



Gachuri v County Government of Kiambu (Employment and Labour Relations Cause E028 of 2023) [2025] KEELRC 3222 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3222 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E028 OF 2023**

**SC RUTTO, J
NOVEMBER 14, 2025**

BETWEEN

GEORGE KAGOTHO GACHURI CLAIMANT

AND

COUNTY GOVERNMENT OF KIAMBU JUDGMENT DEBTOR

RULING

1. This Ruling addresses two applications filed by the Judgment Debtor/Applicant. Both applications are dated 13th June 2025. In the first Notice of Motion, the Applicant seeks an order to set aside and/or strike out the warrant of arrest issued on 25th April 2025 against John Maingi, the County Secretary of the County Government of Kiambu.
2. The Motion is anchored on the grounds set out therein and is supported by the affidavit of John Maingi, the County Secretary of the County Government of Kiambu. Mr. Maingi avers that on 25th April 2025, this Court issued a warrant of arrest against him for failing to pay Kshs. 4,802,655.00 to the law firm of Gitau J. H. Mwara & Company Advocates.
3. He contends that the issuance of the warrant of arrest was procedurally flawed, having been obtained without following the correct legal process. Mr. Maingi further states that a decree holder seeking to enforce a decree against the Government or a County Government must follow the procedure set out under Section 21 of the *Government Proceedings Act*, which begins with the issuance of a Certificate of Order, a step that the Claimant/Decree Holder in this case failed to undertake.
4. Mr. Maingi further avers that it is well-established that the proper procedure to satisfy a decree against the Government or County Government is to seek an order of mandamus compelling the relevant official to settle the decree. He asserts that the Claimant did not follow this procedure in the present matter.



5. In his view, the warrant of arrest is null and void, lacking legal authority and issued in violation of statutory requirements, and are consequently unenforceable ab initio.
6. Mr. Maingi further states that he is neither a party to these proceedings nor a judgment debtor in the matter at hand.
7. The second application by the Judgment Debtor/Applicant seeks leave to file a defence and counterclaim out of time. The Applicant further requests an order setting aside the judgment delivered on 20th December 2023, along with the subsequent decree issued on 28th February 2024, and reopening the suit for hearing on its merits.
8. The Motion is founded on the grounds set out therein and is supported by the affidavit of Elizabeth Kibathi, who describes herself as the Applicant's Deputy Director of Litigation and Prosecution. Ms. Kibathi avers that upon being served with summons to enter appearance, the Applicant instructed Miss Lucy Wanjeri Njuguna to come on record and represent it in the matter.
9. The Applicant only became aware that judgment had been entered in favour of the Claimant when it was served with a warrant of arrest on 10th June 2025.
10. Ms. Kibathi states that they were shocked to learn that no representation had been made on their behalf during the court proceedings, as the advocate they had instructed failed to appear and did not file the defence and counterclaim. Upon inquiry, the advocate confirmed that she had instructed her clerk to file all relevant documents, but the clerk failed to do so. Consequently, the matter proceeded without the Applicant being given an opportunity to be heard, resulting in a denial of fair trial.
11. It is further averred that the Applicant's non-attendance in court was not deliberate, as it was neither notified of the hearings nor aware that they were taking place. That further, the Applicant has a defence which raises triable issues.
12. In response to both applications, the Claimant/Decree Holder, George Kagotho Gachuiiri, filed one Replying Affidavit dated 27th June 2025.
13. Mr. Gachuiiri avers that the Notice of Summons was duly served on the Applicant on 26th January 2023 and was stamped on the same day. He further states that the Notice to Show Cause dated 8th April 2025 was properly served on 9th April 2025 and duly received and stamped by the Applicant. The warrant of arrest dated 25th April 2025 were likewise duly served, received, stamped, and signed by the Applicant.
14. He contends that the County Attorney had promised to ensure payment of the decretal sum of Kshs. 4,801,155 by close of business on 13th June 2025. Instead, the Applicant rushed to file the applications dated 13th June 2025, which, in his view, demonstrates an abuse of court process, as well as disregard and defiance of Court Orders.
15. Mr. Gachuiiri further avers that the Judgment Debtor's advocate, Lucy Wanjeri Njuguna, purportedly responsible for signing the Memorandum of Appearance and the Judgment Debtor's Defence dated 9th March 2023, did not hold a valid practising certificate for the years 2023, 2024, or 2025, according to the Law Society of Kenya status obtained on 18th June 2025. She was therefore inactive and incompetent to sign or file any court pleadings during this period.
16. He contends that the Memorandum of Appearance and draft Defence dated 9th March 2023, signed by Lucy Wanjeri Njuguna, should be struck from the Court record forthwith, and that the two applications should likewise be dismissed with costs awarded to the Claimant.



