



**CHARTERED INSTITUTE OF ARBITRATORS KENYA BRANCH LIMITED
SUMMARY CASE LAW**

**MISC. APPLICATION NO. E 453 OF 2019
CM CONSTRUCTION (E.A) LIMITED VS NINE SISTERS LIMITED**

FACTS

The Applicant/ Decree Holder obtained judgment against the Respondent/Judgment Debtor. The Judgment Debtor failed to settle the judgment thus precipitated the filing of an application dated 27th August, 2020 seeking Garnishee Order Nisi against the Garnishee(Co-operative Bank of Kenya, Ukulima Branch). The Decree holder in the application sought to attach Account No. 01129110775100 domiciled at Co-operative Bank of Kenya, Ukulima Branch. The Garnishee however filed a Replying Affidavit indicating that the attached account was inactive and that it belongs to Maina Wanjigi Secondary School, and not the Judgment Debtor. An issue arose as to who should bear the costs of the application dated 27th August,2020 , being the subject of this ruling. The Applicant and the Respondent both failed to agree on who should pay the costs to the Garnishee and the Court directed parties to canvass the issue by way of written submissions.

The Judgment Debtor and the Garnishee submitted that the Decree Holder should bear the costs of the application as it did not conduct due diligence to establish the real owner of the attached account before filing the Garnishee Proceedings. The Applicant on the other hand submitted that it acted in honest belief that the account belonged to the Judgment Debtor.

ISSUE FOR DETERMINATION

Who should bear the costs of the application dated 27th August, 2020?

RULE OF LAW

The Civil Procedure Act, Section 27(1).

ORDER

The Court ordered the Garnishee's costs to be paid by the Applicant and the Judgment Debtor on a 50/50 basis.

RATIONALE

The Court's finding that justice will require the Applicant and the Judgment Debtor to share the Garnishee's costs equally was guided by the case of *Republic v Medical Practitioners and Dentists Board and 3 others Ex parte Kenya Hospital Association* (2014) Eklr. The Court stated that the Garnishee Proceedings could have been averted if the Judgment Debtor settled the decretal sum in time as agreed. In addition to this, the Applicant was obligated to confirm particulars of the Judgment Debtor's accounts before initiating the garnishee proceedings.