



Vekaria v Lagat & 3 others; Lagat & 3 others (Defendant) (Environment & Land Case 287 of 2012) [2023] KEELC 16990 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16990 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 287 OF 2012**

**EO OBAGA, J
APRIL 27, 2023**

BETWEEN

RAMJI D VEKARIA RESPONDENT

AND

NATHANIEL KIPTALAM LAGAT 1ST APPLICANT

SAMWEL KINGORI MWANGI 2ND APPLICANT

NATIONAL LAND COMMISSION 3RD APPLICANT

UASIN GISHU, DISTRICT LAND REGISTRAR 4TH APPLICANT

AND

NATHANIEL KIPTALAM LAGAT DEFENDANT

SAMWEL KINGORI MWANGI DEFENDANT

NATIONAL LAND COMMISSION DEFENDANT

UASIN GISHU, DISTRICT LAND REGISTRAR DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated December 19, 2022 in which the 3rd defendant/ applicant seeks the following orders: -
 1. Spent
 2. That the court be pleased to set aside and quash warrant of attachment dated October 26, 2022 and subsequent proclamation by Eshikhoni Auctioneers attaching property belonging to the applicant.



3. That the execution proceedings to enforce the costs awarded to the plaintiff/respondent be declared a nullity.
4. That an order be issued to set aside and recall the warrant of attachment and sale for the same are irregular.
5. That the plaintiff/respondent do bear the costs of the auctioneers and the costs of this application.

Background;

2. The plaintiff/respondent had sued the applicant together with three other defendants regarding his property known as Eldoret Municipality Block 15/1816 which had been fraudulently registered in the name of the 1st defendant who later sold it to the 2nd defendant. In a judgement delivered on March 18, 2022, the respondent's claim succeeded. he was given costs. The respondent proceeded to tax his bill of costs at Kshs 6,291, 115/=
3. The respondent then took out warrant of attachment and proceeded to the applicant's regional office at Eldoret where the auctioneers proclaimed the applicant's movable properties. This is what prompted the applicant to file the present application.

Applicant's Contention;

4. The applicant contends that it is a government entity and as per the provisions of the [Government Proceedings Act](#), government is defined to include all agencies of government and as such, there can be no attachment of the applicant's property.
5. The applicant contends that its assets cannot be attached and that the only means through which the respondent can have its costs is through filing judicial review proceedings to compel the applicant to pay the costs.
6. The applicant therefore argues that the execution proceedings by the respondent are irregular as it offends provisions of the [Government Proceedings Act](#) in relation to execution proceedings.

Respondent's Contention;

7. The applicant's application was opposed by the respondent based on a replying affidavit sworn on January 9, 2023. The respondent contends that under article 253 of the [Constitution](#), a constitutional commission is a body corporate with perpetual succession and a seal and is capable of suing or being sued in its corporate name. This being the case, the applicant is an independent body with separate juridical identity which is separate from government and therefore not subject to the provisions of the [Government Proceedings Act](#).
8. The respondent further argues that as the applicant is not represented by the Attorney General, it is therefore not government or an entity associated with government.

Analysis And Determination

9. The application was argued orally. Ms Akello for the applicant relied on article 260 of the [Constitution](#), section 3(1) of the [Interpretation and General Provisions Act](#) cap 2 and section 21(4) of the [Government Proceedings Act](#) as read together with order 29(2) of the [Civil Procedure Rules](#).
10. The applicant's counsel also relied on the case of [Okiya Okioti Omtatah & another v Attorney General & 7 others](#) [2013] eKLR and [Association of Retirement Benefits Scheme v Attorney General](#) [2017]



eKLR. In the latter case, the Court of Appeal set out the criteria for determining what constitutes government and in the former case, Justice Lenaola (as he then was) found that government included independent commissions.

11. Mr Aseso submitted that under article 253 of the Constitution, independent commissions are bodies which can sue and be sued and they are not therefore subject to the Government Proceedings Act and that as they are not represented by the Attorney General, they are not part of the government. He relied on the case of Professor Tom Ojienda v National Land Commission & another [2019] eKLR where justice Sewe held that the National Land Commission was not part of the government and therefore not subject to the provisions of the Government Proceedings Act as relates to execution of decrees and costs.
12. Mr Aseso further argued that the National Land Commission controls its own funds and is therefore not subject to the Government Proceedings Act.
13. I have considered the authorities and provisions of the Constitution as well as the sections of the acts of Parliament cited. In the case of Retirement Benefits Scheme (Supra), the Court of Appeal while dealing with what constitutes public entity resorted to section 3(1) of the Interpretations and General Provisions Act which defines a public body as the government, any department, institution or undertaking thereof or a county government or any authority, board, commission, committee or other body, whether paid or unpaid, which is invested with or is performing, whether permanently or temporarily, functions of a public nature.
14. The judges of the Court of Appeal agreed with the interpretation of a public entity which was given by Justice Onguto in Githunguri Dairy Farmers Co-operative Society Limited v Attorney General & 2 others [2016] eKLR the judge stated that the phrase public entity in article 227 of the Constitution should receive an extended meaning and not the restricted interpretation ascribed to public office or public officers under article 260 of the Constitution. The phrase public entity under article 227 of the Constitution should include statutory bodies established by statute but managed and maintained privately, such as public universities and professional societies, all bodies financially supported by the state and operating in close cooperation with state authorities and also private bodies fulfilling key functions under state supervision.
15. The applicant fits into what is called a public entity and therefore its assets cannot be subject to attachment. The fact that the applicant is not ordinarily represented by the Attorney General is not a ground to categorize it as not being a government agency or a body closely associated with government.
16. The applicant draws its funds from the government and its funds are audited by the government and it closely works with the national government and county governments whose assets cannot be attached. I therefore find that the notice of motion dated December 19, 2022 is well founded. I allow it in terms of prayers (2) (3) (4) and (5).

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF APRIL, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Aseso for Respondent

Ms. Obino for Ms. Akello for Applicant



Court Assistant –Laban

E. O. OBAGA

JUDGE

27th APRIL, 2023

