



Republic & another v Kenya Wildlife Service & 2 others; SMP (A Minor Suing Through His Father and Next Friend MOM) (Ex parte Applicant) (Judicial Review E002 of 2024) [2025] KEHC 14100 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
JUDICIAL REVIEW E002 OF 2024
CM KARIUKI, J
OCTOBER 9, 2025**

BETWEEN

REPUBLIC 1ST APPLICANT

SOLONIK MURUNYA PARMUAI (A MINOR SUING THROUGH HIS FATHER AND NEXT FRIEND MARIMA OLE MURUNYA 2ND APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

COUNTY WILDLIFE COMPENSATION COMMITTEE, NAROK 2ND RESPONDENT

MINISTERIAL WILDLIFE COMPENSATION COMMITTEE 3RD RESPONDENT

AND

SMP (A MINOR SUING THROUGH HIS FATHER AND NEXT FRIEND MOM) EX PARTE APPLICANT

RULING

Introduction

1. Before the Honourable Court is the Applicant's Notice of Motion Dated 28 th March, 2025 seeking orders that the honourable court issues a garnishee order absolute against the Garnishee.
2. In opposition to the grant of orders sought in the Applicant's Notice of Motion dated 28th March 2025, the Respondent filed Grounds of Opposition dated 21 st April, 2025. The Respondent accordingly relies on the Grounds of Opposition.



Background

3. The honourable Court issued a Ruling dated 27th February, 2025 compelling the Respondent by way of mandamus to pay Kshs. 1, 500,000/= as compensation for injuries sustained by the Applicant.
4. It is not in dispute that the said Ruling was in respect to Judicial Review Application seeking an order of mandamus to compel the Respondent to pay the Applicant for compensation of injuries sustained thus by Application dated 28/03/2025, the Applicant orders: -
 1. Spent.
 2. Garnishee Order Nisi against KCB Bank Kenya Limited - the Garnishee herein, in respect of Moi Avenue Branch, Account Number 1107xxxxxx ordering that all monies held to the credit of the Defendant/Judgement-debtor be attached to settle and/or satisfy the Decree/order for Kshs. 1,500,000.00 plus costs agreed at Kshs.157,500.00, all summing up to Kshs. 1,657,500.00 or its equivalent in Kenya Shillings, being the amount in respect of which judgement was entered in favour of the Ex Parte Applicants/ Decree-Holders together with costs that were agreed to by consent dated 18th March 2025.
 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/decree holders the sum of Kshs. 1,657,500.00 or its equivalent in Kenya Shillings, being the decretal amount and costs from the amount in KCB Bank Limited, Moi Avenue Branch, Account Number 1107xxxxxx.
 4. The Honourable court does issue a Garnishee Order absolute against KCB Bank Kenya Limited - the Garnishee herein, in respect to Moi Avenue Branch, Account Number 1107xxxxxx ordering that all monies held to the credit of the Respondent/Judgement - debtor be attached to settle and/or satisfy the Decree for Kshs 1,657,500.00 or its equivalent in Kenya Shillings, being the amount in respect of which judgement was entered in favour of the Decree-Holder together with costs that were agreed to by consent.
 5. The costs of this application be borne by the Respondent/Judgement debtor.
 6. The same is based on grounds on the application namely: -
 7. This Honourable Court entered Judgment for the Ex Parte Applicant on 27th February 2025 as against the Respondent/judgment debtor for a sum of Kshs. 5,000,000.00. The plaintiff/decree holder was also awarded costs and the same were agreed by consent dated 18th March 2025 at Kshs. 157,500.00.
 8. The decretal sum and costs remain unsatisfied to date despite the Judgement-debtor being aware of the existence of the decree.
5. That the Judgement - debtor herein operates Account No. 1107xxxxxx at KCB Bank Kenya Limited, Moi Avenue Branch, the Garnishee herein, and the Garnishee is indebted to the Respondent/Judgement - debtor.
6. 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.
7. Parties were directed to canvass application via submissions



