



PJ Kakad Advocates LLP v National Bank of Kenya Limited & another (Environment and Land Judicial Review Case 16 of 2017) [2025] KEELC 5978 (KLR) (4 September 2025) (Ruling)

Neutral citation: [2025] KEELC 5978 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 16 OF 2017
CG MBOGO, J
SEPTEMBER 4, 2025**

BETWEEN

PJ KAKAD ADVOCATES LLP APPLICANT

AND

THE NATIONAL BANK OF KENYA LIMITED GARNISHEE

AND

THE NATIONAL LAND COMMISSION JUDGMENT DEBTOR

RULING

1. Before me is the notice of motion dated 19th December 2024 filed by the applicant, and it is expressed to be brought under Order 23 Rule 1 and 2 of the Civil Procedure Rules and Sections 1A,1B and 3A of the Civil Procedure Act seeking the following orders:-

1. Spent.
2. That all funds now held or thereafter held by the National Bank of Kenya, Hill Plaza Branch, Nairobi Account Number XXXXXXXXXXXXXXXX(REFXXXXXXXXXX) and XXXXXXXXXXXXXXXX (REF XXXXXXXXXXXX) and are due and owing or is to be due and owing to the judgment debtor in this suit, be attached to answer a decree upon a certificate of taxation issued by the court on 25th April, 2023 for the sum of Kshs. 2,043,555/- and which decree the respondent has failed and or neglected to satisfy.
3. That the garnishee should attend before this court to show cause why it should not pay and or deposit all monies due and owing to the judgment debtor with the applicant in satisfaction of the decree and costs of the garnishee proceedings.
4. That costs of this application be provided for.



2. The application is premised on the grounds on its face. The application is further supported by the affidavit of the Pravinchandra Jamnadas Kakad, the learned counsel for Arvind Kanji Patel sworn on even date. The learned counsel deposed that they obtained a certificate of taxation that was issued on 25th April, 2023 for the sum of Kshs. 2,043,555 against the judgment debtors which was duly served upon the same on 27th April, 2023 and 10th July, 2023. The learned counsel further deposed that despite the service, the respondent has neglected to pay the said amounts and it has come to their attention that the respondent operates Account Numbers XXXXXXXXXXXXXXXX (REFXXXXXXXXXXXXX) and XXXXXXXXXXXXXXXX (REF XXXXXXXXXXXXXXXX) at the National Bank of Kenya Limited, Hill Plaza Branch, the garnishee bank herein.
3. The learned counsel further deposed that they stand to suffer immensely since there are no other means of enforcing payments by the respondents for the amounts which are owing for over four years.
4. The respondent filed a preliminary objection dated 15th January, 2025 challenging the application on the following grounds: -
 - i. The application contravenes the provisions of Section 21 (4) of the [Government Proceedings Act](#).
 - ii. The application contravenes the provisions of Order 29 (2) of the Civil Proceedings Act.
 - iii. The applicant has not exhausted the other remedies available to it before filing this application.
5. The respondent also filed a replying affidavit sworn on 20th January, 2025 by Brian Ikol, the Director Legal Affairs. The respondent admitted to owing the applicant the said amounts. However, they have not been furnished with the requisite funds by the National Treasury to pay the amounts owing. The respondent deposed that the funds held in the said accounts do not belong to the commission and are not used to run its day to day affairs. He deposed that the account holds funds deposited by acquiring bodies for the compulsory acquisition of their land by the government.
6. The respondent further deposed that since it falls under the definition of government, it is exempt from proceedings like the instant application, and that it is thus defective as it breached the provisions of Order 29 Rule 2 (2) of the Civil Procedure Rules and Section 21 (4) of the [Government Proceedings Act](#). Further, that the applicant has not demonstrated that it has exhausted all the remedies available to it before filing the application to attach the money held in the two accounts.
7. The applicant filed a further affidavit sworn on 7th February, 2025. The applicant deposed that the respondent is an independent commission which is a separate juridical entity with a seal and therefore cannot claim protection under the [Government Proceedings Act](#) and the Civil Procedure Rules. The applicant further deposed that there is no evidence that the sums in the account are held for compulsory acquisition.
8. The application and the preliminary objection were canvassed by way of written submissions. The applicant filed its written submissions dated 10th February 2025 where it raised the following issues for determination:-
 - a. Whether there is a valid judgment against the respondent.
 - b. Whether there has been failure by the respondent to satisfy the claim.
 - c. Whether there is a bar to the issuance of garnishee order absolute.
 - d. Whether there is any other mode of execution against the respondent.



