



**Oguna & another v Kenya Wildlife Service; Kcb Bank Ltd (Garnishee) (Judicial Review Miscellaneous Application E002 of 2024) [2025] KEHC 6074 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6074 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E002 OF 2024**

**DK KEMEL, J**

**MAY 16, 2025**

**BETWEEN**

**JOYCE ATIENO OGUNA & ANOTHER ..... APPLICANT**

**AND**

**KENYA WILDLIFE SERVICE ..... JUDGMENT DEBTOR**

**AND**

**KCB BANK LTD ..... GARNISHEE**

**RULING**

1. The Applicant herein filed an application vide a Notice of Motion dated 8<sup>th</sup> March 2025 wherein they sought the following prayers:
  1. Spent
  2. Spent
  3. KCB Bank Kenya Limited the said Garnishee to attend court to show cause why the said Garnishee should not pay the Ex Parte Applicants/decree holders the sum of Kshs5,276,500.00/= or its equivalent in Kenya shillings being the decretal amount and costs from the amount in KCB Bank Limited, Moi Avenue Branch, Account Number 11XXXXXX712.
  4. That this Honourable court does issue a Garnishee Order Absolute against the KCB Bank Kenya Limited – the Garnishee herein in respect to Moi Avenue Branch, Account Number 11XXXXXX712 ordering that all monies held to the credit of the Respondent/Judgment debtor be attached to settle and/or satisfy the Decree for Kshs5,276,500/= or its equivalent in Kenya shillings, being the decretal sum and costs, being the amount in respect of which judgment was entered in favour of the Decree Holder.



5. That the costs of this application be borne by the Respondent/judgment debtor.
2. The application is supported by the grounds set out thereunder and a supporting affidavit of the Applicants sworn on even date. The applicant's gravamen is inter alia; that this Honourable Court entered judgment for the fur Exparte Applicants on 7/2/2025 as against the Respondent/Judgment Debtor for a sum of Kshs5,000,000/=; that the Applicant/Decree holder was also awarded costs which were agreed at Kshs 276,500/=; that the decretal sum and costs remain unsatisfied to date despite the judgment debtor being aware of the existence of the decree; that the judgement debtor herein operates account No. 11XXXXX712 at KCB Bank Kenya Limited Moi Avenue Branch; that the decretal sum, interest and costs remain unsatisfied to date despite the judgement debtor being aware of the existence of the decree while interest continues to accrue; that the decree holder is apprehensive that the Judgement debtor may withdraw and/or move the funds held to its credit by the garnishee unless the orders sought herein are granted, hence frustrating the realization of the decree.
3. The application was opposed by the Garnishee whose Corporate Services Manager Joseph Wambugu swore an affidavit on 25/3/2025 wherein he averred inter alia; that the Garnishee is a duly licensed company carrying on banking business within the Republic of Kenya and regulated by the [Banking Act](#) Cap 488 Laws of Kenya; that the bank is guided by principles set out by the Central Bank Prudential Guidelines 2013 issued pursuant to the provisions of Section 33(4) of the [Banking Act](#) and which require the Garnishee herein to, among other things, know their customers by undertaking Customer Due Diligence (CDD) measures with several objectives including to understand and, as ma appropriate, obtain information on the purpose intended nature of the accounts held by the Garnishee; that the judgment debtor herein Kenya Wildlife Services is a body corporate established under the provisions of Section 6 of the [Wildlife Conservation and Management Act](#), Cap 376 of the Laws of Kenya, with its management thereof being under a Board of Trustees made up of, among other members, a chairperson appointed by the President, the Principal Secreatry in the state Department for the time being responsible for matters relating to wildlife or a designated representative, the Principal Secretary in the State Department for the time being responsible for finance or a designated representative, the Principal Secretary in the State Department responsible for matters relating to County Governments or a designated representative, the Inspector General of Police and the Director General of the Service; that pursuant to the further provisions of the said Act, the funds of the Service are stated to b derived form among other sources, such monies as may be approved and allocated to the Service by the National Assembly as part of the budget process. The service is therefore, for all intents and purposes, an agency of the National Government operating in the public sector, duly controlled and financed and such with its funds, budget and expenditure, including but not limited to settlement of money decrees being subject to Parliamentary control and approval as regulated by Section 32 of the [Government Proceedings Act](#), 40 Laws of Kenya; that he is aware that the Garnishee advocate on record, and that in view of the legal status of the judgment debtor herein, as highlighted above, satisfaction of orders against itself and execution proceedings in respect thereof can only be undertaken pursuant to provisions of Section 21 of the [Government Proceedings Act](#), Cap 40 Laws of Kenya, under which the Decree Holder herein would be required to institute judicial review proceedings and seek an order to compel the Chief Officer of the Service to settle the decree now sought to be enforced within a specified time. Should the amounts not be settled upon service of an appropriate certificate of costs against the Government in that regard, the decree holder is at liberty to apply for committal of the Chief Officer to jail for non-compliance with the courts order; that he was informed by the garnishee advocate on record that the Accounting Officer for the Government department concerned has the mandate to pay to persons entitled or to his advocate any amounts appearing in the certificate of order against Government to be due to him together with interest and should he fail to do so, ought to be cited inappropriate proceedings for contempt of court; that there is no indication whether any decree



