



**Dembena International Limited v National Land Commission; National Bank of Kenya (Garnishee) (Environmental and Land Originating Summons E005 of 2023) [2025] KEELC 4396 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4396 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2023**  
**CA OCHIENG, J**  
**JUNE 12, 2025**

**BETWEEN**

**DEMBENA INTERNATIONAL LIMITED ..... DECREE HOLDER**

**AND**

**NATIONAL LAND COMMISSION ..... JUDGMENT DEBTOR**

**AND**

**NATIONAL BANK OF KENYA ..... GARNISHEE**

**RULING**

1. Judgment was entered herein on 30<sup>th</sup> May, 2024 in favour of the Decree holder against the Judgement debtor for the sum of Kshs. 503,207,157.00 being the balance of the revised award of Kshs. 804,144,317/- issued on 23<sup>rd</sup> September 2021 together with the interest accrued pursuant to Section 117(1) of the Land Act No.6 of 2017. Subsequently, three applications were filed and are the subject of this Ruling. In the first Notice of Motion application dated the 5<sup>th</sup> November 2024 the Decree holder seeks the following Orders:
  - a. Spent.
  - b. That the judgement having been entered against the judgement debtor, a garnishee order nisi be issued by this Honourable court binding National Bank of Kenya, Hill Plaza Branch, the Garnishee herein, ordering that all monies deposited in bank account numbers 0100103XXXX000; 770XXXX021, 770XXXX048, 7700XXXX34, 7700615942, 770XXXX032 and 770XXXX040 at National Bank of Kenya, Hill Plaza Branch registered in the name of the National Land Commission (the Judgement Debtor ) or any other account held at the Bank in the name of The National Land Commission be attached



to satisfy the Decree issued on 11<sup>th</sup> October 2024 together with interest awarded to the Decree holder totaling to ksh.929,400,095.12.

- c. That the garnishee be directed to appear before this Honourable court on an appointed date and time to show cause why the garnishee order nisi so issued should not be made absolute and why it should not pay the sum of ksh.929, 400, 095.12 to the decree holder.
  - d. That the garnishee order nisi be made absolute.
  - e. That costs of this application be borne by the judgement debtor.
2. Upon hearing the Notice of Motion at the first instance, this court issued a Garnishee Order Nisi on 7<sup>th</sup> November 2024.
  3. The application is based on grounds on its face and on the supporting affidavit of RUSSOM TEAME GHEBREMEDHIN, a director of the Decree holder. He avers that subsequent to issuance of judgement herein, the Decree holder extracted the decree and served it upon the Judgement debtor together with a demand dated the 14<sup>th</sup> October 2024 for settlement of the decretal amount plus interest totaling ksh.924,400,095.12, but it remains unsettled to date. He listed bank account numbers that the Judgement debtor operates with the garnishee at its Hill Plaza Branch, which are listed at paragraph 1(b) herein and stated that he reasonably believes that they are sufficient to satisfy the decree partially/ wholly.
  4. In response to the application, the Garnishee filed a replying affidavit sworn by its branch Manager-Hill Plaza Branch, RICHARD G. ORORA. He avers that upon service of the Order Nisi issued on 7<sup>th</sup> November 2024 the Garnishee placed a debit freeze on the accounts listed at paragraph 1 (b) to the extent of the amount sought to be attached awaiting further directions from the court. Further, that the account is sufficiently funded and the amount therein is enough to satisfy the Decree, adding that the garnishee is willing to comply with any directions of the court. He sought an order that the Garnishee's advocates fees of Kshs.100,000/= be paid from the Garnishee's account.
  5. In the 2<sup>nd</sup> Notice of Motion dated 13<sup>th</sup> November 2024, which is filed by the Decree holder, it seeks the following Orders:
    1. That the Honourable court be pleased to order that Mrs. Kabale Tache Arero, Mr. Gershom Otachi and Mr. Ben Cherutich, the Respondent's Secretary/CEO, Chairman and Director Finance respectively be personally present on all dates appointed for the hearing and delivery of the ruling in the instant application.
    2. That this court be pleased cite for contempt;
      - a. The National Land Commission, the Respondent herein.
      - b. The Secretary/CEO of the National Land Commission, Kabale Tache Arero.
      - c. The Chairman of the National Land Commission, Gershom Otachi.
      - d) The Director Finance, Ben Cherutich.
    3. That this court be pleased to deny cited alleged contemnors audience in this matter until and/ or unless they purge the contempt of court committed herein.
    4. That this court be pleased to deny cited alleged contemnors audience in this matter until and/ or unless they purge the contempt of court committed herein.
    5. That this Honourable court be pleased to convict or fine contemnors;



- a. The National Land Commission, the Respondents herein.
  - b. The Secretary/CEO of the National Land Commission, Kabale Tache Arero
  - c. The Chairman of the National Land Commission, Gershom Otachi.
  - d. The Director Finance, Ben Cherutich.
6. The application is premised on grounds on its face and on the supporting affidavit of RUSSOM TEAME GHEBREMEDHIN, a director of the Decree holder. He avers that despite being served with a certified copy of the Decree together with the demand dated the 14<sup>th</sup> October 2024 for settlement of the decretal amount plus interest herein, the cited alleged contemnors have willfully failed/refused to obey the decree by settling the decretal amount together with interest and that their conduct is contemptuous.
  7. The application is opposed by the alleged contemnors vide Grounds of Opposition dated the 22<sup>nd</sup> April 2025. They contend that the application is premature as the Decree holder has not exhausted the requisite processes of execution against the Government pursuant to Section 21 (4) of the *Government proceedings Act* and Order 29 Rule 2 (2) (c) of the Civil procedure Rules prior to taking out contempt proceedings.
  8. In the third Notice of Motion application dated the 15<sup>th</sup> November 2024, filed by Judgement debtor, it seeks following orders:
    - a. Spent.
    - b. Spent.
    - c. That this Honourable court be pleased to set aside and/or vary the interim conservatory garnishee order nisi issued on 7<sup>th</sup> November 2024.
    - d. Any other order this court may deem fit to make in public interest.
    - e. That the costs of this application be granted to the Applicant.
  9. The application is based on grounds on its face and on the supporting affidavit of BRIAN IKOL, Director Legal Affairs and Dispute Resolution of the judgement debtor. He avers that on 7<sup>th</sup> November 2024, this court issued a Garnishee Order Nisi against the accounts of the Judgement debtor held by the Garnishee requiring that all monies held in the said accounts to be attached to answer to the Decree of this court issued on 2<sup>nd</sup> October 2024 for the sum of Kshs.503,207,157/= plus interest. He contends that the judgement debtor disputes any indebtedness and liability since it only compulsorily acquires land on behalf of other institutions, which are required to remit funds for compensation of the project affected persons, that has not happened in this instance.
  10. He claims that for purposes of the construction of the expressway, the acquiring authority was the Kenya National Highway Authority, which only paid part compensation to the Judgement debtor and the balance is yet to be received. Further, that Article 40 and Section 111(1) of the *Land Act* compels the judgement debtor to make prompt compensation yet due to the orders of 7<sup>th</sup> November 2024, all payments of compensation to project affected persons stands suspended with the net effect of grounding all ongoing government projects, that are for public purpose in their nature since the judgement debtor's bank account number 010011032980000 held by the Garnishee is grounded. Further, that the account as contemplated under Section



115(2),111(1) and Section 111(1A) of the Land Act is used only for purposes of holding funds in trust for various government agencies undertaking compulsory acquisition of land.

11. He contends that several project affected persons who are not before this court risk being rendered homeless, displaced and without a source of income since their homes/businesses were demolished to pave way for public purpose projects but they cannot be compensated to purchase alternative land. Further, that the government projects that have underlying costs and contractual obligations will be affected and public funds lost in form of penalties for breach of contractual obligations.
12. He also claims that the Garnishee proceedings offends the provisions of Section 21(4) of the Government Proceedings Act and Order 29 Rule 2 (2) (c) of the Civil Procedure Rules. Further, that the Judgement debtor's operations are at a halt to the extent that it cannot pay salaries or meet daily running costs effectively paralyzing operations as its development and recurrent accounts have been attached. He confirms that the Judgement debtor is yet to receive its exchequer, the budget has not been loaded into its account and that it wholly relies on funds from National Treasury.
13. The application is opposed by the Decree holder vide the replying affidavit of its director, RUSSOM TEAME GHEBREMEDHIN. He avers that in 2020, the Decree holder's property, LR No. Nairobi/Block X8/X8 situated in South C was marked for compulsory acquisition by the Judgement debtor for the construction of the Nairobi Expressway project. Subsequently, the Judgement debtor issued it with a notice of taking possession of the suit property and granted the Kenya National Highways Authority access to the site to commence construction works without first paying it. He avers that the Decree holder moved this Court that issued the impugned judgement, which has not been appealed against or reviewed thus the claim against the Judgement Debtor is proper. He points out that the Judgment Debtor admitted that there are funds held to its credit at National Bank Account No.01001032980000, which has been set aside for compensation of land owners, whose parcels have been compulsorily acquired thus its decision to prioritize compensation of other Project Affected Persons is discriminatory contrary to Article 1o and 27 of the Constitution.
14. Further, that there is no evidence that the acquiring authority (Kenya National Highway Authority) has never remitted the balance of the award due to the Decree holder as alleged and there is also no evidence that the bank account held with the garnishee was opened pursuant to the provisions of Section 115 of the Land Act. Further, that it is held in trust for various government agencies who deposit compensation funds on behalf of Project Affected Persons, and there is no breakdown of funds allegedly held in the account was provided

