



**Republic v Independent Electoral and Boundaries Commission; Onditi (Exparte) (Application E1129 of 2020) [2024] KEHC 9584 (KLR) (Judicial Review) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9584 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION E1129 OF 2020  
J NGAAH, J  
AUGUST 2, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION ..... RESPONDENT**

**AND**

**NYABARO ONDITI ..... EXPARTE**

**RULING**

1. On 20 September 2023, the applicant obtained from the deputy registrar of this Honourable Court a notice directed at the respondent for the respondent to show cause why execution should not issue against in enforcement of a court decree according to which the applicant was entitled to a decretal amount of Kshs 3, 084,666.93 together with costs of Kshs 30,000/=.
2. By a notice of preliminary objection dated 4 December 2023 the respondent objected to this form of execution. In particular, the respondent pleaded that:
  - “i. The Notice to Show Cause dated the 20th September 2023 is grossly incompetent, bad in law and in contravention of section 13(2) of the [Independent Electoral and Boundaries Commission Act](#) read together with Section 21 of the [Government Proceedings Act](#) since execution cannot issue by way of attachment and sale of movable property against the Respondent.
  - ii. The Notice to Show cause is *res judicata* having been heard and determined by this Honourable Court through a judgement delivered at Nairobi on the 25<sup>th</sup>



November 2021 by the Honourable Justice A. Ndungu that found the prayers for warrants of attachment sought by the ex parte applicant as unmerited.

- iii. The Notice to Show Cause is bad in law, incompetent, and an abuse of the court process and should be struck out with costs.”
3. The recorded shows that the purported notice to show cause was preceded by a judgment according to which the applicant was granted an order of *mandamus* compelling the respondent to pay the applicant the sum of Kshs 2,120,046/= being taxed party and party costs awarded to the applicant in Kisumu Civil Appeal No 44 of 2013 together with interest at 6% per annum from 26 January 2016 until payment in full.
4. In the suit in which the applicant obtained the order of *mandamus*, he had also asked for warrants of attachment of the respondent’s property in event the respondent did not pay the decretal sum. The prayer for this particular order was framed as follows:
  - “b) That in event the respondent fails to pay and settle the Kshs 2,120,046 together with the interest at court rates at 12% from 26/1/2016 being the date of taxation till payment in full within 14 days from the date of the grant of prayer 1 above, the court to issue warrants of attachment and sale to a licensed auctioneer to attach moveable properties of the respondent to recover the amount of Kshs 2,120,046 together with interest at 12% from 26/1/2016 till payment in full.”
5. The court declined to grant this particular prayer and gave its reasons for refusal to grant the prayer in paragraph 17 of its judgment where it noted as follows:
  - “ 17. Lastly, on the prayers for issue of warrants of attachments, section 21 (4) of the [Government Proceedings Act](#) provides as follows:

‘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 the any money or costs.’

The only method of enforcement therefore available to the ex parte applicant is to pursue contempt of court proceedings, once he has been granted and served the respondent with an order of *mandamus* which is not complied with.”
6. In the wake of this holding, it is not clear why the applicant would be seeking to execute the decree contrary to the judgment of the court and, in particular, contrary to section 21(4) of the [Government Proceedings Act](#). It is also clear that in having the notice to show cause why execution should not issue, the applicant has deliberately ignored or disregarded the court’s holding that the only means open to the applicant in enforcing its judgment, is to institute contempt of court proceedings against the applicant subject, of course, to complying with the requisite conditions of instituting such proceedings.
7. Without belabouring the point, purported notice to show cause given under the hand of the deputy registrar on 20 September 2023 is a nullity in law and is hereby struck out with costs to the respondent. It is so ordered.



**SIGNED, DATED AND POSTED THE CTS ON 2 AUGUST 2024**

**NGAAH JAIRUS**

**JUDGE**

