



Nyawara & another (Suing as the Administrators & Legal Representatives of the Estate of John Clinton) v Kenya Wildlife Service; KCB Bank Kenya Limited (Garnishee) (Judicial Review E001 of 2025) [2025] KEHC 13746 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
JUDICIAL REVIEW E001 OF 2025
DK KEMEL, J
OCTOBER 3, 2025**

BETWEEN

JARED ODHIAMBO NYAWARA 1ST APPLICANT

JOCINTER MARY 2ND APPLICANT

**SUING AS THE ADMINISTRATORS & LEGAL REPRESENTATIVES OF THE
ESTATE OF JOHN CLINTON**

AND

KENYA WILDLIFE SERVICE JUDGMENT DEBTOR

AND

KCB BANK KENYA LIMITED GARNISHEE

RULING

1. The Applicants herein filed a Notice of Motion dated 15th July 2025 wherein they sought the following prayers:
 1. Spent.
 2. Spent.
 3. KCB Bank Kenya Limited, the said Garnishee to attend court to show cause why the said Garnishee should not pay the Ex Parte Applicants/decreed holders the sum of Kshs5,000,000/= or its equivalent in Kenya shillings being the decretal amount in the accounts operated by the Judgment Debtor in the Garnishee's various branches.
 4. That this Honourable court does issue a Garnishee Order Absolute against the KCB Bank Kenya Limited – the Garnishee herein in respect to Moi Avenue Branch, Account Number



XXX ordering that all monies held to the credit of the Respondent/Judgment debtor be attached to settle and/or satisfy the outstanding balance of Kshs5,000,000/= or its equivalent in Kenya shillings, being the decretal sum and costs, being the amount in respect of which judgment was entered in favour of the Decree Holder.

5. That the costs of this application be borne by the Respondent/judgement debtor.
2. The application is supported by the grounds set out thereunder and a supporting affidavit of the 2nd Applicant – Jocinter Mary sworn on even date. The applicant’s gravamen is inter alia; that this Honourable Court entered judgment for the Exparte Applicants on 19/5/2025 as against the Respondent/Judgment Debtor for a sum of Kshs5,000,000/=; that the decretal sum remain unsatisfied to date despite the judgment debtor being aware of the existence of the decree and being able to settle the same; that the judgement debtor herein operates account No. XXX at KCB Bank Kenya Limited Moi Avenue Branch the Garnishee herein; that the decree holder is apprehensive that the Judgement debtor may withdraw and/or move the funds held to its credit by the garnishee unless the orders sought herein are granted, hence frustrating the realization of the decree.
3. The application was opposed by the Judgment Debtor/Respondent vide a replying affidavit sworn by Sheila Ochieng, the Judgment Debtor’s County Warden stationed at Siaya on 12/8/2025 wherein she deponed inter alia; that the compensation sum of Kshs5,000,000/= was approved on the 17/7/2025 by the Siaya County Wildlife Compensation Committee which is mandated to review/recommend for approval and payment of compensation; that the Exparte Applicants are out to bypass all the required procedures by seeking to garnishee accounts of the Judgment Debtor whose mandate does not cover compensation for Human Wildlife Conflict; that the application for mandamus has been spent and therefore it should not be extended to compel payment before an ongoing process is concluded as that will result in a travest of denying other equally deserving claimants a fair share of the available funds; that the application lacks merit and meant to render the court as a conveyor belt of illegalities and should be dismissed with costs.
4. The application was also opposed by the Garnishee who filed a Notice of Preliminary Objection dated 15th September 2025 wherein it raised the following grounds:
 - i. That the judgment debtor is a government department and or agent of the government of Kenya, although established under Section 6 of the [Wildlife Conservation and Management Act](#), 2013 as a body corporate with capacities such as suing, being sued, and holding property, this status does not negate its governmental nature. The institution’s Board of Trustees, as constituted under Section 8 is predominantly composed of Principal Secretaries, reflecting executive oversight, equally indicative of its public character, Section 14 underscores that Kenya Wild life Service’s funding is primary sourced through Parliamentary appropriations, along with investments and donations under public financial oversight. Consequently, the Kenya Wildlife Service qualifies as a government agent under Section 21 (4) of the [Government Proceedings Act](#) (Cap. 40), in so far as the said provisions regulates execution procedures for public bodies.
 - ii. The Garnishee Application seeks to attach monies owed by a government agency, Kenya Wildlife Service, in contravention of the express provisions of the [Government proceedings Act](#) (Cap 40), in so far as the said provisions regulates execution procedures for public bodies.
 - iii. The Garnishee shall at the first hearing hereof, raise a Notice of Preliminary Objection on a point of law to have the Claimant’s Notice of Motion application dated 19/8/2025 struck off with costs, on account of the issue that Kenya Wildlife Service, as a government agency, cannot be subjected to ordinary execution.



- iv. That the judgment debtor being a government agency cannot be subjected to ordinary execution.
5. The parties agreed to canvass the Garnishee's Preliminary Objection dated 15/9/2025 by way of written submissions.
6. The Garnishee filed submissions dated 16/9/2025. It was submitted that the intended execution process is in direct contravention of the express and mandatory provisions of Section 21(4) of the [Government Proceedings Act](#) as read with Order 29 Rule 2(2) (b) of the Civil Procedure Rules. The same provides as follows:

Section 21. Satisfaction of orders against the Government.

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 orders:
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.
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.

It was therefore submitted that the law prohibits any form of execution by way of attachment of any of the properties of any government institution such as the judgment debtor herein whose mandate is to conserve/manage and regulate wildlife resources in Kenya on behalf of the Government. Hence, the present execution is null and void. The Applicant should have obtained an order compelling the Chairperson of the Wildlife Compensation Committee as established under Section 18 of the [Wildlife Conservation and Management Act](#) 2013 to satisfy the decree. It was further submitted that even though the judgment debtor is a body corporate with its corporate seal, capable of being sued and suing in its own name, the said entity is a public entity wholly owned, operated by public officers appointed by the President of Kenya and that it gets its funds from the consolidated fund/Treasury and that its accountability falls under Parliamentary approval. Further, it is pointed out that Kenya Wildlife Service is an agency or agent or department of the Government of Kenya and



is protected by the *Government Proceedings Act*. It was further contended that the judgment debtor does not lose its character as an agent of government simply because it has capacity to sue and be sued in its name and therefore it is sheltered from execution. Reliance was placed in the cases of *Dr. Ezekiel Nyangama Okemwa vs. Kenya Marine and Fisheries Research Institute* (2020) eKLR, as per Hon. Justice James Rika, *Martin Muriithi & Another vs. Postal Corporation of Kenya & 4 Others* (2019) eKLR, *Association of Retirement Benefit scheme vs. Attorney General & 3 Others* (2017) eKLR and *International Airport (R.D Shetty) vs. The International Airport Authority of India & Others*.

It was submitted that from the foregoing authorities, courts are expected to take caution and to ensure that government proceedings are complied by parties. That all government entities get their funding through Parliamentary approval and therefore no payment out of public funds is legal unless it is authorized by statute and that any unauthorized payment must be recovered.

It was finally submitted that it is important to protect and preserve properties of government from execution and that any payments should be controlled by Parliament as there is a possibility that the several executions across the country would cripple all government operations rendering them bankrupt and unable to meet the urgent public obligations vested upon it. Learned counsel urged the court to desist from the temptation to follow the recent trends of judicial decisions on this well beaten path. It was urged that the execution proceedings herein be declared a nullity.

