



**Mwangi Njenga & Company Advocates v County Government of Mombasa;
National Bank of Kenya Limited (Garnishee) (Miscellaneous Civil
Application 26 of 2022) [2023] KEHC 17418 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 26 OF 2022**

OA SEWE, J

MAY 11, 2023

BETWEEN

MWANGI NJENGA & COMPANY ADVOCATES APPLICANT

AND

COUNTY GOVERNMENT OF MOMBASA RESPONDENT

AND

NATIONAL BANK OF KENYA LIMITED GARNISHEE

RULING

1. Upon obtaining judgment herein against the respondent for costs as between Advocate and Client, the applicant, M/s Mwangi Njenga & Company Advocates, filed the Notice of Motion dated June 3, 2022 seeking the following orders:
 - (a) Spent
 - (b) That leave be granted to the applicant to execute forthwith the decree issued herein before the amount of costs incurred in the suit have been ascertained by taxation;
 - (c) That a garnishee *order nisi* be issued attaching forthwith the sum of Kshs 2,349,762.35 held in account No xxxxxxxxxx at the Bondeni Branch of the Garnishee Bank, National Bank of Kenya Limited, to the credit of the respondent, the County Government of Mombasa.
 - (d) That upon the inter partes hearing of the application, the Court be pleased to issue a Garnishee Order Absolute in terms of Prayer 3;
 - (e) That the costs of the application be provided for at Kshs 100,000/=.



2. In response to the application, the respondent filed a Notice of Preliminary Objection on June 16, 2022, contending that:
 - (a) The Notice of Motion dated June 3, 2022 offends Section 21 of the [Government Proceedings Act](#).
 - (b) The application is inconsistent with Order 29 of the [Civil Procedure Rules](#).
 - (c) There is a clear procedure when it comes to execution as against the Government and the application offends that procedure.
3. Accordingly, the respondent prayed that the Notice of Motion dated June 3, 2022 be dismissed with costs.
4. The Preliminary Objection was canvassed by way of written submissions, pursuant to the directions given herein on June 23, 2022. Accordingly, counsel for the respondent, Mr. Tajbhai, filed his written submissions on August 31, 2022. He proposed a single issue for determination, namely, whether the orders sought in the application dated June 3, 2022 are orders that can be issued. Mr. Tajbhai submitted that the mode of execution proposed by the applicant in the application dated June 3, 2022 is improper and inconsistent with the law; particularly Section 21 of the [Government Proceedings Act](#) and Order 29 of the [Civil Procedure Rules, 2010](#). Counsel relied on [Republic v Attorney General & Another, Ex Parte Stephen Wanyee Roki](#) [2016] eKLR, [Kennedy Wainaina Ngenga v County Government of Nairobi, Co-operative Bank of Kenya Limited \(Garnishee\)](#) [2019] eKLR and [Takaful Insurance of Africa Ltd \(Kenya\) v County Government of Garissa & 2 Others; Governor, Central Bank of Kenya \(Garnishee\)](#) [2021] eKLR. He accordingly prayed for the dismissal of the application dated June 3, 2022 with costs.
5. The record shows that, as of October 5, 2022 when the matter was reserved for ruling, neither the applicant nor the Garnishee had filed written submissions. That notwithstanding they were granted 7 more days for compliance. Neither of them have complied to date. I have accordingly proceeded on the basis of the documents on the file, notably the Notice of Motion dated June 3, 2022, the Notice of Preliminary Objection dated June 16, 2022 and the respondent's written submissions dated August 30, 2022. The single issue arising therefrom is whether the said Notice of Motion is competent from the standpoint of Section 21 of the [Government Proceedings Act](#) as read with Order 29 rule 2 of the [Civil Procedure Rules](#).
6. It is trite law that the Government consists of both the National and County Government by virtue of Article 6(2) of the [Constitution of Kenya](#). This, therefore, means that, any proceedings against the County Government of Mombasa, the Respondent/Judgment Debtor must take into account the provisions of the [Government Proceedings Act](#). In this context, Section 21 of the [Government Proceedings Act](#) is explicit that: -
 - (1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs



have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
- (3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

- (4) 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 any money or costs.
- (5) 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.

7. Moreover, Order 29 Rules 2 (2) of the Civil Procedure provides:

No order against the Government may be made under—

- (a) Order 14, rule 4 (Impounding of documents);
- (b) Order 22 (Execution of decrees and orders);
- (d) Order 23 (Attachment of debts);
- (d) Order 40 (Injunctions); and
- (e) Order 41 (Appointment of receiver).

8. In addition to the foregoing, Order 29, Rule 4(1) of the *Civil Procedure Rules*, is explicit that:

“No order for the attachment of debts under Order 23 or for the appointment of a receiver under Order 41 shall be made or have effect in respect of any money due or accruing or alleged to be due or accruing from the Government.”

9. In the premises, it is plain that the Notice of Motion dated June 3, 2022 is incompetent. In this regard I am in total agreement with the conclusions reached in the cases of *Kennedy Wainaina Ngenga v County Government of Nairobi; Co-operative Bank of Kenya Limited (Garnishee)* [2019] eKLR and



Takaful Insurance of Africa Ltd (Kenya) v County Government of Garissa & 2 others; Governor Central Bank of Kenya (Garnishee) [2021] eKLR, to the effect that the County Governments are part of the Government of Kenya for purposes of *Government Proceedings Act*. It is therefore my finding that the garnishee proceedings instituted herein against the County Government of Mombasa are entire misconceived.

10. In the result, I find merit in the Preliminary Objection dated June 16, 2022. The same is hereby upheld with the result that the Notice of Motion dated June 3, 2022 is untenable. The same is hereby struck out with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 11TH DAY OF MAY 2023

OLGA SEWE

JUDGE