Exparte Applicant's Submissions: -

8. The Court delivered a consolidated judgment in favour of the Applicant herein alongside other applicants in HCJR No. 3, HCJR No. 4 and HCJR No. 5 all of 2024. The Applicants extracted and served the orders on the Respondent, who has maintained their stance as that before the matter was decided that it is not their responsibility to pay.
9. The Respondent seems to be dissatisfied with the judgment of this Court but has not appealed the same. Stay lapsed two months ago yet no payment has been made as ordered by this Court.
10. The Applicant filed a garnishee application to recover the amount due and the Garnishee funds available for attachment is Kshs.7,680,943.00.
11. The Respondent and the other party filed grounds of opposition, challenging the mode of execution. Their objection is based on a misguided position that Judicial Review Proceedings are not subject to Civil Procedure Rules.
12. For that reason, they contend that execution by way of Garnishee proceedings do not apply to Judicial Review cases as in the one before you.
13. The procedure for filing and hearing of Judicial Review cases is provided under Order 53 of the Civil Procedure Rules. It therefore follows that Judicial Review case, even though special in nature, the substantive law is the Law Reforms Act, but the procedure is governed by the Civil Procedure Rules, under which Garnishee proceedings are provided for.
14. In the case of Futureway Limited -vrs- National Oil Corporation of Kenya [2017] KEHC 6365 (KLR) at paragraph 56, where the court made a finding that Judicial Review proceedings are indeed subject to Civil Procedure Rules. As established under Section 6 of the Wildlife Conservation and Management Act of 2013, is a body corporate with perpetual succession and a common seal and capable, in its corporate name, of suing and being sued, buying/holding property in its name. This means that it is independent from the Government and in all matters where it is involved, the Attorney General is not involved.
15. For purposes of Government Proceedings Act, the Respondent is not a Government. Reliance made on the cases of Mombasa HC 87 of 2013 Thompson Dickens Ngobi -vrs- Kenya Ports Authority and Others 2017, Ngayau Mutia & another v Kenya Petroleum Refineries Limited 120201 5742 (KLR). at paragraph 8,9 and 10, and Kimoi Ruto Another vs. Samuel Kipkosgei Keitany & Another 2014 e KLR at Paragraph 46,.
16. Thus, for purposes of proceedings, the Respondent herein is not Government and therefore not subject to the provisions of the Government Proceedings Act.

Respondent Submissions: -

17. The Respondent submits that it does not owe the Applicant any monies in form of debt capable of being executed by way of garnishee proceedings. It relies on the case of Republic Vs Town Clerk Kisumu Municipality Exparte East African Engineering Consultants (2007) KEHC 147(KLR) the court when issuing a ruling on execution of Judicial Review Application by way of garnishee proceeding held that; "garnishee proceedings are both provided for under the Civil Procedure Act and Rules and the Judicial review jurisdiction is sui generis and is not subject to this Act and Rules either"



18. The Respondent submits;
- “An order of mandamus is a public law remedy that commands a public authority to perform a public duty. It is not a substitute for a money decree and is not enforceable in the same way as a judgment under the Civil Procedure Rules”Reliance made on *Exparte Fredrick Manoah Egunza* [20121 KEHC 1643 (KLR), *Republic v Attorney General & another Exparte James Alfred Koroso* [20131 KEHC 90 (KLR) and, *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* 119971 KECA 58 (KLR)
19. The Respondent submits that an order of mandamus to compensate the Applicant for injuries sustained does not amount to debt and/or money owed and therefore cannot be enforced through garnishee proceedings.
20. Pursuant to Order 23 Rule 1 (1) of the Civil Procedure Rules, 2010 it stipulates that;
- “a court may upon affidavit by the decree-holder ...stating that a judgment debtor is indebted to him and that a third party is indebted to the judgment -debtor order that all debts owing or accruing from such third part ... to the judgment -debtor shall be attached...”
21. The Respondent reiterates that it does not have any debt and/ or not owed or accrue any monies by the Applicant capable of being enforced through garnishee proceedings.
22. The Respondent is a public body corporate established pursuant to section 6(1) of the Wildlife Conservation and Management Act, 2013 and further a state corporation as defined under State Corporations Act (Cap 446). As such, it performs governmental functions, receives public funding and is subject to government oversight, thereby bringing it squarely within the ambit of the Government Proceedings Act (cap 40).
23. Section 21 (4) of the Government Proceedings Act provides.
- “Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued against the government or any government officer”
24. This statutory prohibition extends to garnishee proceedings and other execution processes against public funds or institutions funded by the exchequer reliance made on the case of *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza* 120121 eKLR , *Republic v Town Clerk, Webuye County Council & another* [20141 eKLR.
25. Thus, summed up that, the Applicant has improperly instituted garnishee proceedings notwithstanding the legal position that Judicial review remedies including mandamus are not self-executing and do not amount to money decrees enforceable under the Civil Procedure Act:
26. Accordingly, the Respondent submits that execution of the order of mandamus through garnishee proceedings is fundamentally flawed and legally untenable.

Issues Analysis and Determination:

27. The issues discernible from pleadings, and parties’ submissions are,



Whether the garnishee proceedings are appropriate in the instant matter and costs.

28. The Court issued a Ruling dated 27th February, 2025 compelling the Respondent by way of mandamus to pay Kshs. 1, 500,000/= as compensation for injuries sustained by the Applicant. It is not in dispute that the said Ruling was in respect to Judicial Review Application seeking an order of mandamus to compel the Respondent to pay the Applicant for compensation of injuries sustained.
29. Pursuant to Order 23 Rule 4 of the Civil Procedure Rules, 2010 It provides for execution against Garnishee and stipulates that.

“If the garnishee does not dispute the debt due or claimed to be due from him to the judgment-debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with the costs of the garnishee and the order absolute shall be in Form No. 17 or 18 of Appendix A, as the case may require.”
30. Further, Order 23 Rule 3 of the Civil Procedure Rules, 2010 provides for effect of garnishee order that;

“Service of an order that debts due to a judgment debtor liable under a decree shall be attached, or notice thereof to the garnishee in such manner, as the court may direct, shall bind such debts in his hands.”
31. Applicants submit that, the procedure for filing and hearing of Judicial Review cases is provided under Order 53 of the Civil Procedure Rules. It therefore follows that Judicial Review case, even though special in nature, the substantive law is the Law Reforms Act, but the procedure is governed by the Civil Procedure Rules, under which Garnishee proceedings are provided for. As established under Section 6 of the Wildlife Conservation and Management Act of 2013, is a body corporate with perpetual succession and a common seal and capable, in its corporate name, of suing and being sued, buying/ holding property in its name.
32. This means that it is independent from the Government and in all matters where it is involved, the Attorney General is not involved. In rejoinder, The Respondent submits that an order of mandamus to compel the Respondent to perform a duty does not amount to debt and/ or money owed and therefore cannot be enforced through garnishee proceedings.
33. The Respondent further submits that garnishee proceeding is not a proper mode of execution for Judicial Review matters.
34. I have considered the application, the affidavits sworn in support and in opposition of the same, the submissions filed on behalf of the parties as well as the authorities cited. Consequently, the issues for determination are:
 - a. Whether the garnishee proceedings are appropriate in the instant matter,
 - b. Whether or not the 1st Garnishee is analogous to the government and therefore not subject to execution in the manner provided for under Order 23 rule 1 of the Civil Procedure Rules 2010.
 - c. Whether the Garnishee Order Nisi made herein should be made absolute.
35. On the 1st issue, the Respondent submits that, it is a public body corporate established pursuant to section 6(1) of the Wildlife Conservation and Management Act, 2013 and further a state corporation as defined under State Corporations Act (Cap 446).



36. As such, it performs governmental functions, receives public funding and is subject to government oversight, thereby bringing it squarely within the ambit of the Government Proceedings Act (cap 40) thus, it is a government agency established under statutes. That in the premises, no execution can be levied against the property of a government agency in settlement of a decree in a civil case regardless of the status of the person or institution in whose name the property vests as contained in section 21 (3) and (4) of the Government Proceedings Act and Order 29 Rule 4 (1) of the Civil Procedure Rules.
37. The respondent is created under section 6(1) of the Wildlife Conservation and Management Act, 2013 as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and doing all things that a corporation may lawfully do.
38. Section 2 of the State Corporations Act, No. 18 of 1986 defines a state corporation. On the other hand, section 21(4) of the Government Proceedings Act provides: -
- “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 persons 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.”
39. My reading of the above section is that for any party to benefit from the protection in execution proceedings accorded by section 21(4) of the Act, it must fall within the description of government, a government department or an officer of the government. There is sufficient jurisprudence affirming that state corporations, although controlled and managed by government are not government, a government department or an officer of the government as contemplated by the Act. They are independent legal persons and cannot invoke section 21(4) of the Government Proceedings Act as a bar to execution.
40. In *Ikon Prints Media Company Limited V Kenya National Highways 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 judicial 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.”
41. This position was also adopted in *Greenstar Systems Limited v Kenyatta International Convention Centre (KICC) & 2 Others*, [2020] 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.”



42. The respondent is a body corporate and not a Government department or agency. Its invocation of the Government Proceedings Act is but a last-ditch attempt to scuttle the execution proceedings against it. The 1st Garnishee is estopped from relying on the provisions of the Government Proceedings Act as a challenge to execution against it. (See also *Anniversary Press (K) Limited v National Water Conservation & Pipeline Corporation*, [2020] eKLR).
43. The rationale for this unanimous view by the Courts is to ensure that the right to access to justice under Article 48 of the Constitution is not infringed. (See the Court of Appeal in *Joseph Nyanamba & 4 others v Kenya Railways Corporation* [2015] eKLR and this court in *African Commuter Services Ltd v The Kenya Civil Aviation Authority & 2 Others* [2014] eKLR). It also serves to ensure that courts do not act in vain.
44. Having determined that the provisions of Order 23 rule 1 of the Civil Procedure Rules 2010 do apply to the 1st Garnishee, I now turn to the second issue as to whether the Garnishee Order Nisi made should be made absolute. The law governing garnishee proceedings is Order 23 Rule 1(1) of the Civil Procedure Rules which provides: -
- “A court may, upon the ex parte application of a decree holder, and either before or after an oral examination of the judgment debtor, and upon affidavit by the decree holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, Rule 42 owing from such third person (hereinafter called the “Garnishee”) to the judgment debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree holder the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.”
45. Order 23 Rule 4 of the Civil Procedure Rules provides: -
- “If the garnishee does not dispute the debt due or claimed to be due from him to the judgment debtor, or, if he does not appear upon the day of hearing named in an order nisi, then the court may order execution against the person and goods of the garnishee to levy the amount due from him, or so much thereof as may be sufficient to satisfy the decree, together with costs of the garnishee proceedings; and the order absolute shall be in Form 17 or 18 of Appendix A, as the case may require.”
46. The primary object of a garnishee order is to make the debt due by the judgment debtor available to the decree holder in execution without driving him to the suit.
- i. Order 23 Rule 4 is explicit where the debt is not disputed. Both Garnishees have admitted the claim. The bank has confirmed its willingness to comply with this court’s orders.
 - ii. Therefore, court does issue a Garnishee Order absolute against KCB Bank Kenya Limited - the Garnishee herein, in respect to Moi Avenue Branch, Account Number 1107xxxxxx ordering that all monies held to the credit of the Respondent/Judgement - debtor be attached to settle and/or satisfy the Decree for Kshs 1,657,500.00 or its equivalent in Kenya Shillings, being the amount in respect of which judgement was entered in favour of the Decree-Holder together with costs that were agreed to by consent.



iii. The costs of this application be borne by the Respondent/Judgement debtor.

iv. Orders accordingly.

DATED AND DELIVERED IN NAROK VIA MICROSOFT TEAMSTHIS 9TH OCTOBER 2025

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CHARLES KARIUKI

JUDGE

