



**Zakhem International Construction Limited v Kenya Pipeline Company Limited;
Equity Bank Kenya Limited & 6 others (Garnishee) (Miscellaneous Application
E590 of 2025) [2025] KEHC 9154 (KLR) (Commercial and Tax) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E590 OF 2025**

JWW MONG'ARE, J

JUNE 23, 2025

BETWEEN

ZAKHEM INTERNATIONAL CONSTRUCTION LIMITED APPLICANT

AND

KENYA PIPELINE COMPANY LIMITED RESPONDENT

AND

EQUITY BANK KENYA LIMITED GARNISHEE

STANBIC BANK KENYA LIMITED GARNISHEE

KCB BANK KENYA LIMITED GARNISHEE

NCBA BANK KENYA PLC GARNISHEE

CITIBANK N.A. KENYA GARNISHEE

CO-OPERATIVE BANK OF KENYA LIMITED GARNISHEE

ABSA BANK KENYA PLC GARNISHEE

RULING

Introduction and Background

1. Through its Notice of Motion dated 12th June 2025, the Applicant (“Zakhem”) seeks several orders from the Court primarily to attach monies held by the various garnishee banks ((Equity, Stanbic, KCB, NCBA, Citibank, Co-operative, and ABSA) to satisfy a decretal sum of Kshs. 485,000,000.00 that it claims is unpaid by the Respondent (KPC). Zakhem avers that this debt arose out of a Partial Decree issued on 16th June 2020 in HCCOMM E322 of 2019; [Zakhem International Construction Limited](https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/9154/eng@2025-06-23)



v Kenya Pipeline Company Limited by Nzioka J. Zakhem seeks for the Garnishees to be compelled to produce bank statements for the KPC's accounts as of 11th June 2025 and that if they dispute holding funds, they are to appear in court to show cause why they should not pay the outstanding amount to Zakhem. Further, that upon the inter-partes hearing, Zakhem seeks a Garnishee Order Absolute for the specified accounts to satisfy the Kshs. 485,000,000.00 debt, that the attached sums be remitted to the Zakhem's advocates' bank account and that costs of the application be provided for and retained under the Garnishee Order.

2. Zakhem has grounded its application on the facts set out on the its face and the affidavits of Zakhem's Managing Director, Ibrahim Zakhem, sworn on 12th June 2025 and 19th June 2025. KPC has responded to the application through the replying affidavit of its Ag. Chief Legal Officer, Nelson Nyaduwa, sworn on 17th June 2025. The Garnishees have also filed various depositions in response to the application.
3. Zakhem states that the Partial Decree was entered on 16th June 2020, in its favor for USD 44,019,024.64 in HCCC No. E322 of 2019 in respect of unpaid contractual dues for the Construction, Testing and Commissioning of Line 1 Replacement Project. The Kenya Revenue Authority (KRA) then issued Agency Notices in August and September 2020, attaching funds for Zakhem's tax liability which KPC paid KRA Kshs. 3,099,971,539 on 22nd October 2020, and Kshs. 915,316,830 on 8th January 2021, out of the decretal sum. A ruling on 6th January 2021 by Ngenye Macharia J.,(as she was then) directed that a balance of approximately Kshs. 485,000,000.00 be released to the Zakhem and that disbursements should be in US Dollars unless otherwise agreed.
4. In another ruling on 8th April 2021 by Ngenye Macharia J., Zakhem was directed to draw fresh Warrants of Attachment for the sum ordered in the 6th January 2021 ruling as Zakhem had obtained Warrants for the sum of USD 7,157,824.77. Zakhem contends that the sum of Kshs. 485,000,000.00 determined as owing was never recovered due to a stay of execution order from the Court of Appeal on 3rd December 2021 and that the orders sought herein are due to the fact that Civil Appeal No. E208 of 2020 was withdrawn by consent on 11th March 2025.
5. Zakhem admits that a garnishee application dated 14th April 2025 in Misc. Application No. E395 of 2025 was dismissed by the court on 29th May 2025 because the claimed sum of USD 7,157,824.77 was in excess of what was payable and that the court determined in the ruling that Zakhem was entitled to Kshs. 485,000,000.00 as per the 6th January 2021 ruling. Zakhem asserts that KPC maintains bank accounts with the named Garnishees, and these accounts are believed to hold sufficient funds (in excess of Kshs. 485,000,000.00) to satisfy the judgment debt. Zakhem states that KPC is undeniably indebted for Kshs. 485,000,000.00 and Zakhem is apprehensive that KPC may dispose of the funds if the orders are not granted, thus frustrating execution and that this court has the jurisdiction to attach the accounts, and the orders are urgently needed to enable it to realize the fruits of its judgment.
6. In response, KPC regurgitates the litigation history of the parties highlighted above stating that indeed, the balance of approximately Kshs. 485,000,000.00 was to be paid to Zakhem. However, KPC depones that this amount was to be paid after payment to KRA and that the court also allowed KRA to demand interest and penalties for the tax liability if a waiver was not granted. KPC states that Zakhem's request for waiver of interest and penalties from KRA was declined and subsequently, KRA issued another Agency Notice on 7th January 2021, demanding Kshs. 1,350,316,830.00 and that Kshs. 3,099,971,539.00 and Kshs. 1,350,316,830.00 were recovered by KRA from KPC's banks on 22nd October 2020, and 8th January 2021, respectively, fully settling the decretal amount in the partial decree.



