Republic v Principal Secretary, in Charge of the Ministry of Agriculture & another; RG (Minor Suing Through His Mother and Next Friend EW) (Exparte Applicant) (Judicial Review 3 of 2018) [2025] KEHC 4715 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4715 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYAHURURU

JUDICIAL REVIEW 3 OF 2018

LN MUTENDE, J

APRIL 7, 2025

IN THE MATTER OF AN APPLICATION BY RGW FOR AN ORDER OF MANDAMUS

-AND-

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT

IN THE MATTER OF NYAHURURU CHIEF MAGISTRATE'S COURT CASE NO. 367 OF 1997: RGW - VERSUS- DAVID NJOROGE, THE PERMANENT SECRETARY MINISTRY OF AGRICULTURE AND THE HON. ATTORNEY GENERAL

BETWEEN

REPUBLIC ..... APPLICANT

AND

PRINCIPAL SECRETARY, IN CHARGE OF THE MINISTRY OF AGRICULTURE ..... 1ST RESPONDENT

ATTORNEY GENERAL ..... 2ND RESPONDENT

AND

RG (MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND EW) ..... EXPARTE APPLICANT

RULING

1. The Ex-Parte Applicant herein who was involved in a road accident in the year 1997 filed a Civil Suit in Nyahururu PMCC No. 367 of 1997 against the Respondents. The court found the 1st Respondent liable. It awarded damages and a decree and certificate were subsequently issued. The 1st Respondent was required to pay a total sum Kshs.424,407. The certificate of costs was duly served upon the 1st Respondent on 15th February, 2008, who disregarded the same.

2. On 16th February, 2018, leave was sought to initiate an order of mandamus to compel the 1st Respondent to liquidate the decree and certificate, costs and interest.

3. The order having been granted, a substantive motion was made, considered and allowed. The 1st Respondent was given 30 days within which to pay Kshs.427, 407/-. This was also ignored. Party to party costs were taxed at Kshs.112,185/- and a certificate issued. A further certificate was sent to the Government including interest from 22nd July, 2007 – 22nd April, 2024, the sum had accrued to Kshs.1,516,565/-.

4. The 1st Respondent was summoned to come to court and he disregarded the court summons. On 24th July, 2024, counsel for the 2nd Respondent appeared and offered to settle the matter. They were given time by the court but they didn't return on the scheduled date hence a warrant of arrest was issued against the 1st Respondent.

5. In the instant application, the 1st Respondent seeks the following orders;

    a. That the warrants of arrest issued on 24th September, 2024 against the 1st Respondent be lifted.

    b. That there be stay of execution of the ruling issued on 24th September, 2024.

6. The application was disposed through written submissions. It is urged by the 1st Respondent that the court had no jurisdiction in issuing the warrants of arrest dated 24th September, 2024, on the premise that the judgment issued in PMCC 367 of 1997 on 20th March, 2003 and the decree and certificate of costs thereto dated 22nd October, 2007, indicating a total of Kshs.424, 407/- due and owing from the 1st Respondent and costs and interest accrued now amounting to Kshs.1,516,565/- is exorbitant and unlawful as the accrual is statute barred by dint of Section 4(4) of the *Limitation of Actions Act*.

7. That the arrears ought to have been recovered last in 2009. That the Ex-Parte Applicant (Respondent) chose to file the Judicial Review in 2018, sixteen (16) years later hence the warrant of arrest ought to be lifted and orders of 24th September 2024, vacated as the then court lacked jurisdiction to issue orders. Reliance is placed on Rift Valley Agricultural Contractors Ltd v Kenya Wildlife Service [2021] KR where Matheka J stated that;

> " It is clear from this provision that the security is given by the appellant is for the performance of the decree that may ultimately be binding on the appellant. In this case the ultimate decree can only be discerned with effect from the date of the Judgment of the Supreme Court. Anything less would amount to denying the plaintiff the fruits of its judgment."

8. Further, that the payment voucher dated 13th September, 2018, for the decretal sum of Kshs.424,407/- had already been processed and awaits the Ex-Parte Applicant's submission of relevant documents for purposes of payment settlement of the same.

9. In response, the Ex-Parte Applicant argues that the court had requisite jurisdiction to issue warrants of arrest dated 24th September, 2024, against the 1st Respondent. He appreciates that jurisdiction flows from the *constitution* and legislation hence the court cannot arrogate itself of the same.

10. On the question of limitation of action as provided by Section 4(4) of the *Limitation of Actions Act*, it is argued that immediately after issuance of the decree and certificate of costs issued on 22nd October, 2007, in the sum of Kshs.424,207/-, the Ex-Parte Applicant sought to execute the decree by immediately serving the certificate of costs dated 15th February, 2008.