7. The Applicant's counsel filed submissions dated 15th September 2025 wherein he raised one issue for determination namely whether the judgment debtor herein is indeed a government or government department within the interpretation of the *Government Proceedings Act* and therefore immune from execution by way of Garnishee proceedings. It was submitted that the issue has been litigated before the High Court and Court of Appeal and hence a precedent had been set and therefore this court arriving at a different finding would amount to re-inventing the wheel. Learned counsel placed reliance on several cases namely *Masha v Kenya Wildlife Service; Standard Chartered Bank & Ano (Garnishee)* (Tribunal Appeal 37 of 2020) [2023] KENET 488 (KLR) (Environment and Land) (1 September Ruling), *Bob Thompson Dickens Ngobi v Kenya Ports Authority & Others* [2017] KEHC 627 (KLR), *Ngayau Mutia & Another v Kenya Petroleum Refineries Limited* [2020] KEHC 5742 (KLR), *Merry Elly Ndeda & Ano. v Kenya Wildlife Service; KCB Bank Limited (Garnishee) Miscellaneous Application E003 of 2024*, *Oguna & Ano v Kenya Wildlife Service; KCB Bank Ltd (Garnishee) Judicial Review Miscellaneous Application E002/2024* [2025] KEHC 6074 (KLR) (16 May 2025) Ruling and *Lodwar HCJR No. E003 of 2024 – Dongol Eleman Kokoi & 3 Others Vs. Kenya Wildlife Service & Kenya Commercial Bank* to reiterate the fact that the Judgment Debtor herein (Kenya Wildlife Service) is a State Corporation clothed with corporate personality and the capacity to sue and be sued in its corporate name and thus distinct from the government or department of government and is therefore subject to execution by way of Garnishee proceedings. Learned counsel urged the court to re-affirm its earlier position and dismiss the preliminary objection and order the Garnishee herein to release funds it holds on behalf of the judgment debtor in settlement of the debt herein.
8. I have considered the application and the submissions of learned counsels. It is not in dispute that the Applicants herein had earlier filed an application dated 29/11/2024 wherein they were granted an order of mandamus vide a ruling of this court dated 16th May 2025 and that the Judgment Debtor herein was ordered to release Kshs5,000,000/=. It is also not in dispute that the said Judgment Debtor did not pay up the money and hence the present application. The issue for determination is whether the Garnishee application has merit.



9. The main issue which is in contention is whether the judgment debtor is a government entity and therefore falls under the purview of the [Government Proceedings Act](#) Cap 40 Laws of Kenya. Indeed, suits against the Government or any entity of government must comply with the provisions of the aforesaid Act more particularly Section 21 thereof. The judgment debtor and the Garnishee have contended that the judgment debtor is a Government Entity and therefore the orders sought against it should not be granted as the same would be in violation of Section 21 of the [Government Proceedings Act](#). On the other hand, the Exparte Applicants maintain that the judgment debtor is a corporation (parastatal) with a corporate seal and capable of suing and being sued in its corporate name and therefore is amenable to execution proceedings.
10. The judgment debtor for all intents and purposes is a state corporation and therefore a body corporate with capacity to sue and be sued and also with capacity to hold property. That being the case, it should not be treated as part of Government per se as they are independent of government formed by government in order to undertake and perform certain functions on behalf of the government which cannot be adequately or efficiently performed within the structure of Government Ministries as was held by Munyao J in *Kimoi Ruto & Ano. Vs. Samuel Kipkosgei Keitany & Another* 2014 eKLR.

It is noted that the judgment debtor and the Garnishee have attempted to seek refuge under the [Government Proceedings Act](#). More particularly, Section 21 (4) thereof. The same provides as follows:

Section 21. Satisfaction of orders against the Government.

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 orders:
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.
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.

It was submitted by the Garnishee that the intended execution process is in direct contravention of the express and mandatory provisions of Section 21(4) of the [Government Proceedings Act](#) as read with Order 29 Rule 2(2) (b) of the Civil Procedure Rules. Learned