issued by this court, certificate of costs or certificate of order against Government and demand for settlement have been served on the judgment debtor or the Attorney General in compliance with the [Government Proceedings Act](#) and that in the event of failure to comply, then contempt proceedings against the relevant officer would be the appropriate remedy and not attachment of accounts; that the Garnishee confirms that it owns the account for the relevant client which has available balance of Ksh17,306,460.24/=. Finally, that should the money be released without just cause, the Garnishee shall be prejudiced as it may be pursued by the Government for the amounts.

4. The application was canvassed by way of oral submissions.
5. Mr. Opondo for the Exparte Applicants submitted that the issues raised by the garnishee are not meant to benefit the 1<sup>st</sup> Respondent in that the [Wildlife Conservation and Management Act](#) provides that the 1<sup>st</sup> Respondent is a body capable of suing and being sued and it has a common seal, it can also be sued in its own name. The 1<sup>st</sup> Respondent is not subject to the [Government Proceedings Act](#). That the Garnishee has confirmed that he has funds in his account and therefore the same should be released to settle the claim. It was submitted that the issue of security does not arise since the Attorney General has not come on board as is the case of Government matters. That the 1<sup>st</sup> Respondent is acting by itself and that the State Corporation should not invoke the [Government Proceedings Act](#) and thus the 1<sup>st</sup> Respondent should not hide under the umbrella of Government. That the matter does not affect the [Government Proceedings Act](#). The learned counsel urged the court to allow the application and proceed to order that the Decree Nisi be made absolute.
6. Ms Walubengo submitted that they opposed the application and supports the Garnishee response to the application. That the monies are meant for park operations and security. That the court should waive the order as it will be for the goodwill of the country. That the Ministry is the right body to compensate the Applicant but not the 1<sup>st</sup> Respondent.
7. Ms. Onyango Jael submitted that the Garnishee has drawn the attention of the court regarding the circumstances of the judgment debtor. She submitted that the funds should be disbursed in accordance with the [Government Proceedings Act](#) and that Government Agencies require specific procedures regarding funds.
8. I have considered the application and the submissions of learned counsels. It is not in dispute that the Applicants herein had earlier filed an application dated 4/9/2024 wherein they were granted an order of mandamus and that the Judgment Debtor herein was ordered to release Kshs5,000,000/= to the Applicants vide a ruling of this court dated 7/2/2025. It is also not in dispute that the said Judgment Debtor did not pay up the money and hence the present application. It is also not in dispute that the Garnishee has confirmed that it has funds on behalf of the Judgment Debtor. The issue for determination is whether the application has merit.
9. The main issue which is in contention is whether the 1<sup>st</sup> Respondent is a government entity and therefore falls under the purview of the [Government Proceedings Act](#) Cap 40 Laws of Kenya. Indeed, suits against the Government or any entity of government must comply with the provisions of the aforesaid Act more particularly Section 21 thereof. The 1<sup>st</sup> Respondent and the Garnishee have contended that the 1<sup>st</sup> Respondent is a Government Entity and therefore the orders sought against it should not be granted as the same would be in violation of Section 21 of the [Government Proceedings Act](#). On the other hand, the Exparte Applicants maintain that the 1<sup>st</sup> Respondent is a corporation and more particularly a parastatal.
10. The 1<sup>st</sup> Respondent for all intents and purposes is a state corporation and therefore a body corporate with capacity to sue and be sued and also with capacity to hold property. That being the case, it



should not be treated as part of Government per se as they are independent of government formed by government in order to undertake and perform certain functions on behalf of the government which cannot be adequately or efficiently performed within the structure of Government Ministries as was held by Munyao J in *Kimoi Ruto & Ano. Vs. Samuel Kipkosgei Keitany & Another* 2014 eKLR.