11. That Section 4(4) of the *Limitation of Actions Act* does not apply to the application dated 23rd April, 2024 for warrant of arrest to be issued against the 1st Respondent for what is contemplated is a new action. It does not cover execution commenced before the expiry of 6 years. Reliance is placed on Moses Kipkurui Bor v John Chirchir [2019] where the court stated that;

> " 9. In as much as the application herein was for execution of the decree and was filed before 12 years from the date of judgment lapsed, does it mean that the mere fact that it has been filed, without any step taken to prosecute it, would conclude that it is alive? Does it mean that such application can be left for an indefinite duration of time? I do not think so. My view of the matter is that if one files an application for vacant possession of land in execution of a decree, he must take steps to prosecute such application at the latest within 12 years of filing such application, or at least within this period of time, take steps towards prosecution of that application so that even if a decision is made outside the 12 years, this would not be because the application has remained unprosecuted for that duration of time. If such decree holder does not take steps to prosecute such application within 12 years of filing it, my view of the matter is that the application will be caught up by Section 4 (4) of the *Limitation of Actions Act*, and would be statute barred. It certainly could not be the intention of the law to have a party simply file an application for vacant possession and fail to prosecute it for an indefinite period of time, then at whatever time in the future, seek to now prosecute it. In matters of land, it should be appreciated that time starts running in favour of the occupant, who can claim adverse possession if 12 years lapse when his occupation is undisturbed. To me, failure to prosecute such application would be akin to allowing the possessor quiet occupation of the suit land, and after 12 years, any action which attempts to reclaim the suit land would be time barred."

12. And, in Koinange Investments and Development Company v Ian Kahio Ngethee & 3 Others [2015] where it was stated that;

> " An issue also arises as to whether Section 4(4) of the *Limitation of Actions Act* can apply where the execution process had been started even if completion comes after the statutory 12 year period. The court in Hudson Moffat Mbue v Settlement Fund Trustees & 3 Others (Supra) took the view that the process must be allowed to completed. The court therefore expressed itself thus on the issues;
>
> > " I hold the position therefore that the expression "An action may not be brought upon a judgment after the end of twelve years from the date on which judgment was delivered..... "means that unless an application has been brought

> for enforcement of the judgment and has been completed and/or the same has not been concluded by the time the 12 year, period expires no fresh action for enforcement of the judgment can be brought after the expiry of 12 years from the date of the delivery of the judgment."

13. On the criteria for grant of stay of execution, it is argued that based on the provision of Order 42(6)(2) of the Civil Procedure Rules, as read with Section 1A and B of the *Civil Procedure Act*, the 1st Respondent/Applicant has not demonstrated any sufficient cause/evidence to warrant a stay of execution as there is no appeal against the decree that is being sought to be executed and the 1st Respondent who has always acted in bad faith has never bothered to make a proposal on the mode of payment.

14. I have considered rival arguments, the application and affidavits in support and opposition and authorities cited. On the question of jurisdiction Section 4(4) of the Laws of *Limitation of Actions Act* provides that;

> An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

15. The provision of law concerns expiration of the timeline within which legal action must be initiated. Indeed, time affects one's legal rights to sue, strict adherence to time allows the court to do justice. In the instant matter, it was a question of an action being taken after the decree and certificate were drawn and subsequently when arrears on interest started accruing, when action should have been taken.

16. It is not in dispute that after entry of judgment in the matter there was an attempt to execute the decree within a period of five (5) years. This was before 12 years from the date of the judgment. The instant suit which resulted into the 1st Respondent being compelled to pay the decretal sum was filed in 2018 eleven years later and an order by Wendoh J is dated 31st May, 2018.

17. In arguing that this was 16 years later, the 1st Respondent faults the court for issuing a warrant of arrest against him.

18. In as much as I am called upon to consider whether this court has jurisdiction to determine the matter, guided by Section 4(4) of the Limitation of Actions Acts, it is worth noting that after the judgment in the instant case was delivered, where the Respondent was ordered to pay Kshs.424,407/- plus costs and interest at court rates from 22nd January, 2007 till payment in full, the 1st Respondent continued to ignore orders of the court. This is what resulted into the summons that were issued by Ndung'u J that were also disregarded. It was upon that basis that the learned Judge issued the warrant of arrest.

19. Indubitably, wheels of attempted execution process propelled by the Ex-Parte Applicant eventually started grinding out in an endeavor to get justice. This leads to the question of whether I am well placed to unsettle the order of this court? What is apparent is the fact of courts of concurrent jurisdiction having proceeded well aware of the provisions of Section 4(4) of the Law of Limitation of Actions Act. Therefore, being called upon to interpret the law would be unjust and unprocedural. The Appellate court would have been better placed to determine the issue.

20. From the foregoing, I find the application unwarranted. Accordingly, it is dismissed.

21. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF APRIL, 2025.

.....

L.N. MUTENDE

JUDGE