



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISUMU**  
**MISC.APPLICATION NO.96 OF 2011**

**BETWEEN**

**KEROSI ONDIEKI & COMPANY**

**ADVOCATES.....APPLICANT/ADVOCATES**

**AND**

**TRANSMARA COUNTY COUNCIL..... RESPONDENT/CLIENT**

**RULING**

1. The case concerns the issue of fees between the advocates and client. At any rate on 8<sup>th</sup> December 2011, judgment was entered for the advocates against the respondent for the sum of Kshs. 18,793,555/- and a decree issued.
2. The advocates then proceeded with execution by way of attachment and sale of the respondent's moveable properties. In response and in order to forestall further execution, the respondent filed the Notice of Motion dated 17<sup>th</sup> April 2015. This motion is two pronged. It seeks a stay of execution on the ground that the advocates cannot levy execution against its property as the County government is part of the Government within the meaning of the ***Government Proceedings Act (Chapter 40 of the Laws of Kenya)*** hence its property cannot be attached. It also prays for an order that it has settled the decretal sum by making various payments.
3. The application is opposed through the affidavit of Kerosi Ondieki sworn on 27<sup>th</sup> April 2015. He contends that the County government does not enjoy the protection of against attachment and sale of its moveable properties afforded by the ***Government Proceedings Act*** as the ***Act*** only applies to civil claims brought against the National government represented by the Attorney General. He also avers that although the advocates were paid Kshs. 19,893,535/- as stated by the respondent, the money was in respect of instructions in other matters handled on its behalf.
4. As to whether the County government is protected from execution by way of attachment and sale of its moveable properties, the law is now been settled by an amendment to **section 21** of the ***Government Proceedings Act*** by the ***Government Proceedings (Amendment) Act, 2015, Act No. 35 of 2015***. **Section 21(5)** of the ***Act*** now applies the shield against attachment of moveable assets by a judgment creditor to County government. In the circumstances, I must hold that the execution by of attachment and sale of moveable properties cannot be levied against the respondent hence the warrants of attachment herein are discharged.

5. The advocates do not deny that they received certain payments from the respondent. The issue is whether the sums received were in satisfaction of decretal sum. Regrettably the firm has not sufficiently particularized the payments it received and for what purpose in its response in order to demonstrate that the judgment debt has not been satisfied. Further this vague and bland assertion denies the respondent an opportunity to fully respond, to the advocates contention. Mr Chelang'a, counsel for the respondent, informed the court that the respondent had filed a suit, being ***Naivasha HCCC No.1 of 2016(OS)***, in which it seeks an account from the advocates for services rendered in amongst other cases the subject of the present case. In my view, it may be through a proper account that the court may hold that there is accord and satisfaction.

6. The advocates filed a Notice of Motion dated 18<sup>th</sup> April 2016 seeking to hold the respondent's officer's responsible for failure to pay the decretal sum on the ground that the officer had violated the advocates' rights to fair administrative action protected by **Article 47(1)** of the Constitution. For the reasons I have set out above, the Notice of Motion to mulct the respondent's officers for failing to pay the advocates is untenable and is dismissed.

7. In summary, I make the following orders;

- (a)The warrants of attachment and sale of the respondent's properties issued herein are discharged.
- (b)The proceedings herein are stayed pending the hearing and determination of **Naivasha HCCC No. 1 of 2016 (OS)**.
- (c)The Notice of Motion dated 18<sup>th</sup> April 2016 is dismissed.
- (d)Each party to bear its own costs.

**DATED and DELIVERED at KISUMU this 31<sup>st</sup> day of October 2016.**

**D. S. MAJANJA**

**JUDGE**

Mr Chelang'a instructed by Chelanga and Associates Advocates for the applicant/client.

Mr Omondi Okoyo instructed by Bosire Gichana and Company Advocates for the respondent/advocates.