7. KPC restates that indeed, Zakhem attempted to execute the partial decree for USD 7,157,824.77 on 1st February 2021 but KPC's application to set aside these warrants was granted as per the said ruling of 8th April 2021. KPC also filed for stay pending appeal, which was granted on 3rd December 2021 and that Zakhem's application to review the 6th January 2021 ruling was dismissed on 23rd September 2021. KPC depones that Zakhem and KPC later agreed to amicably settle all claims from the subject Contract and during negotiations, they agreed that USD 2,204,437.11 was payable to Zakhem for EOT 1-4 after applying the exchange rate, and this amount was factored into the final settlement. That a Consent dated 25th September 2023, was entered in HCCOMM No. E322 of 2019, stating that all claims related to the contract were fully settled once the consent terms were complied with. KPC claims to have settled the full agreed amount, and that Zakhem has not disputed the consent or its contents. Additionally, in other garnishee proceedings (HCCOMM No. E132 of 2020), Zakhem's Managing Director, IBRAHIM ZAKHEM, confirmed that KPC only held USD 31,308,249.80 and no further funds. KPC asserts that it no longer owes Zakhem any money from the Contract and that consequently, Zakhem withdrew HCCOMM E322 of 2019 on 2nd February 2024, and also withdrew its intended appeal against the 8th January 2021 ruling and Civil Appeal No. E208 of 2020 by consent.
8. KPC argues that the current garnishee application is fatally defective because there is no enforceable decree from a wholly withdrawn suit and that a withdrawn suit effectively ceases to exist, and no further proceedings, such as the current garnishee application, can arise from it. That the application fails to meet the threshold for a garnishee application under Order 23 of the *Civil Procedure Rules* and that it is a disguised attempt to revive a withdrawn suit. It further contends that the suit offends sections 6 and 7 of the *Civil Procedure Act* and is an abuse of the court process. KPC states that its operations are being hampered by this application, and it seeks dismissal of the application with costs

Analysis and Determination

9. Upon careful consideration of the parties pleadings and the rival submissions both written and oral, I note that the main issue for the court's determination is whether the Garnishee Orders ought to be issued by the court to settle the claimed debt owed by KPC to Zakhem in the sum of Kshs. 485,000,000.00. KPC disputes owing this amount stating this the same was recovered by KRA from KPC's banks on 22nd October 2020 and 8th January 2021 respectively, fully settling the decretal amount in the partial decree and that this was after KRA declined to grant a waiver of interests and penalties to Zakhem and an Agency Notice dated 7th January 2021 was issued. I take judicial notice that this is not the first time KPC has put forth this argument as the same was also stated by it in *Zakhem International Construction Limited v Kenya Pipeline Company Limited; Attorney General (Interested party)* [2021] KEHC 12862 (KLR). As deponed by Zakhem in its supplementary affidavit, this is what Ngenye-Macharia J., held:

