



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC NO. 62 OF 2017

(FORMERLY MERU HCCC NO. 55 OF 2003)

AYUB MUTHURI IKIARA.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF MERU.....DEFENDANT

RULING

1. The notice of motion dated 15.10.2019 is brought under the following provisions; ***Section 1A, 1B, 3, 3A of the Civil Procedure Act, Article 159 of the Constitution, section 21 (1) & (4) of the Government Proceedings Act and all other enabling provisions of the law.***

2. The applicant/defendant is seeking the following orders:

- (i) That this application be certified urgent and heard ex-parte in the first instance.
- (ii) That this honourable court be pleased to stay execution of warrants of arrest against the county secretary, Meru county government pending hearing and determination of this application.
- (iii) That this honourable court be pleased to review, vary and/or vacate orders of October 2019 that issued warrants of arrest against the County Secretary Meru county.
- (iv) That costs of the application be provided for.

3. The grounds in support of the application are that:

- (i) On the 14.10.2019 the honourable Deputy Registrar issued warrants of arrest to one Joseph Miriti Mwereria the county secretary of the Meru county government.
- (ii) That the orders were issued pursuant to a notice to show cause why warrants of arrest should not issue dated 22.7.2019
- (iii) That present in the court file is an application in the nature of grounds of opposition to the warrants of arrests dated 10.10.2019 premised on breach of section 21 (4) and 21(1) of the government proceedings act.
- (iv) That the warrants of arrest issued against the county secretary Meru County were issued whereas the application in the nature of grounds of opposition was still pending.
- (v) That the said warrants of arrest are contrary to section 21 (1) and 21 (4) of the Government Proceedings Act.
- (vi) That the applicant is apprehensive that the respondent is on the verge of executing the warrants of arrest against a public officer without adhering to the procedure provided by the government proceedings act.
- (vii) That the applicant stands to be prejudiced and/or embarrassed if the warrants are executed in that it is the county government of Meru that allegedly owes the respondent and not Joseph Mbiti Mwereria in his personal capacity.
- (viii) That it is in the best interest of justice and rule of law that this application is allowed.

4. A supporting affidavit has also been filed where by the applicant has reiterated the averments set out in the application.

5. The application has been opposed via the replying affidavit dated 4.11.2019 where in summary the respondent contends that he obtained judgment against the respondent on 26.9.2018 after 16 years of tiresome litigation with defendant. Thereafter he was awarded costs of Shs.176,735 as outlined in the certificate of costs. He then filed a notice to show cause against one Joseph Miriti Mwereria who is the county secretary and on 4.9.2019, defence sought for more time to come up with a settlement plan so as to settle the decretal amount only for the respondent to file grounds of opposition in opposition to the issuance of the warrants of arrest.

6. The plaintiff contends that no appeal was filed to challenge the verdict of this court and hence it is contended that the applicant has approached the court with an unclean hands and they should just indicate how they intend to settle the outstanding amount of Shs.536,518. Plaintiff therefore desires that the application be dismissed.

7. On 21.1.2020 advocates for the parties urged the court to determine the issue at hand based on the application and the affidavits filed by the parties.

Determination

8. The law governing the execution of decrees against governments is anchored under section 21 of the Government Proceedings Act. Subsection (4) thereof 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 any money or costs”.

While subsection 5 provides as follows;-

“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 part”.

9. The Government Proceedings (Amendment) Act of 2015 is the one which introduced subsection (5) of section 21, thus bringing the county government on board to be at par with the national government in the matters “*execution*”.

10. In the case of **Judicial Review Miscellaneous application no. 44 of 2012 Republic vs The Attorney General & another exparte James Alfred Koroso**, Odunga J opined as follows:

“In the present case the exparte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the government. Apart from mandamus, he has no option of ensuring that the judgment that he has been awarded is realized”.

11. Likewise in the case of **Republic vs Attorney General exparte Stephen Wanyee Roki (2016) KLR**, it was held that:

“.....that being the position, execution under the civil procedure rules is barred in so far as the county governments are concerned. What then is the option available to a party in whose favour judgment has been decreed.....it follows that the only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus compelling the county government to settle the decree in question”.

Also see **Republic vs county secretary Migori County Government and another (2019) eKLR**.

12. The upshot of the foregoing analysis is that the plaintiff cannot execute against the defendant in these proceedings. Recourse lies in Judicial review proceedings. I must however add that defendant is the one pushing the plaintiff to this corner. The proceedings of 4.9.2019 indicate that defendant had apparently requested for time to come up with a settlement plan and instead, it came up with the present application. Thus even though the application is merited, the circumstances warrant the applicant/defendant to bear costs. **The application dated 15.10.2019 is allowed but applicant is hereby condemned to pay costs of the application.**

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH DAY OF MAY, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137,

this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE