satisfy the decree, the applicant filed this application dated 20<sup>th</sup> May, 2025 seeking the following orders:

- 1. THAT for reasons to be recorded service of process on the Judgment-Debtor under these proceedings be dispensed with for the purposes of hearing and determination of prayers 2 and 3 hereof.**
- 2. THAT the Honorable Court be pleased to make a Garnishee Order Nisi against "EQUITY BANK KENYA LIMITED MOI AVENUE BRANCH the 1" Garnishee herein, being "Account Number 0470295172486" AND CO-OPERATIVE BANK LIMITED PARLIAMENT ROAD BRANCH the 2 Garnishee herein, being "Account 01100061176300" AND CFC STANBIC BANK -GALERIA BRANCH the 3<sup>rd</sup> Garnishee herein, being "Account No. 0100003451059" ordering that all monies lying and/or held in deposit by the Garnishees respectively to the credit of**

**Musa Magodo Keya, the 3<sup>rd</sup> Respondent herein, be attached to answer the Order for the Decretal sum of Kenya Shillings Sixteen Million Eight Hundred and Eighty Six Thousand Six Hundred and Fifty Six Only (Kshs.16,886,656/-) being a decretal sum together with certified costs due to the Applicant herein and further costs of these Garnishee Proceedings.**

- 3. THAT an Order Nisi upon the Garnishee do issue and the same be served on the Garnishees before being served on the Respondents or their Advocates.**
- 4. THAT the Garnishees do appear before this Honourable Court on an appointed date and time to show cause why they should not pay to the Applicant/ Decree Holder the sum of Kenya Shillings Sixteen Million Eight Hundred and Eighty Six Thousand Six Hundred and Fifty Six Only (Kshs. 16,886,656/-) being Decretal sums due to the Applicant plus costs herein and further costs of these Garnishee Proceedings.**
- 5. THAT the Applicant/Decree Holder be at liberty to apply for any such further orders and/or directions as the Honourable Court may deem fit and just to grant.**
- 6. THAT the costs of this application be borne by the Garnishees.**

The grounds for the application are that judgment was entered against the estate of the deceased for the sum of Ksh.16,886,656.00 being the advocates bill of costs. The

administrators having been served with the decree have failed and/or neglected to satisfy the same and that:

***“That the 3<sup>rd</sup> Respondent estate herein holds accounts with, “EQUITY BANK KENYA LIMITED - MOI AVENUE BRANCH the 1<sup>st</sup> Garnishee herein, being “Account Number 0470295172486” and CO-OPERATIVE BANK LIMITED - PARLIAMENT ROAD BRANCH the 2<sup>nd</sup> Garnishee herein, being “Account 01100061176300” and CFC STANBIC BANK - GALERIA BRANCH the 3<sup>rd</sup> Garnishee herein, being “Account No. 0100003451059”.***

The application is supported by the affidavit of Jackline Chepkemai Kimeto sworn on 21<sup>st</sup> May, 2025 reiterating the grounds in support of the application.

Melody Yego for Co-operative Bank filed a Replying Affidavit sworn on 8<sup>th</sup> June, 2025 stating that Account No. 01100061176300 does not exist in the 2<sup>nd</sup> Garnishee Bank. She prayed that the Garnishee should, therefore, be discharged.

Equity Bank Kenya Ltd (1<sup>st</sup> Garnishee) and CFC Stanbic Bank (3<sup>rd</sup> Garnishee) did not file any response in this application after they were served with the application.

Garnishee proceedings in civil suits are governed by Order 23 Rule 1 Civil Procedure Rules. It provides:

***“1. 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.*”**

In an application under this order, the applicant must satisfy the court that:

- 1) A decree has been issued against the judgment debtor
- 2) The decree is still unsatisfied by the judgment debtor.
- 3) That another person is indebted to the judgment debtor.

- 4) The person who owes a debt to the judgment debtor (Garnishee) has admitted the debt or has failed to show cause why he should not pay this debt to the decree holder.

In this application, the applicant has established that:

- i) There exists a decree against the estate of Musa Magodo Keya for Kshs.16,866,656.00 indeed there is judgment of this court in respect of the same.***
- ii) The administrator of the estate, Gladys Nekesa Peter, Alice Ingaiza Madogo have refused and/or neglected to satisfy the decree.***
- iii) That the Equity Bank Ltd (1<sup>st</sup> Garnishee), Co-operative Bank Kenya Ltd (2<sup>nd</sup> Garnishee), CFC Stanbic Bank (3<sup>rd</sup> Garnishee). Hold funds belong or due to the judgment debtor.***

Only Co-operative Bank Kenya Ltd filed response denying the indebtedness or holding any deposits in respect of the estate, and therefore, denying indebtedness.

Equity Bank Kenya Ltd and CFC Stanbic Bank were served with the application for Garnishee. Neither Equity Bank Kenya Ltd nor CFC Stanbic Bank filed a response to the application. If a

Garnishee has been served and does not dispute debt due or claimed to be due from him to the judgment debtor or if he does not appear on the day named then the court may order execution against the persons and goods of the Garnishee to levy the amount due from him. In **Otieno Ragot & Co. Advocates Vs City Council of Nairobi (2015) eKLR** that court stated:

***“Garnishee proceedings are in their nature proceedings whereby the Garnishee is required to prove whether or not the Garnishee is indebted to the judgment-debtor. Ordinarily, the judgment-creditor only makes allegations of the Garnishee’s indebtedness based on sound evidence whereby the burden of proof shifts to the Garnishee to prove otherwise. In this regard, to discharge that burden, the Garnishee has to produce strong, sufficient and convincing evidence that the funds in its hands or the debts are not due or payable.”***

2<sup>nd</sup> Garnishee, Co-operative Bank Kenya Ltd filed a response denying that they are indebted to or hold deposits to an account of the estate of the deceased. Having not admitted the debt and the same having not been proved this court hereby discharges the 2<sup>nd</sup> Garnishee - Co-operative Bank Kenya Ltd.

This court, therefore, orders that the 1<sup>st</sup> Garnishee - Equity Bank Ltd and 3<sup>rd</sup> Garnishee - CFC Stanbic Bank do pay the firms of

Kimeto and Associates Advocates jointly and severally the sum of Kshs.16,886,656.00 from the undermentioned accounts:

- 1. EQUITY BANK KENYA LIMITED  
MOI AVENUE BRANCH  
Account Number 0470295172486**
  
- 2. CFC STANBIC BANK  
GALERIA BRANCH  
Account No. 0100003451059**

***Dated, signed and delivered virtually at Nairobi this 3<sup>rd</sup> day of September, 2025.***

.....  
**S N RIECHI  
JUDGE**