



REPUBLIC OF KENYA



**Postal Corporation of Kenya v Ndarua & 4 others (Civil Case 1055 of 2000)
[2022] KEHC 13281 (KLR) (Commercial and Tax) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 1055 OF 2000
DAS MAJANJA, J
SEPTEMBER 30, 2022**

BETWEEN

POSTAL CORPORATION OF KENYA PLAINTIFF

AND

PAUL G NDARUA 1ST DEFENDANT

**DANIEL GATHAIYA AND KEVIN O. BYRNE T/A GATHAIYA AND
PARTNERS 2ND DEFENDANT**

**MICHAEL MWENDWA NGILU T/ANGILU AND ASSOCIATES 3RD
DEFENDANT**

**J. N NYAMBANE & S. O MAGANE T/A NYAMBANE AND MAGANE
ASSOCIATES 4TH DEFENDANT**

L. W. KUNGU T/A EMKA DESIGNERS 5TH DEFENDANT

RULING

1. The application for consideration before the court is the plaintiff's notice of motion dated April 11, 2022 seeking an order that the warrants of attachment and sale issued by this court on March 30, 2022 be set aside. The application is grounded on the affidavit for the plaintiff's Corporation Secretary, Julius Opini, sworn on April 11, 2022. Since the application only concerns the 1st defendant ("the defendant"), it is opposed through the affidavit of its advocate, Bonface Mapesa, sworn on April 19, 2022.
2. The singular question raised by the plaintiff is whether execution against it by way of attachment and sale of moveable assets can proceed in view of the provisions of section 25 of the [Postal Corporation Act](#), No 3 of 1998 which states as follows:



25. Restriction on execution against property of corporation
- (1) Notwithstanding anything to the contrary in any written law—
- (a) where any judgement or order has been obtained against the corporation, no execution or attachment, or process in the nature thereof, shall be issued against the corporation or against any property of the corporation; but the Postmaster General shall, without delay, cause to be paid out of the revenue of the corporation such amounts as may, by the judgement or order, be awarded against the corporation to the person entitled thereto;
- (c) no property of the corporation shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Postmaster General.
3. The defendant states that section 25 aforesaid obliges the Postmaster General to promptly pay the judgment debt which it has not done and has not put before the court any indication or proposal of how it intends to pay the amount. The defendant rejects the argument that the legislature intended to immunize the plaintiff from execution, rather it imposes a duty on the Postmaster to settle the decretal sum.
4. The provisions of the law are straight forward. The plaintiff's assets are protected from attachment and sale except with permission of the Postmaster General. However, as the counsel for the defendant points out, an affirmative statutory duty is placed on the Postmaster General to act without delay in setting any judgment debt. While the court is obliged to enforce the dictates of the statute and set aside the warrants of attachment and sale, it cannot leave a decree holder without a remedy. To do would amount to violating the right of access of justice protected by article 48 of the Constitution. The Postmaster General must come to court and explain why it has not resolved the judgement debt despite the statutory duty cast upon it.
5. For the reasons I have set out above I make the following orders:
- a. The notice of motion dated April 11, 2022 is allowed and the warrants of attachment and sale issued by this court on March 30, 2022 be and are hereby set aside.
- b. Summons shall issue to the Postmaster General of the Postal Corporation of Kenya to show cause why it has not settled the amount of Kshs 536,175.00 in accordance with the provisions of section 25 of the Postal Corporation Act on November 4, 2022.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2022.

D. S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango

Mr Obuya instructed by TripleOKLaw LLP Advocates for the plaintiff

Mr Mapesa instructed by Kilonzo and Company Advocates for the 1st defendant.

