



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 113 OF 2006

THE COUNTY GOVERNMENT

OF ISIOLOPLAINTIFF/APPLICANT

VERSUS

SHARIFF IBRAHIM FARAHDEFENDANT

RULING

1. This matter relates to a Notice of Motion dated 18/9/2019 brought under *Section 1A, 1B, 3A & 63(e) of the Civil Procedure Act, Order 53 Rule 1 and Rule 2, Order 22 and Order 29 Rule 2 (2) (b) of the Civil Procedure Rules, Section 21 (4) of the Government Proceedings Act CAP 40 Laws of Kenya and Articles, 1, 2, 10, 159, 174, 175, 176(1), 177(1), 178, 185 and Chapter 6 of the Constitution of Kenya 2010*. The applicant/plaintiff seeks amongst other orders the setting aside of the warrant of attachment of movable property in execution of a decree for money and subsequent proclamation by Jocet Auctioneers attaching property belonging to the county government of Isiolo. Further, the applicant seeks for a permanent injunction restraining the defendant/decree holder from repossessing, immobilizing, grounding and or in any way interfering with all the movable assets of the applicant.

2. The grounds in support of the application are set forth in the body of the application and in the supporting affidavit of Dr. Ahmed Galgalo Guyo, County Secretary of Isiolo County Government, sworn on 18th September 2019. It is argued for the applicant that the mode of execution of the decree by the decree holder is illegal, unlawful and not tenable. This is because execution by way of attachment of the county government's property is not available and is not sustainable in law. Reference was made to the provisions of *Order 29 Rule 2 (2) (b) of the Civil Procedure Rules 2010* which prevents the court from making any order of attachment of assets against the government. The county government of Isiolo is therefore protected under the Government Proceedings Act. Thus, the warrants of attachment issued to Jocet Auctioneers are misconceived and misleading and should be cancelled.

3. The application was opposed by the defendant/respondent through his replying affidavit sworn on 27/9/2019, where he has deponed that the applicant who is indebted to him has ignored to pay the amount due. He contends that the attachment and execution is legal and not prohibited by the law, since the government referred to under *Order 29 of the Civil Procedure Rules* and *The Government Proceedings Act* does not include county government.

4. The issue for determination is *whether the mode of attachment is lawful in so far as the same is against a county government*.

5. *Order 29 Rule (2) (c) of the Civil Procedure Rules 2010* stipulates that no order is to be made concerning attachment of debts against the government. The procedure with regard to executing decrees against the government is stipulated in *the Government Proceedings Act. Section 21* specifies the procedure to follow as to satisfy orders against the government. *Sub section (4)* states:

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

6. Does this provision apply to county governments? *The Government Proceedings Amendment Act No. 35 of 2015* provides as follows;

“Section 21 of the Government Proceedings Act is amended by inserting the following new sub-section immediately after sub-section (4)—

(5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government (emphasize added), or in any proceedings in connection with any arbitration in which a county government is a party”.

7. From the foregoing it is crystal clear that the county government is included in the application of the Government Proceedings Act.

8. Further, **Article 6 (2) of the Constitution of Kenya** provides that our government is at national and county levels which are distinct and interdependent of each other. Besides, they work in cooperation as stated under **Article 189**. Therefore, there is one government which works at two levels with each level complementing each other and working in unity.

9. Since a party is barred from executing against the government, the decree holder has the option of instituting judicial review proceedings and seek for an order of mandamus. This was so stated in the case of **Republic v Attorney General & another Exparte Stephen Wanyee Roki [2016] eKLR** where Odunga J held that:

“It follows that the only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus compelling the County Government to settle the decree in question.”

10. The authority cited by the applicant **Kajiado Misc. App. No. 6 of 2018, R. vs. The Principal Magistrate & Court at Mavoko & 3 Others** is in tandem with the above mentioned proposition.

11. Accordingly, I am of the view that the court is prevented from making an order of attachment of moveable property belonging to the applicant in execution of the decree against it. I therefore conclude that the application is meritorious and the same is allowed but each party to bear their own costs of the application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 27TH NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muriuki for applicant/plaintiff

Otieno M/s for defendant/respondent

HON. LUCY. N. MBUGUA

ELC JUDGE