### Submissions

15. The Decree holder reiterated its averments in its affidavits and submitted that Article 40 (3) (b) (i) of the Constitution provides for prompt payment in full of compensation to an individual or entity whose land has been compulsory acquired by the Judgment Debtor for a public purpose. Further, that the Constitution cannot be subordinate to the provisions of the Government Proceedings Act and the Civil Procedure Rules.
16. It cited the case of Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR to submit that the Judgement Debtor failed to prove allegations that its accounts held with the Garnishee were opened pursuant to the provisions of Section 115 of the Land Act and hold funds of other project affected persons. Further, that the Judgment Debtor is under a duty to obey the law and the insulation and



- immunity granted to it, are intended to protect the public interest and ought not to operate against the public interest.
17. It also submitted that the conduct of the cited alleged contemnors complained is contemptuous of this Court orders, constitutes a criminal offence and ought to be reprimanded as it undermines the rule of law. To this end, the case of Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] KLR 828 and the case of Republic v Principal Secretary, Ministry of Defence Ex Parte; George Kariuki Waithaka [2021] KEHC 5353 (KLR) were relied upon.
  18. The Judgement debtor relied on the case of Association of Retirement Benefits Schemes v Attorney General & 3 others [2017] eKLR to submit that it is a public body and therefore part of the definition of State under Article 260 of *the Constitution*, thus Sections 21(4) of the *Government Proceedings Act* and Order 29 Rule 2 (2)(c) of the Civil Procedure Rules apply in instances of execution against it. It contended that the jurisdiction of this Court has not been properly invoked as there is a clear process of execution against it, which entails complying with the provisions of Section 21 of the *Government Proceedings Act*, that contemplate applying for a certificate of order and costs against the government and then enforcing the same by way of an order of mandamus and later contempt of Court. In this instance the case of Speaker of the National Assembly v James Njenga Karume (1992) eKLR was relied upon.
  19. It was further submitted that in Five Star Agencies versus National Land Commission & others (ELC Civil Case Number 445 of 2014), the Honorable Court in setting aside a garnishee order nisi issued to attach the account of the Judgement Debtor herein reiterated that the said accounts are not subject to garnishee proceedings. Further, that this decision was upheld by the Court of Appeal in *Five Star Agencies Limited and Another Versus National Land Commission and 2 Others (Civil Appeal E 290 & 328 of 2023)*(consolidated) [2024] KECA 439[KLR].
  20. The Judgement Debtor also relied on the various decisions including: Permanent Secretary Office of the President, Ministry of Internal Security & Another ex parte Nassir Mwandihhi (2014) eKLR, Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR, Jamleck Waweru Karanja v County Government of Nakuru [2020] eKLR, Kisy Investments Ltd vs. Attorney General & Another [2005] 1 KLR 74, Republic vs. Attorney General & Another ex parte The Standard Limited & Baraza Limited [2018] eKLR, and the case of Republic v County Secretary Migori County Government & Another [2019] eKLR to buttress its averments.
  21. On their part, the alleged contemnors submitted that the Decree holder's mode of execution has no foundation in law as execution against the judgement debtor can only be done under the provisions of Section 21 of the *Government Proceedings Act*. They further submitted that it cannot be said that, there is willful disobedience of a Court Order as orders of mandamus are yet to be obtained by the Decree Holder. To support their arguments, they relied on the following decisions: Five start agencies (supra); Mwaka 124 v County Government of Machakos; Mutie & another (Contemnor) (Miscellaneous Application E012 OF 2021)[2022]KEELRC 13021(KLR)(14 October 2022)(Ruling) and Sheila Cassat Issenberg & another v Anthony Machatha Kinyanjui [2021] eKLR.

### **Analysis and Determination**

Upon consideration of the three Notice of Motion applications including the respective affidavits and rivalling submissions, the following are the issues for determination:



Whether the Decree Holder complied with the required statutory procedure under Section 21 of the [Government Proceedings Act](#) and Order 29 Rule 2(2)(c) of the Civil Procedure Rules before initiating contempt proceedings?

Whether the Garnishee Order Nisi should be set aside or Garnishee order Absolute issued.

As to whether the Decree holder complied with the required statutory procedures under section 21 of the [Government Proceedings Act](#) and Order 29 Rule 2(2)(c) of the Civil Procedure Rules before initiating contempt proceedings.