It is noted that the 1<sup>st</sup> Respondent and the Garnishee have attempted to seek refuge under the *Government Proceedings Act*. More particularly, Section 21 (4) thereof. The same provides as follows:

“Save as aforesaid no execution or attachment or process in 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 persons 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.”

Since the 1<sup>st</sup> Respondent and the Garnishee have sought to take refuge under the above provisions of *Government Proceedings Act*, they are under obligation to show that they fall within the description of the government or government department or an officer of government. It is common knowledge that state corporations even though controlled and managed by government are not government per se as contemplated by the Act since they are independent legal entities and therefore cannot seek refugee under Section 21 (4) of the *Government Proceedings Act* so as to prevent execution proceedings. In *Ikon Prints Media Company Limited V Kenya National Highway Authority & 2 Others*, [2015] Eklr, the Court observed as follows:

Foremost though, it is important to point out that it would not be tenable to invoke the *Government Proceedings Act* (Cap 40) as a bar to any execution herein. The 1<sup>st</sup> Respondent is a body corporate with perpetual succession and a common seal. It is a corporate entity capable of subsisting independently.

It is dependent on Government funding but it is not government or servant of or agent of Government for the purposes of the Government Proceeding Act. The 1<sup>st</sup> Respondent is an independent judicial person capable of being sued and suing. Its litigation does not involve the Government. Any judgments decreed against the 1<sup>st</sup> Respondent are not judgments against the government but against an independent juridical body.”

This position was also adopted in *Greenstar Systems Limited v Kenyatta International Convention Centre (KICC) & 2 Others*, [supra] eKLR, where the court observed that:

“The above authority which is of persuasive value upholds the view that a state corporation or parastatal is not automatically subject to the *Government Proceedings Act*. Where proceedings are instituted under this Act the Hon. Attorney General will be a party. The Hon. Attorney General is not a party in the present proceedings.

11. From the foregoing observations, it is clear that the 1<sup>st</sup> Respondent is a parastatal with a common seal capable of suing and being sued in its name and therefore, it cannot seek refuge under the *Government Proceedings Act*. The funds which belongs to the 1<sup>st</sup> Respondent and held by the Garnishee ought to be available for attachment in order to satisfy the decree herein. Hence the objections raised by the Garnishee should be rejected because it is obliged to satisfy the decree having confirmed that the funds in its possession belongs to the 1<sup>st</sup> Respondent and that the 1<sup>st</sup> Respondent being the Judgment Debtor ought to allow the Decree Holder access the funds in settlement of the decree. The Garnishee’s vociferous objection to the application is unwarranted in that the responsibility to contest the claim lodged by the Applicants was upon the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent having failed to establish



that it is a government entity and not a parastatal, then the Garnishee has no option but to allow the attachment of the sums in accordance with the decree. The Garnishee has also sought for its costs of Kshs25,000/=. It is noted that the 1<sup>st</sup> Respondent/Judgment debtor did not react to the Garnishee's request for costs. Indeed, costs follow the event and hence I find the sum of Kshs25,000/= sought by the Garnishee is reasonable and ought to be paid by the Judgment debtor by way of deducting the same from the Judgment debtor's account with the Garnishee.

12. In the final analysis, it is my finding that Exparte Applicants application dated 8/3/2025 has merit. The same is allowed in terms of prayer Number 4 and 5 thereof. The costs of the Garnishee in the sum of Kshs25,000/= be paid by the 1<sup>st</sup> Respondent/Judgment debtor out of the sums held by the Garnishee.

**DATED AND DELIVERED AT SIAYA THIS 16<sup>TH</sup> DAY OF MAY 2025.**

**D. KEMEI**

**JUDGE**

In the presence of

Opondo.....for Applicants/Decree Holder

N/A M/s Walubengo.....for Judgment Debtor

M/s Onyango Jael.....for Garnishee

Okumu.....Court Assistant