17. Mr. Gachuri further avers that the purported Defence filed by the Judgment Debtor is meritless and raises no triable issues. On the basis of this deficient Defence, he argues that the applications have no merit and should be dismissed with costs.
18. He also asserts that the High Court has clarified that any past protection enjoyed by the National Government, Public Authorities, or County Governments under Section 21 of the [Government Proceedings Act](#) was effectively curtailed by [the Constitution](#) of Kenya 2010, which leaves little room for impunity, disregard, or defiance of court orders by these entities.
19. Mr. Gachuri further avers that, should the Court exercise its discretion in favour of the Applicant, the Court should order it to deposit the decretal sum of Kshs. 4,801,155 into court or into a joint interest earning account within 21 days pending the re-hearing of the suit, failing which the judgment and decree on record should remain enforceable.

Submissions

20. The Applications were canvassed by way of written submissions. The court has paid due consideration to the written submissions by both parties.

Analysis and Determination

21. Upon consideration of the two applications dated 13th June 2025 by the Judgment Debtor/Applicant, the Claimant's Replying Affidavit and the rival submissions, the Court identifies the following issues for determination:
 - a. Whether the warrant of arrest issued on 25th April 2025 is lawful and regular;
 - b. Whether the Court should set aside its judgment delivered on 20th December 2023 and allow the Applicant to file a defense and counterclaim out of time.
22. With respect to the first issue, the Applicant contends that the warrant of arrest issued on 25th April 2025 against its County Secretary are procedurally flawed, having been obtained without following the proper legal procedures.
23. In support of this contention, the Applicant argues that the rules applicable to ordinary execution proceedings do not apply to the Government. It further submits that no execution can be levied against the property of the Government or County Government to satisfy a decree in a civil case, and that the only remedy available to a decree holder is to seek an order of mandamus.
24. Conversely, the Claimant submitted that the technical requirements, such as obtaining a certificate of order against the Government for an order of mandamus that existed prior to [the Constitution](#) of Kenya 2010, were generally subordinated to the substantive goal of ensuring justice for decree holders in the case of *Absa Kenya PLC v Kenya Deposit Insurance Corporation*, Milimani HCCC No. E411 of 2022.
25. Regarding execution against the Government, the law is now settled that, before seeking an order of mandamus, an applicant must comply with the procedure set out in Section 21 of the [Government Proceedings Act](#), which provides as follows:

“(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.”

26. Further, Section 21 (3) of the said Act provides that:

“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.”

27. Regarding the applicability of Section 21 to County Governments, it is noteworthy that the provision was amended to align with the new constitutional dispensation to read as follows:

“(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.”

28. The Court aligns itself with the decision in *Gichina (Suing as the Administrator of the Estate of the Late Joseph Gichina Muhoro) v County Government of West Pokot (Environment & Land Case 125 of 2016) [2024] KEELC 7104 (KLR) (24 October 2024)*, in which it was held that:

“Under the *Government Proceedings Act* the relevant provisions in regard to execution of decrees against government is Section 21 of the Act. Further, the Section has been amended by The Government Proceedings (Amendment) Act, 2015, Act No. 35 of 2015, assented to on 18th December, 2015 and commenced on 7th January, 2016. The provision stipulates that: “Section 21 of the *Government Proceedings Act* is amended by inserting the following new sub-section immediately after sub-section (4)- (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.”

29. In view of the foregoing, it follows that, as the Judgment Debtor herein is a County Government, any execution proceedings against it must comply with the provisions of Section 21 of the *Government Proceedings Act*.