22. The Decree holder has sought to execute the Decree against the Judgement debtor in the form of garnishee proceedings as well as cite the Chairperson, Secretary and Finance Director of the National Land Commission(NLC) for contempt. Further, this Court on 7<sup>th</sup> November, 2024 granted a Garnishee order Nisi against the NLC aforementioned accounts held at the National Bank of Kenya. The said application has been opposed by the Judgement debtor who contends that the Decree holder has not complied with the provisions of the [Government Proceedings Act](#), in respect to execution of a Decree. Further, it has sought for the Garnishee Order Nisi to be set aside since the monies in the aforementioned accounts belong to different government entities and are supposed to be paid to project affected persons, whose parcels of land have been compulsorily acquired.
23. It is not in dispute that the NLC is a government entity as per Article 260 of [the Constitution](#). On execution of a Decree against any government agency/entity, section 21 of the [Government Proceedings Act](#) provides 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.”

24. In *Kisya Investments Ltd versus Attorney General & another* [2005] eKLR, it was held that:

“There will be no end to the list of likely assets to be attached and auctioned by the auctioneer’s hammer. No Government can possibly survive such an onslaught. The Government and therefore, the state operations will ground to a halt and be paralyzed and soon the Government will not only be bankrupt, but it’s Constitutional and Statutory duties will not be capable of performance. This will lead to a chaos, anarchy and the breakdown of the Rule of Law.”

25. Based on the facts before me while relying on the legal provisions cited and decisions quoted, noting that the Decree holder has not disputed that it is yet to adhere to the procedure set out in section 21 of the *Government Proceedings Act*, at this juncture, I find that it is premature to cite the alleged contemnors for contempt of court, for failing to settle the Decretal amount.

As to whether the Garnishee Order Nisi should be set aside or Garnishee Order Absolute issued.

26. This Court issued a Garnishee Order Nisi on the 7<sup>th</sup> November, 2024 as against the aforementioned accounts of the National Land Commission held with the National Bank of Kenya. The Decree holder is now seeking for Garnishee Order absolute while the National Land Commission has sought to set aside the Garnishee Order Nisi contending that it is a government agency, the monies held in its account are held on behalf of other agencies. Further, that it is supposed to compensate project affected persons with monies therein and the said order is prejudicial.

27. In the case of *Tom Ojienda & Associates v Nairobi City County; Cooperative Bank of Kenya (Garnishee) (Miscellaneous Application E138 of 2021)* [2024] KEELC 1662 (KLR) (5 April 2024) (Ruling) it was held that:

“...this court is not prepared to decree an Order Nisi on the face of the existing provisions of Section 21[4] and [5] of the *Government proceedings Act*; which provisions remain alive and existing in the statute books.”

28. Further, in *Five Star Agencies Limited & another v National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023)* (Consolidated) [2024] KECA 439 (KLR) (12 April 2024) (Judgment), the Court of Appeal stated that:

“...it follows therefore that the garnishee proceedings instituted by Five Star through the notice of motion dated 20<sup>th</sup> January 2023 and brought under the provisions of Order 23 Rule 1, 2, and 3 of the Civil Procedure Rules, 2010 were incompetent, bad in law and unsustainable as provisions of Order 23 Rule 1, 2, and 3 of the Civil Procedure Rules, 2010 do not apply in execution against the Government and/or State organs. Five Star ought to have commenced execution proceedings against the NLC in strict adherence with the provisions of section 21 of the *Government Proceedings Act*.” Emphasis Mine



29. See also the case of *Magut v Commission & another; Kestem Company Limited (Interested Party); National Bank of Kenya Limited (Garnishee)* (Environment & Land Case 7 of 2016) [2024] KEELC 6324 (KLR) (30 September 2024) (Ruling).
30. In the foregoing, while associating myself with the decisions cited, I find that the Garnishee proceedings commenced by the Decree holder herein were premature and incompetent for failure to adhere to the provisions of the *Government Proceedings Act*. It is my considered view that the rationale of the provisions of the *Government Proceedings Act* that outlines procedures on execution against and attachment of the Government's assets and property was not stipulated in vain, since the monies will still emanate from public coffers. I opine that the Garnishee Order Nisi issued on 7<sup>th</sup> November, 2024 was hence incompetent, null and void and should set aside. I hence proceed to set aside the Garnishee Order Nisi issued on 7<sup>th</sup> November, 2024 and release the Garnishee.
31. In the circumstances, I find the Decree holder's two Notice of Motion applications dated the 5<sup>th</sup> November, 2024 and 13<sup>th</sup> November, 2024 unmerited and will disallow them. I however find the Judgement debtor's Notice of Motion application dated the 15<sup>th</sup> November, 2024 merited and will allow it.
32. I direct that each party do bear their own costs of the three applications.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

**Mbaji for Decree holder**

**Odoyo for Judgement Debtor**

**Kitala for Garnishee**

**Court Assistant: Joan**

