



Kisia t/a Steg Consultants v Attorney General & another (Commercial Miscellaneous Application E403 of 2024) [2025] KEHC 14464 (KLR) (Commercial and Tax) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14464 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

COMMERCIAL MISCELLANEOUS APPLICATION E403 OF 2024

MN MWANGI, J

OCTOBER 3, 2025

IN THE MATTER OF AN APPLICATION BY PATRICK KISIA T/A STEG CONSULTANTS FOR AN ORDER RESTRAINING THE JUDGMENT-DEBTOR FROM RECEIVING SUCH MONEY DUE AND/OR ACCRUING FROM THE GOVERNMENT

-AND-

IN THE MATTER OF THE CIVIL PROCEDURE RULES

-AND-

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT CAP 40

BETWEEN

PATRICK KISIA T/A STEG CONSULTANTS APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

KAY CONSTRUCTION COMPANY LIMITED 2ND RESPONDENT

RULING

1. The applicant filed an Originating Summons dated 15th May 2024 which was subsequently amended on 6th November 2024. The Summons has been brought under the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 29 Rule 4(2) of the Civil Procedure Rules 2010, Section 23 of the *Government Proceedings Act*, Cap 40 and all other enabling provisions of the law. The applicant prays for an order to restrain the 2nd respondent from receiving 15% of all monies due to it from the Government through the Ministry of Defence and an order directing the Government to pay directly to the applicant monies due to the 2nd respondent in such sum equivalent to 15% of all monies owed



- to the 2nd respondent, in satisfaction of the decree issued on 25th May 2015 in HCMC No. 39 of 2014, relating to a building contract dispute over the Rehabilitation of the Laikipia Airbase.
2. The Summons are supported by an affidavit sworn on 14th May 2024 by Mr. Patrick Sagwa Kisia, the applicant herein. Mr. Kisia averred that he obtained a Judgment against the 2nd respondent for Kshs.142,234,965.60, and a decree was issued on 25th March 2022 in Civil Suit No. 60 of 2016. He stated that the said Judgment required payment upon the 2nd respondent's receipt of funds from the Government through the Ministry of Defence. He also stated that the 2nd respondent has admitted liability and acknowledged the applicant's entitlement to the decretal sum.
 3. Mr. Kisia asserted that as confirmed in a Ruling dated 31st October 2023, the 2nd respondent received Kshs.350,000,000/= from the Government before the Judgment but failed to pay him. Additionally, he averred that the 2nd respondent later received an additional Kshs.25,000,000/= but did not disclose this to the Court or pay the applicant his share. He deposed that all his efforts to recover the amount due to him from the 2nd respondent have been unsuccessful and that he risks suffering irreparable loss if the orders being sought herein are not granted.
 4. In opposition to the application, the 2nd respondent filed a replying affidavit sworn on 17th September 2024 by Mr. Hasmita Patel, a Director of the 2nd respondent. He averred that the 1st respondent was not a party to Civil Suit No. 60 of 2016, which is the basis of the applicant's claim. He averred that the payments from the Ministry of Defence to the 2nd respondent relate to a different matter being, Misc. Civil Suit No. 39 of 2014, thus they are governed by a separate decree. He asserted that Civil Suit No. 60 of 2016 only required the 2nd respondent and not the Ministry of Defence or the 1st respondent to pay the applicant upon receiving funds. He maintained that there was no order for direct remittance from the Ministry of Defence to the applicant.
 5. Mr. Patel stated that the Court in Civil Suit No. 60 of 2016 neither had the jurisdiction to interfere with proceedings or payments in Misc. Civil Suit No. 39 of 2014, nor could it issue binding orders to the Ministry of Defence or the 1st respondent. He asserted that directing the 1st respondent to pay the applicant would interfere with the Advocate-Client relationship between the Ministry of Defence and its Counsel, and would amount to unlawful garnishee proceedings, contrary to the provisions of Order 29 Rule 2 of the Civil Procedure Rules, 2010.
 6. He further stated that the application herein may embarrass the Court due to conflicting orders, and overlooks that the applicant has already recovered Kshs.8,000,000/= via garnishee proceedings and Kshs.25,000,000/= directly from the 2nd respondent. Mr. Patel averred that Civil Suit No. 60 of 2016 is still active with pending applications including one by the applicant for review and another one by the 2nd respondent for payment by way of instalments. He asserted that it is improper to initiate new miscellaneous proceedings when execution should be pursued in the original suit.
 7. In a rejoinder, the applicant filed a further affidavit sworn on 6th November 2024 by Mr. Patrick Sagwa Kisia, the applicant herein. He reiterated that he obtained Judgment against the 2nd respondent for Kshs.142,234,965.60, or such sum equivalent to 15% of all monies received or set to be received by the 2nd respondent from the Government under a separate decree in HCMC No. 39 of 2014. He averred that the 2nd respondent had already received Kshs.350,000,000/= from the Government but failed to remit 15% of that amount to the applicant until execution proceedings forced it to effect payment. He stated that the 2nd respondent more recently received an additional Kshs.25,000,000/= in April 2024 from the Government but failed to pay the applicant its 15% share as required.
 8. Mr. Kisia contended that the 2nd respondent's conduct demonstrates unwillingness and bad faith in settling the decree, prompting the instant application to restrain it from receiving 15% of future



payments and directing the Government to pay that portion directly to the applicant. He deposed that the application herein is a lawful mode of execution and not garnishee proceedings, as mis-characterized by the 2nd respondent. He contended that it is within the legal framework for enforcement of Court judgments against unwilling judgment-debtors. He asserted that the Court was aware of the existence of HCMC No. 39 of 2014 when issuing the Judgment in Civil Suit No. 60 of 2016, hence the orders being sought herein are consistent with that Judgment. He averred that the orders being sought herein target future sums and seek to preserve judicial resources by ensuring compliance with Court orders.

9. The instant application was canvassed by way of written submissions. The applicant's submissions were filed on 8th November 2024 by the law firm of Tito & Associates Advocates. On 17th February 2025, Mr. Ometto, learned Counsel for the 2nd respondent informed this Court that they would not file written submissions in opposition to the application herein and they would instead rely solely on the contents of the said respondent's replying affidavit already on record.
10. Mr. Tito, learned Counsel for the applicant submitted that pursuant to the provisions of Order 29 Rule 4(2) of the Civil Procedure Rules, 2010 and Section 23(1) of the *Government Proceedings Act*, this Court is empowered to restrain the 2nd respondent from receiving 15% of monies due to it from the Government and make an order for direct payment of that portion to the applicant. He argued that the Government is indebted to the 2nd respondent in Misc. Civil Case No. 39 of 2014, whereas the 2nd respondent is indebted to the applicant in Civil Suit No. 60 of 2016, and as such, this Court has the requisite jurisdiction to issue the orders being sought to ensure satisfaction of the applicant's decree. To buttress the above submissions, Counsel relied on the case of *Kennedy Wainaina Ngenga v County Government of Nairobi; Co-operative Bank of Kenya Limited (Garnishee)* [2019] eKLR.
11. Mr. Tito contended that the instant application relates to future payments, given that the underlying contract with the Government is still yielding disbursements. He further contended that the 2nd respondent has repeatedly shown bad faith and has failed to comply with a Court Judgment requiring it to remit 15% of sums received to the applicant, thereby denying him the fruits of a valid Judgment. He argued that the 2nd respondent's non-compliance undermines the Court's authority and justifies intervention to enforce the Judgment and prevent further delay. Counsel cited the case of *Nyakundi & Co Advocates v Council of Governors; Cooperative Bank of Kenya Limited (Garnishee)* [2023] KEHC 1035 (KLR) and submitted that based on the 2nd respondent's past conduct, this Court should grant the orders being sought herein in the interest of justice and to ensure compliance with Court orders.

Analysis And Determination.