- e. Justice and fairness in the matter.
9. On the first and second issues, the applicant submitted that it has proved the existence of a decree and that the respondent has not filed any document in the matter to confirm payment of the decretal sum. On the third and fourth issues, the applicant submitted that there is no proposal for the payment of the outstanding amounts. Further, that whereas the *Government Proceedings Act* was amended to include County Governments, the same was not extended to independent commissions such as the respondent. To buttress on this issue, the applicant relied on the case of *Ikon Prints Media Company Limited v Kenya National Highways Authority & 2 Others* [2015] eKLR.
10. The respondent filed its written submissions dated 11th March, 2025 where it raised three issues for determination as listed below:-
- i. Whether the *Government Proceedings Act* applies to the commission/ judgment debtor.
 - ii. Whether the applicant has exhausted other available remedies.
 - iii. Whether the application should succeed.
11. On the first issue, and while relying on the cases of *Retirement Benefits Scheme v Attorney General & 3 Others* [2017] eKLR, and *Okiya Omtata Okoiti & Another v Attorney General & 7 Others* [2013] eKLR, the respondent submitted that pursuant to Article 249 (3) of *the Constitution* of Kenya and Order 29 Rule 2 (2) of the Civil Procedure Rules, the statutory provisions apply to it and provides protection to its assets thus it is prohibited by law.
12. On the second issue, the respondent submitted that the applicant has not exhausted the remedy of judicial review orders of mandamus, and that because it has not done so, the applicant has not exhausted the remedies available before resorting to the drastic measure of filing an application to attach its account. Reliance was placed in the cases of *R v National Land Commission ex parte Sceneries Ltd ELC JR E010 of 2021* and *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 Others* [1997] eKLR.
13. On the third issue, the respondent submitted that the accounts are special compensation accounts contemplated under Section 115 (2) of the *Land Act* which were opened for the sole purpose of receiving and making payments to persons whose parcels have been compulsorily acquired by the National or County Governments. The respondent relied on the case of *Prof Tom Ojienda & Associates and National Land Commission, Miscellaneous Application No. 29B of 2016*.
14. I have considered the application, replies thereof, the preliminary objection and the written submissions filed by the respective parties herein. The issue for determination is whether the orders sought in the application should issue.
15. It is not in dispute that there exists a certificate of taxation dated 25th April, 2023. The respondent admits to owing Kshs. 2,043,555/- to the applicant herein. However, it contends that the monies held in the accounts do not belong to the commission but the acquiring bodies for the payment of compensation where there is compulsory acquisition of land. The respondent contended that the monies held in the accounts are held in trust for citizens and are not available for any other purpose. The garnishee did not file any response to the application. On this issue, and in the absence of any response by the garnishee, I am satisfied that the garnishee is the custodian of the accounts owned by the respondent.
16. The arguments advanced by the respondent in my view speaks to a party that is attempting to evade responsibility. While admitting owing the said amounts, it cannot be said that the monies in the said



accounts are held in trust for Kenyans. A debt due that is owing must be paid. In the case of Nyandoro & Company Advocates v National Water Conservation & Pipeline Corporation; Kenya Commercial Bank Group Limited (Garnishee) [2021] KEHC 13342 (KLR), it was held: -

“ 13. A litigant is entitled to reap the fruits of his successful litigation. As a result, where a judgment-debtor fails to comply with the terms of a judgment, the judgment-creditor is entitled to enforce such judgment by adopting a suitable procedure provided under the law. By the process of garnishee, the court has power to order the garnishee to pay directly the sums it owes the judgment-debtor to the garnishor or so much of it as may be sufficient to satisfy the amount of the judgment and the cost of the garnishee proceedings. In this regard, the provisions of Order 23 Rule 4 provide with sufficient clarity what this court should do where the Garnishee admits the debt as in this case.”

17. From the above, I find merit in the notice of motion dated 19th December, 2024, and it is hereby allowed as follows:-

- i. It is hereby ordered that all funds now held by the National Bank of Kenya, Hill Plaza Branch, Nairobi Account Number XXXXXXXXXXXXXXXX(REFXXXXXXXXXXXX) and XXXXXXXXXXXXXXXX (REF XXXXXXXXXXXXXXX) and are due and owing to the judgment creditor/ applicant in this suit, be attached to answer a decree upon a certificate of taxation issued by the court on 25th April, 2023 for the sum of Kshs. 2,043,555/- and which decree the respondent has failed and or neglected to satisfy.
- ii. The garnishee is hereby ordered to attend court on 05/11/2025 to show cause why it should not pay and or deposit all monies due and owing to the judgment creditor/applicant in satisfaction of the decree and costs of the garnishee proceedings.
- iii. The applicant is entitled to costs of this application.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DAY OF SEPTEMBER, 2025.

HON. MBOGO C.G.

JUDGE

04/09/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Koki for the Advocate/Applicant

Ms. Masinde for the Judgment debtor/Respondent

