



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 1 OF 2011

STEPHEN WANYEE ROKI.....PLAINTIFF

-VERSUS -

K-REP BANK LIMITED.....1ST DEFENDANT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

DAVID WAWERU.....3RD DEFENDANT

RULING NO. 2

1. The plaintiff, **STEPHEN WANYEE ROKI** has filed an application for the execution of the Decree. The proposed mode of execution is by way of attachment of funds which were in the hands of the 2nd defendant's bankers, **CO-OPERATIVE BANK OF KENYA LIMITED**.
2. In effect, these are Garnishee proceedings.
3. The application was scheduled for hearing on 29th June 2016.
4. However, before the applicant could commence the prosecution of the substantive application, the 2nd defendant canvassed its Preliminary Objection. This Ruling is therefore on the said Preliminary Objection.
5. In a nutshell, the **COUNTY GOVERNMENT** of **NAIROBI** said that the court cannot issue any orders for the attachment of debts of the Government. The 2nd defendant cited Order 29 Rule 2 (2) of the Civil Procedure Rules as providing a bar to the attachment of the debts of the Government.
6. Order 29 Rule 2 (2) stipulates as follows;

“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);***
- c. Order 23 (Attachment of Debts);***

d. Order 40 (Injunctions); and

e. Order 41 (Appointment of receiver) ?.

7. Clearly, therefore, if the County Government of Nairobi falls within the scope of “*the Government?*”, there is an express prohibition against the Attachment of Debts, as well as a prohibition against the execution of Decrees and Orders, pursuant to Order 22 of the Civil Procedure Rules.

8. In response, the plaintiff drew the court’s attention to 3 cases in which the courts had granted Garnishee orders against County Governments. Therefore, as far as he was concerned, this court has the requisite jurisdiction to issue garnishee orders against the County Governments.

9. The plaintiff also pointed out that Garnishee orders were just another mode of execution of a Decree.

10. Having been denied the opportunity to execute the Decree through the process of Mandamus, the plaintiff said that the court should not deprive him of the Garnishee orders.

11. On the other hand, Mr. Mokuu, the learned advocate for the 2nd defendant, submitted that the provisions of the Government Proceedings Act were applicable for County Governments.

12. In **ISLAND UNIFORMS LTD Vs MUNICIPAL COUNCIL of MOMBASA, COMMERCIAL CASE No. 26 of 2010 (at Mombasa)**, the 2nd Garnishee, **KENYA COMMERCIAL BANK LTD**, consented to pay to the plaintiff, Kshs. 21,630,562/-. It was further agreed that upon payment of that sum, the 2nd to the 6th Garnishees would stand discharged.

13. As the parties in that case recorded consent orders, the court was not called upon to determine whether or not the Municipal Council of Mombasa was “*the Government?*”, or whether or not Garnishee orders could issue in respect to funds held by banks on behalf of Local Authorities.

14. The second authority cited by the plaintiff was **OTIENO RAGOT & Co. ADVOCATES Vs CITY COUNCIL of NAIROBI, Misc. APPLICATION No. 148 of 2013**. In that case, Mabeya J. directed the Garnishee Nisi, be made absolute, against the Garnishee Bank.

15. The only issue in contention in that case was whether or not the funds were the subject of a lien, on the grounds that money was security for the loans which had been advanced to the members of the Respondent’s County Assembly.

16. After giving the due consideration to the evidence before it, the court concluded that;

“...it is irresistibly clear that the funds in those accounts belong to no one but the Respondent?.

17. Secondly, the learned Judge held that the garnishee had failed to prove the existence of any lien over the funds.

18. It is in those circumstances that the court made absolute the Garnishee nisi.

19. A reading of the authority reveals that it did not address the issue as to whether or not the funds held in the account of a Local Authority could be subjected to a garnishee order.

20. Similarly, in **WACHIRA NDERITU NGUGI & Co. ADVOCATES Vs CITY COUNCIL of NAIROBI & ANOTHER, Misc. APPLICATION No. 145 of 2012**, the Respondent never raised any issue touching on the court’s jurisdiction to make a garnishee order in respect to funds held to the order of a Local Authority.

21. The final authority cited by the plaintiff was **BENJAMIN MALAKWEN KOECH & ANOTHER**

Vs JACKSON K. KOMEN Alias TUITOEK Hccc No. 36 of 2010 (at Kericho). In that case, all the parties were private citizens. Therefore, the decision on the garnishee application cannot help answer the question concerning the court's jurisdiction to make garnishee orders in respect of funds held to the order of either a Local Authority or to a County Government.

22. In **CLUB LIMITED Vs THE GOVERNOR, KAJIADO COUNTY & KENYA COMMERCIAL BANK, Misc. APPLICATION No. 442 of 2011,** Ogola J. dealt with the question about whether or not a County Government was “*Government?*”, as envisaged under the Government proceedings Act.

23. This is what the learned Judge said;

“The draftsman, in coming up with the Government Proceedings Act, had in mind the interests of the Government as a whole. The County Government is not an exception.

I think I have said enough to show that the County Government is “Government?”, as per the Government Proceedings Act. Therefore, the provisions of the said Act apply in proceedings brought against County Governments. Having made the foregoing observations, it therefore follows that the Garnishee proceedings instituted by the Applicant are not sustainable?.

24. The court proceeded to reject the application seeking to attach the property of the County Government, which was being held by the bank.

25. Meanwhile, in **REPUBLIC Vs THE ATTORNEY GENERAL Exparte STEPHEN WANYEE ROKI, Misc CIVIL APPLICATION No. 93 of 2015,** Odunga J. had an indepth look at the Judicial Review remedy of Mandamus.

26. In the course of his determination, the learned Judge pointed out that Article 189 (1) of the Constitution recognizes the existence of the Government at 2 levels; the National level and the County level. He then expressed himself thus;

“In my view a holistic approach to this provision would lead to the conclusion that there is only one Government, being exercised at two levels; both levels complimenting each other and operating in the spirit of co-operation and complementarity?.

27. I am in full agreement with my learned brother in that respect.

28. Therefore, the County Government of Nairobi is “*the Government?*” as envisaged by the Government Proceedings Act and also by Order 29 Rule 2 (2) of the Civil Procedure Rules.

29. Accordingly, there is merit in the Preliminary Objection, and I now uphold it. The nett result is that there is no need to go into the substance of the garnishee application as the court cannot order that the funds of the Government, which are in the hands of any Garnishee, be attached.

30. In the result, the plaintiff's application dated 2nd March 2016 is struck out.

31. The plaintiff will pay to the 2nd defendant and to the Garnishee, the costs of that application.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd day of November 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Plaintiff in person.

No appearance for 1st the Defendant

Mokua the 2nd Defendant

No appearance for the 3rd Defendant

Miss Omari for the Garnishee

Collins Odhiambo – Court clerk.