12. I have considered the instant Summons, the affidavits filed in support thereof, as well as the replying affidavit by the 2nd respondent and the written submissions by Counsel for the applicant. The issue that arises for determination is whether the applicant has made out a case to justify being granted the orders being sought herein.
13. The instant Summons have been filed pursuant to the provisions of Order 29 Rule 4(2) of the Civil Procedure Rules, 2010 and Section 23 of the *Government Proceedings Act* which states that -
Order 29 Rule 4 (2)

In a case where it is alleged that such an order could have been obtained and would have had effect in respect of such money if it had been due or accruing from a subject the court may on the application by summons of the decree-holder make an order restraining the judgment-debtor from receiving such



money and directing payment by the Government to the decree-holder or receiver; and the court may appoint a receiver for that purpose.

Section 23

1. Where any money is payable by the Government to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would if the money so payable by the Government were money payable by a subject, be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due, or an order for the appointment of a receiver to receive the money on his behalf, the High Court may, subject to the provisions of this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person, or to the receiver:

Provided that no such order shall be made in respect of -

- a. deleted by Act No. 6 of 1979, Sch.;
 - b. money which is subject to the provisions of any written law prohibiting or restricting assignment or charging or taking in execution; or
 - c. money payable by the Government to any person on account of a deposit in the Kenya Post Office Savings Bank.
2. The provisions of subsection (1) of this section shall, so far as they relate to forms of relief falling within the jurisdiction of a subordinate court, have effect in relation to subordinate courts as they have effect in relation to the High Court. (Emphasis added).
14. From the foregoing provisions, a decree-holder can move the Court for an order such as the one being sought in the instant application, where the Government is indebted to a judgment-debtor, and the judgment-debtor has failed or refused to satisfy a decree.
 15. It is not in contest that following a decree issued on 25th March 2022 in Civil Suit No. 60 of 2016, the 2nd respondent was indebted to the applicant in the sum of Kshs.142,234,965.60. It is also uncontested that payment of the aforesaid sum was conditional upon the 2nd respondent receiving funds from the Government of Kenya through the Ministry of Defence. The record clearly shows that the 2nd respondent has since received a cumulative sum of Kshs.375,000,000/= from the Government, yet it has only remitted a portion of the said amount to the applicant after execution measures were undertaken by the applicant.
 16. The Court in the case of *Kennedy Wainaina Ngenga v County Government of Nairobi; Co-operative Bank of Kenya Limited (Garnishee)* (supra), held as follows-

The above cited legal provisions confirm that the process of execution with regard to Government institutions is prescribed by *Government Proceedings Act*. The *Civil Procedure Act* & Rules 2010 also prescribes the execution process and exempts Government from the said process. This means although execution is a right enforced by a decree holder against judgment debtor execution shall be carried down where it involves Government it shall be within the purview of *Government Proceedings Act*
 17. From the above decision, this Court is not persuaded by the 2nd respondent's contention that the instant application amounts to unlawful garnishee proceedings, noting that the application herein has been properly filed under the provisions of Order 29 of the Civil Procedure Rules, 2010 and Section 23 of the *Government Proceedings Act*, which provide a separate mechanism for recovery of decretal sums,



where Government funds are involved. A perusal of the affidavits filed and the annexures attached to the application herein reveal a consistent pattern of non-compliance, delay and lack of good faith on the part of the 2nd respondent, thereby warranting this Court's intervention to uphold the integrity of the Judgment and Ruling delivered in Civil Suit No. 60 of 2016 and HCMC No. 39 of 2014, respectively, to secure the applicant's rights.

18. It is therefore my finding that the instant application is merited. It is hereby allowed in the following terms -

- i. The 2nd respondent is hereby restrained from receiving 15% of all monies due and accruing to it from the Government through the Ministry of Defence in respect of HCMC No. 39 of 2014, until full satisfaction of the decree issued in Civil Suit No. 60 of 2016;
- ii. The Government under the Ministry of Defence, through the 1st respondent, is hereby directed to pay directly to the applicant a sum equivalent to 15% of all monies payable to the 2nd respondent in relation to the decree in HCMC No. 39 of 2014, until the decretal sum is fully settled; and
- iii. Costs of this application shall be borne by the 2nd respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 3RD DAY OF OCTOBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Owuor for the applicant

No appearance for the 1st respondent

Mr. Ometo holding brief for Dr. Arwa for the 2nd respondent

Ms B. Wokabi – Court Assistant.