I have perused the agency notice dated 7th January, 2021 issued by KRA a day after the Ruling demanding payment of Kshs. 1,350,316,830/= from the Defendant on account of tax owed to it by the Plaintiff. The Defendant has stated that it paid the entire amount demanded by KRA which was inclusive of the sum that was supposed to be paid to the Plaintiff as per the Ruling of 6th January, 2021. The Plaintiff has not denied that it owed that much in taxes due to KRA. Its only complaint is that the Defendant ought to have complied with the orders of this court as this is not the proper forum that KRA should have used to collect its taxes. Further, counsel for KRA has confirmed that an amount equivalent to the partial decretal sum has since been paid to the Authority on account of taxes owed by the Plaintiff and that all that remains are the interests and penalties.



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57. The other facet of the Defendant's argument is that it disbursed all decretal sum because KRA issued a further Agency Notice dated 7th January, 2021. It is however worthy to note that, despite KRA having issued the Agency Notice, Miss Mburugu for the Authority submitted that interests and penalties demanded remained unpaid. Therefore, the Defendant cannot hide under the guise of a dismissive statement that it disbursed all monies to KRA, reasons wherefore it had nothing owing to the Plaintiff. Such an assertion can only hold upon demonstrating that, even if the money was disbursed in USD as ordered by the court, the proper prevailing exchange rate was applied.

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.....the Defendant decided to operate under its own terms and conditions, to its own disaster. For this reason, clearly the monies disbursed to KRA were in excess of the apportionment to it as ordered on 6th January, 2021. (emphasis added).

59. Further and in any event, even if an Agency Notice was issued by KRA, the amount of the tax demanded must be subject to proof. As far as this court is aware and borne by the record, KRA pronounced itself to demanding no more than was consented to and recorded in the aforesaid Ruling of January 6th. I add that, the assertion that no waiver of interests and penalties was given, reasons why all the decretal sum was disbursed to KRA was a submission from the bar and not supported by evidence. I say so because, clearly the court was not shown any such documentation containing a refusal of the waiver by the Cabinet Secretary despite alleging so.

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61. What is intriguing to note is that the tax in the Agency Notice of 7th January, 2021 does not comprise interests and penalties as would be the position as at the date of the Ruling but of a Principal Tax. The Court having distributed the Partial Decretal Sum as per its Ruling means that any monies paid to KRA in excess of the order was so paid at the peril of the Defendant and its bankers. In fact, it is in blatant disregard of the court orders which have neither been set aside nor reviewed, or better still, appealed. What I am simply saying is that such transmission was on the Bank's own volition and the court cannot come to its aid.

10. The aforementioned court, in its ruling of 6th January 2021 gave the following orders:
- a. That the Defendant within 10 days releases to KRA the principal balance in the sum of Kshs. 915,316,830/.
 - b. That the balance from Kshs. 4,041,288,368/- of about Kshs. 485,000,000/ (after deducting both Kshs. 3,099,971,539/- and Kshs. 915,316,830/ being principal tax) shall be released to the Plaintiff.
 - c. That if the waiver of interests and penalties is not granted then KRA shall be at liberty to demand the same.