counsel has urged this court to depart from its earlier position it had taken in another similar matter and to be persuaded by the authorities presented by the Garnishee. I have perused the aforesaid authorities and note that the learned Judges were of the view that all corporations despite having a corporate seal and capacity to sue and be sued were organs or agents of government and thus shielded and or protected by the provisions of the Government Proceedings Act. However, my considered view is that the judgment debtor though a public entity under Article 227 of the Constitution falls within the category of statutory bodies as defined under the aforesaid Articles as statutory bodies, parastatals, bodies established by statute but managed privately such as universities and professional societies and also any private bodies fulfilling key functions under State's supervision. I find that from the description of the entities mentioned in Article 227 of the Constitution, there is no difference between the Judgment Debtor herein and a university as the same are managed as public bodies and they have a corporate seal and capable of suing and being sued in their corporate name. It is noted that the judgment debtor herein also manages other entities which fall under it namely County Wildlife Conservation and Compensation Committee which handle the exercise of scrutinizing compensation claims and that it is the judgment debtor who is responsible for providing the compensation funds. The compensation funds managed by the judgment debtor are liable to be garnished by claimants if it fails to honour such claims. It is instructive that the garnishee proceedings that have been mounted by the Applicants do not lead to a situation where the judgment debtor's physical assets are seized but that it is only a form of execution targeted at funds belonging to the judgment debtor and held by a garnishee on its behalf. I find that since the judgment debtor and the Garnishee have sought to take refuge under the above provisions of Government Proceedings Act, they are under obligation to show that they fall within the description of the government or government department or an officer of government. It is common knowledge that state corporations even though controlled and managed by government are not government per se as contemplated by the Act since they are independent legal entities and therefore cannot seek refuge under Section 21 (4) of the Government Proceedings Act so as to prevent execution proceedings. In *Ikon Prints Media Company Limited V Kenya National Highway Authority & 2 Others*, [2015] eKLR, the Court observed as follows:

Foremost though, it is important to point out that it would not be tenable to invoke the Government Proceedings Act (Cap 40) as a bar to any execution herein. The 1st Respondent is a body corporate with perpetual succession and a common seal. It is a corporate entity capable of subsisting independently.

It is dependent on Government funding but it is not government or servant of or agent of Government for the purposes of the Government Proceeding Act. The 1st Respondent is an independent juridical person capable of being sued and suing. Its litigation does not involve the Government. Any judgments decreed against the 1st Respondent are not judgments against the government but against an independent juridical body.”

This position was also adopted in *Greenstar Systems Limited v Kenyatta International Convention Centre (KICC) & 2 Others*, [supra] eKLR, where the court observed that:

The above authority which is of persuasive value upholds the view that a state corporation or parastatal is not automatically subject to the Government Proceedings Act. Where proceedings are instituted under this Act the Hon.



Attorney General will be a party. The Hon. Attorney General is not a party in the present proceedings.

11. From the foregoing observations, it is clear that the Judgment Debtor is a parastatal with a common seal capable of suing and being sued in its name and therefore, it cannot seek refuge under the *Government Proceedings Act*. The funds which belongs to the Judgment Debtor and held by the Garnishee ought to be available for attachment in order to satisfy the decree herein. Hence, the objections raised by the Garnishee vide its Notice of Preliminary Objection dated 15th September 2025 should be rejected because it is obliged to satisfy the decree as it holds the said funds on behalf of the Judgment Debtor and that the Judgment Debtor ought to allow the Decree Holder access the funds in settlement of the decree. The Garnishee's vociferous objection to the application is unwarranted in that the responsibility to contest the claim lodged by the Applicants was upon the Judgment Debtor while the Garnishee is merely a holder of funds on behalf of the Judgment Debtor and its duty is to release the same as and when directed by the Judgment Debtor or a Garnishee Order served upon it. It is surprising that the Garnishee is the one on the forefront forestalling the garnishee proceedings on behalf of the judgment debtor yet any dispute between the Applicants and the Judgement Debtor ought to be resolved between them and that the Garnishee is only to confirm the availability of the funds and to release them upon being directed appropriately.
12. The Judgment Debtor having failed to establish that it is a government entity and not a parastatal, then the Garnishee has no option but to allow the attachment of the sums in accordance with the decree. Further, as the Garnishee has failed to show cause why the decree nisi should not be made absolute, then the Applicants are entitled to the prayer for a garnishee order absolute.
13. In the final analysis, it is my finding that the Notice of Preliminary Objection dated 15th September 2025 lacks merit and is dismissed with costs to the Applicants. The Exparte Applicants' application dated 15th July 2025 is allowed in terms of prayer Numbers 4 and 5 thereof.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 3RD DAY OF OCTOBER 2025.

D. KEMEI

JUDGE

In the presence of:

Opondo.....for Applicants/Decree Holders

Karang'a for M/s Walubengo.....for Judgment Debtor

M/s Oduor.....for Garnishee

Okumu.....Court Assistant