30. Applying the provisions of Section 21 of the *Government Proceedings Act* to the present case, the Claimant was first required to obtain a Certificate of Costs and a Certificate of Order against the Government. Only thereafter could he seek a writ of mandamus compelling the relevant officer in the Applicant’s County Government to comply with the decree.



31. It is evident, therefore, that the Claimant herein failed to comply with Section 21 of the [Government Proceedings Act](#) by not obtaining or serving the Applicant with a Certificate of Order and/or a Certificate of Costs.
32. Accordingly, the execution proceedings initiated by the Claimant are irregular, and as such, the warrant of arrest issued on 25th April 2025 against John Maingi, County Secretary, County Government of Kiambu, is irregular and unlawful.
33. Having reached the foregoing conclusion, I now turn to consider whether the Court should set aside its judgment delivered on 20th December 2023, grant the Applicant leave to file a Statement of Defence, and allow the matter to be reopened.
34. The power to set aside a judgment is discretionary. In *Pithon Waweru Maina v Thuka Mugiria* (1982-88) 1 KAR 171, Bosire J (as he then was) held that the power to set aside judgment is discretionary; the discretion is unlimited provided it is properly exercised; it being judicial discretion must be exercised on the basis of evidence and sound legal principles; the Court has powers to set aside on terms as are just; the Court is obliged to look at the defence the Applicant /Defendant may be having to the claim; if a party establishes a reasonable defence and which appears on the face of the pleadings to contain considerable merit, the Court ought to be inclined towards setting aside.
35. In *Shah vs Mbogo & Anor* (1967) E.A 470 Court of Appeal for Eastern Africa held: -

“applying the principle that the Court’s discretion to set aside an ex parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not to assist a person who has deliberately sought (whether by evasion or otherwise) to obstruct or delay the cause of justice, the motion should be refused.”
36. In the instant case, the Applicant contends that it had issued instructions to one Lucy Wanjeri Njuguna, Advocate to appear on its behalf and represent it in the proceedings.
37. The Applicant further states that it only became aware of the actual representation when it was served with the warrant of arrest.
38. The record shows that upon being served with the summons to enter appearance and the Memorandum of Claim, the Applicant entered appearance through an Advocate by the name Lucy Wanjeri Njuguna, who filed a response to the Memorandum of Claim. However, the said Advocate did not make any court appearances thereafter.
39. The Claimant contends that the Advocate did not hold valid practicing certificates for the years 2023, 2024, or 2025, according to the Law Society of Kenya status obtained on 18th June 2025, which showed she was inactive and therefore incompetent to sign or file any court pleadings during that period.
40. In support of his assertions, the Claimant attached a screenshot from the Law Society of Kenya website indicating that the Advocate was last active in practice in 2022.
41. Consequently, it is apparent that she was not qualified to file pleadings or represent the Applicant in these proceedings.
42. What manifests from the foregoing is that the Advocate instructed by the Applicant failed to act prudently by ensuring her practicing status was regularized and by attending court to defend the Applicant.



43. In the circumstances, the Court is inclined to give the Applicant the benefit of the doubt. In so doing, the Court concurs with the decision in Phillip Kiptoo Chemwolo & Anor v Augustine Kubede (1986) eKLR, which held that:

“I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of parties and not for the purpose of imposing discipline....”

44. In the circumstances, the Court is persuaded that the Judgment Debtor/Applicant’s motion is merited and that this is an appropriate case for the exercise of its discretion.

45. Accordingly, the two Applications by the Judgment Debtor/Applicant dated 13th June 2025 are allowed on the following terms:

- a. The warrant of arrest issued on 25th April 2025 against John Maingi, County Secretary, County Government of Kiambu, is irregular and is hereby set aside.
- b. The judgment delivered on 20th December 2023, along with the consequential orders, is hereby set aside.
- c. The Judgment Debtor/Applicant is granted seven (7) days’ leave from the date hereof to enter appearance and file its Defence.
- d. The Claimant/Decree Holder is awarded thrown-away costs of Kshs. 30,000, payable within fourteen (14) days from the date hereof, failing which the orders in (b) and (c) shall automatically lapse.
- e. The Claimant/Decree Holder is also awarded the costs of this Application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant/Decree Holder, Mr. Gitau

For the Judgment Debtor/Applicant Ms. Ang’iela

Court Assistant Elijoy

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

