



Daasanach Construction Limited v County of Marsabit; Kenya Commercial Bank, Marsabit Branch (Garnishee) (Commercial Case E600 of 2021) [2023] KEHC 2445 (KLR) (Commercial and Tax) (10 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E600 OF 2021
DAS MAJANJA, J
MARCH 10, 2023**

BETWEEN

DAASANACH CONSTRUCTION LIMITED PLAINTIFF

AND

THE COUNTY OF MARSABIT DEFENDANT

AND

KENYA COMMERCIAL BANK, MARSABIT BRANCH GARNISHEE

RULING

1. By an application dated January 14, 2023, the Plaintiff as Decree-holder applied to attach the Judgment debtor's accounts domiciled at Kenya Commercial Bank, Marsabit Branch ('the Garnishee'). The court allowed the application in part by issuing a Garnishee Order Nisi on January 23, 2023. In response to the application, the Garnishee filed two affidavits sworn by its officer, Stanley Mwangi, sworn on January 10, 2023 and February 24, 2022.
2. Though the parties did not address the issue, the accounts of a County Government cannot be attached by virtue of section 21 of the *Government Proceedings Act* (Chapter 40 of the Laws of Kenya) which prescribes the procedure for satisfaction of court orders against the Government which excludes execution in the manner provided under the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) and the *Civil Procedure Rules*. County Governments are covered by section 21(5) which provides that, 'This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.'



3. I adopt what Muigai J, explained in *Kennedy Wainaina Ngenga v County Government of Nairobi & Cooperative Bank of Kenya (Garnishee) HC COMM No 63 of 2017 [2019] eKLR* as follows:

'The above legal provisions confirm that the process of execution with regard to Government Institutions is prescribed by the *Government Proceedings Act*. The *Civil Procedure Act* & rules 2010 also prescribe the execution process and exempts the Government from the said process. This means although execution is a right enforced by a decree holder against a judgment debtor execution shall be carried down where it involves government and it shall be within the purview of *Government Proceedings Act*. Therefore, the Garnishee proceedings herein against the Judgement Debtor; the County Government of Nairobi are improper in law to the extent of the recovery process. However, the judgement debt remains unchallenged and a valid order and decree of this court.

4. It is thus clear that in light of the *Government Proceedings Act*, the garnishee orders cannot be sustained (see also *Kilimanjaro Safari Club Limited v The Governor - Kajiado County Government and Kenya Commercial Bank ML HC Misc Application No 442 of 2011 [2014]eKLR* and *Takaful Insurance of Africa (Kenya) v County Government of Garissa and 2 Others; Governor Central Bank of Kenya (Garnishee) GRS HCCC No 8 of 2020 [2021] eKLR*).
5. The Notice of Motion dated January 14, 2023 is struck out and the order nisi discharged. There shall be no order as to costs.

DATED and DELIVERED at NAIROBI this 10th day of MARCH 2023.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Dr Khaminwa instructed by Khaminwa and Khaminwa Advocates for the Plaintiff/Decree-holder.

Ms Ikonge instructed by Kale Maina and Bundotich Advocates for the Garnishee.

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