



**Republic v Governor Nairobi County Government & 2 others; Salima Enterprises Limited (Exparte Applicant); Co-operative Bank of Kenya Limited & another (Garnishee) (Judicial Review 309 of 2015) [2024] KEHC 14699 (KLR) (Judicial Review) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14699 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW 309 OF 2015  
JM CHIGITI, J  
NOVEMBER 25, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE GOVERNOR NAIROBI COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY AND ECONOMIC PLANNING-NAIROBI  
COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF ACCOUNTING OFFICER NAIROBI COUNTY  
GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**SALIMA ENTERPRISES LIMITED ..... EXPARTE APPLICANT**

**AND**

**CO-OPERATIVE BANK OF KENYA LIMITED ..... GARNISHEE**

**EQUITY BANK LIMITED ..... GARNISHEE**

**RULING**

1. The application that is before me is dated 25<sup>th</sup> June 2024 wherein The applicant seeks the following orders;

A. Spent.



- B. THAT pending the hearing and determination of this application inter-partes this Honourable Court be pleased to issue a garnishee order nisi against 1<sup>st</sup>Garnishee Bank Co-operative Bank of Kenya Limited in respect of account numbers 01141709xxxxxx,011412323xxxxxx, 02128232xxxxxx, 011412323xxxxxx, 01141232xxxxxx, 011432012xxxxxx held at various branches of the bank, 2<sup>nd</sup> Garnishee Bank Equity Bank Limited in respect of account number 17702799xxxxxx held at Parliament Branch or any Branch, and any other account of the Respondent Nairobi County Government held in any of the garnishee banks directing all monies belonging to the Respondent/Judgment debtor in any of said accounts be attached to answer the judgment and decree of the court herein granted on 7<sup>th</sup> June 2016 for the amount of Kshs.1,098,000,000/= . which remains unsatisfied.
- C. That at the interpartes hearing or further hearing of this application the garnishee order nisi in prayer 2 above be made absolute and the monies attached in full satisfaction of the decree or part thereof be released to the decree holder advocates through their account number 2043574062 in the names of Kinyanjui, Kirimi & Co. Advocates held at ABSA Bank Limited, Sarit Branch.
- D. That the court be pleased to make such other consequential orders as are necessary for the execution of the decree.
- E. That costs of this application be provided for.
2. In support of the application Hanif Gulam through his supporting affidavit argues that a judgment was entered in favour of the decree holder in 2014 under NRB ELC 1144 OF 2013 and the decree holder commenced judicial review execution proceedings in this matter where vide a judgment delivered on 7<sup>th</sup> June 2016 by Justice Odunga orders of mandamus were issued.
3. He depones that efforts by the decree holder to execute the decree have largely been unsuccessful due to immense frustrations by the Respondents' tactics.
4. He argues further that in compromise of a previous garnishee application, the Respondent County Government entered into a consent on 9<sup>th</sup> January, 2018 and agreed to pay the sum of Ksh 600 Million within 21 days but which they did not pay up at all.
5. Consequently, the decree holder took out warrants of arrests against the Governor, Chief Accounting Office and the Minister for Finance and Economic Planning but has been extremely frustrated in any attempt to arrest either of them.
6. He argues that numerous efforts to arrest the Respondents have been completely unsuccessful and even efforts to call upon the Inspector General of Police to aid in the arrest have been unfruitful and letters by its advocates seeking to pursue payment have fallen on deaf ears. The amount outstanding is Kshs 1,098,000,000.00.
7. Reliance is placed in the case of High Court Commercial Case No E411 of 2023 in ABSA Bank Kenya PLC v Kenya Deposit Insurance Corporation where found that Section 21 of the Government Proceedings Act, which bars execution against the Government was unconstitutional and termed it a relic of colonial history. Analysis and determination;
8. The Court of Appeal's holding in Civil Appeal Number E290 of 2023, Five Star Agencies Ltd v National Land Commission and National Bank of Kenya dismissed the action to garnish the National Land Commission's accounts, holding that as a government body, the procedure to be followed in enforcing a judgment debt against the Government is through the procedure set out in Section 21 of



the Government Proceedings Act. Under Section 21, an elaborate procedure is set out through which a successful litigant can enforce judgment against the Government.

9. The applicant took out warrants of arrests against the Governor, Chief Accounting Office and the Minister for Finance and Economic Planning which it argues have been extremely frustrated in all the attempts to arrest either of them.
10. The applicant argues that efforts to call upon the Inspector General of Police to aid in the arrest have been unfruitful.
11. It is this court's finding that the Applicant did not furnish the court with any evidence to demonstrate the efforts made towards effecting the arrests and how they were frustrated by the judgment debtors.
12. The least that the applicant would have done is to furnish the court with an affidavit of attempted service. None was presented to the court by the Applicant as a result of which the court is not satisfied that there were attempts to execute the warrants of arrest as alleged.
13. The argument that numerous efforts to arrest the Respondents have been completely unsuccessful and even efforts to call upon the Inspector General of Police to aid in the arrest have been unfruitful is unsupported and the same remain unsubstantiated. The Applicant has not tendered any evidence to show that it sought orders from this court for the assistance to arrest the Respondents through the Inspector general of police.
14. The Black's Law Dictionary, (9<sup>th</sup> Edition, 2009) at page 1535 defines 'the standard of proof' as '[t]he degree or level of proof demanded in a specific case in order for a party to succeed.'
15. Section 107(1) of the Evidence Act (Cap 80) provides: that Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."
16. The Applicant did not furnish the court with evidence to demonstrate or to prove the so-called extreme frustration in arresting even one of the Judgment debtors' officers.
17. The decree holder has not exhausted the avenues to recover the debt under Order 21 and 53 of The Civil Procedure Rules.
18. This court cannot allow the application without being furnished with sufficient evidence.

**Disposition;**

19. The Applicant has not made out a case for the grant of the orders sought.

Order:

The application is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY 2024.**

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**J. CHIGITI (SC)**

**JUDGE**