- d. That the disbursements of any monies shall be in US Dollars unless the parties otherwise agree. Parties are at liberty to confirm currency exchange rates from Central Bank if a dispute on the same arises.
- e. Each party shall bear its own costs of the application.
11. From the above holding and orders of the court, it is clear that KPC were supposed to remit the said sum of Kshs. 485,000,000.00 to Zakhem upon payment of Kshs. 3,099,971,539.00 and Kshs. 915,316,830.00 principal tax to KRA. However, KPC decided to pay KRA more than this amount, something that the court in *Zakhem International Construction Limited v Kenya Pipeline Company Limited*(supra) faulted as being against its ruling of 6th January 2021. The court also noted that even if KPC paid KRA as per the said Agency Notice of 7th January 2021, the excess sums were not for interest and penalties as claimed by KPC as KRA had stated that the same were yet to be paid. At the end of the day, KPC had no business making payments to KRA in excess of what was ordered by the court and if they did, then the same was at their own risk and detriment. The court's orders were explicit that the Kshs. 485,000,000.00 was to be paid to Zakhem after payment of the Principal Tax. This, KPC did not do. To my understanding, any demand by KRA for additional taxes did not mean that KPC could not make payment of the Kshs. 485,000,000.00 to Zakhem. Actually, my interpretation of the court's orders is that the payment of the Kshs.485,000,000.00 was to be done first before any additional payment is made to KRA other than the principal tax stated. As the court held, the payment made by KPC's bankers to KRA was in excess of the orders of the court issued on 6th January 2021 and such transmission was on the Bank's own volition and the court cannot come to its aid.
12. In any event, Zakhem has annexed letters dated 7th November 2022 and 3rd February 2023 indicating that the National Treasury had waived 100% of the outstanding penalties and interest owed by Zakhem. This buttresses my earlier position that the payment of monies to KRA as per the Agency Notice of 7th January 2021 was not in respect of the said penalties and interest as claimed by KPC.
13. On the contention that the parties had recorded a Consent dated 25th September 2023 in HCCOMM E322 of 2019, stating that all claims related to the contract were fully settled once the consent terms were complied with, Zakhem has annexed proceedings of the court therein where DR. Mugambi J., on 2nd February 2024 held that this consent was withdrawn and that the consent was of no affect having been filed after the Notice of Withdrawal and that there existed no consent judgment that had been adopted by the court. In the foregoing, it is my finding and holding that the sum of Kshs. 485,000,000.00 remains due and payable by KPC to Zakhem as per the court's order of 6th January 2021 issued in *Zakhem International Construction Limited v Kenya Pipeline Company Limited*(supra).
14. Having found that KPC is indebted to Zakhem, it follows that the latter is entitled to attach the debt by way of garnishee proceedings. As stated, the Banks deposed on whether they are able to settle the debt owed by KPC. Equity Bank, the 1st garnishee, stated that it holds sufficient funds to satisfy the debt; NCBA stated that KPC has a closing balance of Kshs. 193,858,443.62 in its Kenya Shilling account and USD 1,345,209 in its US Dollar account therefore it cannot satisfy the entire debt; ABSA stated that it holds Kshs. 883,479.00 and therefore incapable of satisfying the entire debt; Citibank stated that it holds Kshs. 66,963,188.57 in KPC's Kenya Shilling account and USD 2,489,941.66 in its US Dollar account whereas Co-operative Bank states that the accounts cited by Zakhem are incorrect. As Equity is the only Bank that has demonstrated that it holds sufficient funds to satisfy the debt, I find that it will be appropriate to issue a garnishee order against KPC's account held by it and discharge the other banks from these proceedings. This discharge is on condition that the amount has been fully settled by the Equity Bank,



Conclusion and Disposition

15. In the upshot, I now make the following final orders:

- a. A Garnishee Order Absolute in respect of the Judgment Debtor's account number 056xxxxxx234 held at Equity Bank Limited is hereby issued and the Garnishee is directed to pay the Applicant Kshs. 485,000,000.00 to be remitted to its Advocates' bank account number 55030160006446, UBA Kenya Bank Limited, Upperhill Branch.
- b. The Garnishee Banks are hereby discharged it from this proceedings upon confirmation that Equity Bank Limited has fully settled the Kshs. 485,000,000.00 from the Accounts of KPC held by it. Costs assessed at Kshs. 30,000.00 are payable by the Respondent to Equity Bank, NCBA Bank, Citibank, Co-operative Bank and ABSA Bank.
- c. The Respondent shall also pay the costs of this application to the Applicant assessed at Kshs. 30,000.00.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF JUNE 2025

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J.W.W. MONGARE

JUDGE

In the presence of:-

1. Ms. Asli Osman for the Applicant/Plaintiff.
2. Mr. Kihara for the Respondent/Defendant.
3. Ms. Wangari for the 1st Garnishee- Equity Bank.
4. N/A for the 2nd Garnishee - Stanbic Bank.
5. Mr. Gitau for the 3rd Garnishee-KCB Bank.
6. Mr. Gichangi for the 4th Garnishee- NCBA Bank.
7. Mr. Lawson Ondieki for the 5th Garnishee – Citibank.
8. Ms. Kemigicha for the 6th Garnishee- Cooperative Bank.
9. Mr. Olunga for the 7th Garnishee- ABSA.
10. Amos - Court Assistant

