

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

JUDICIAL REVIEW (JR) NO. E001 OF 2025

PASKAL

OTIENO OLWAYO.....APPLICANT/DECREE HOLDER

VERSUS

KENYA WILDLIFE

SERVICE.....RESPONDENT/JUDGMENT DEBTOR

KCB BANK LTD.....GARNISHEE

RULING

1. The Applicant herein filed a garnishee application dated 1st September 2025 seeking the following reliefs:

- 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 Kshs3,000,000/= or its equivalent in Kenya shillings being the decretal amount in the accounts operated by the Judgement 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 1107169712 ordering that all monies held to the credit of the Respondent/Judgment debtor be attached to settle and/or satisfy the Decree for Kshs3,000,000/= 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 Applicant sworn on even date. The applicant's gravamen is inter alia; that this Honourable Court entered judgment for the fur Exparte Applicants on 23/7/2025 as against the Respondent/Judgment Debtor for a sum of Kshs3,000,000/=; that the decretal sum and costs 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. 1107169712 at KCB Bank Kenya Limited Moi Avenue Branch; that the garnishee herein is indebted to the Applicant; that the decree holder is apprehensive that the judgment 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 Respondent/Judgment debtor who filed grounds of opposition dated 28th October 2025 wherein it raised objections inter alia; that execution through garnishee proceedings as contemplated under Order 23 of the Civil Procedure Rules is a preserve of Civil proceedings and not applicable in judicial review; that there is no such relief as garnishee proceedings in the laws donating the judicial review jurisdiction, that is, the Constitution or the Law Reform Act, under which the Applicants approached this Honourable Court; that the judicial review jurisdiction is sui generis and not subject to the Civil Procedure Act and Rules,

where garnishee proceedings are applicable; that this Honourable court, exercising judicial review jurisdiction lacks the jurisdiction to grant the reliefs sought as they are beyond the judicial review purview; that the Notice of Motion application dated 1st September 2025 is incompetent, incurably defective, bad in law and should be dismissed with costs to the Respondent.

4. The Garnishee filed a replying affidavit dated 5th November 2025 wherein it averred inter alia; that the garnishee confirms that the Respondent/Judgment Debtor holds and operates an account with the garnishee whose particulars are as follows:

Account Name: Kenya Wildlife Service

Account Number: 1107169712

Balance: Kshs23,882,993.34/=

That the money in the said account is sufficient to settle the decretal sum demanded by the decree holder together with costs of the suit as assessed by this court; the garnishee is ready and willing to comply with any orders issued by this court subject to payment of its costs of Kshs30,000/=.

5. The application was canvassed by way of written submissions. It is only the Applicant who complied while the garnishee opted to rely on its replying affidavit.

6. Subsequent to the judgment of the Court, the Respondent refused to pay and the Applicant sought to attach the accounts by way of Garnishee Proceedings.
7. Mr. Opondo for the Applicant submitted that the Respondent/Judgment debtor's grounds of opposition dated 28/10/2025 lacks basis and should be rejected. On whether the Respondent is a Government entity within the meaning of the Government Proceedings Act, it is noted that the issue has been litigated before this Court and the Court of Appeal and precedence set and which are binding on this Honourable Court and that arriving at a different finding would amount to re-inventing the wheel. Counsel placed reliance in the case of **Masha v Kenya Wildlife Service; Standard Chartered Bank & another (Garnishee) (Tribunal Appeal 37 of 2020) [2023] KENET 488 (KLR) (Environment and Land) (1 September 2023) (Ruling)**, where the Tribunal held that Kenya Wildlife Service, as established under Section 6(2) of Wildlife Conservation and Management Act of 2013, is a State Corporation clothed with corporate personality and the capacity to sue and be sued in its corporate name and hence it is distinct from the Government or Department of Government.
8. Further, a reliance was placed in the case of Bob Thompson Dickens Ngobi v Kenya Ports Authority & others [2017] KEHC 627 (KLR) where Justice P.J.O. Otieno observed as follows: -

“a statutory corporation, unless the creating statute says otherwise, is not an appendage or department of the Government as contemplated under the Government Proceedings Act. One need not invite the application of the Government Proceedings Act when parliament in its own wisdom has expended time and public resources to enact a statute to regulate the body so desired to be created”

It was urged that this decision is in concurrence with the earlier cited authority that State Corporations, unless specifically stated, is not Government or a Department of Government.

9. Counsel also cited the case of **Ngayau Mutia & another v Kenya Petroleum Refineries Limited [2020] KEHC 5742 (KLR)**, where Justice E O. Ogolla, in dismissing a similar Preliminary Objection as this, made reference to the decision of **Justice Munyao J in Kimoi Ruto & Another vs. Samuel Kipkosgei Keitany & Another 2014 eKLR**, where he held that: -

“. It will be seen from the above that State Corporations may be established by the President (Under S.3) or through an Act of Parliament. They are ordinarily body corporate

with capacity to sue and to be sued and with capacity to hold property. I find it difficult to hold that they should be considered as “government” because if they were, then litigation would be governed by the Government Proceedings Act (CAP 40) and I am more prepared to hold that they are not strictly “Government”, unless the context otherwise prescribes, but rather, that they are independent agents of Government, formed by government in order to undertake and perform certain functions on behalf of government, which functions cannot adequately or efficiently be performed within the structure of Government Ministries.”

10. Counsel further cited the decision of this court in **Merry Elly Ndeda & another v Kenya Wildlife Service; KCB Bank Limited (Garnishee) (Miscellaneous Application E003 of 2024) [2025] KEHC 6140 (KLR) (16 May 2025) (Ruling)**, where it held that Kenya Wildlife Service is not a Government or Government Department within the meaning of the Government Proceedings Act and are therefore subject to execution by way of Garnishee Proceedings.

11. Counsel further cited the case of **Oguna & another v Kenya Wildlife Service; Kcb Bank Ltd (Garnishee) (Judicial Review Miscellaneous Application**

**E002 of 2024) [2025] KEHC 6074 (KLR) (16 May 2025)
(Ruling)**

12. Counsel pointed out that this Court had already addressed the issue and rendered a ruling on 28th July 2025, when a similar issue was raised by the Respondent and that the court held that the Respondent herein is not a Government or a Government Department and is therefore not subject to the provisions of Government Proceedings Act and further ordered that the Applicant's assets are therefore attachable by all means including Garnishee Proceedings as is the case.
13. On whether Garnishee Proceedings are available for Judicial Review Matters, learned counsel submitted that this court having established that the Respondent is not a government or a department of the Government, it suffices to state that the Respondent is open to any form of execution as provided for under the Civil Procedure Rules and that where a Judgment - Debtor fails to comply with the terms of a Judgment, the Judgment - Creditor is entitled to enforce such Judgment by adopting a suitable procedure provided under the law. This position was aptly enunciated by Mwita J in ***Kenya National Highways Authority - Versus Ahmednassir Maalim Abdullahi [2021] eKLR*** wherein he held that a successful litigant should not be barred from enjoying the fruits of litigation. Further, the Judge posited that the failure by The Judgement Debtor, in this case a state corporation, would seriously violate the

Decree Holder's right of access to justice thus ***Contra constitutonem.***

14. As regards the Respondent's claim that Judicial Review Proceedings are not subject to Civil Procedure Rules, where execution by way of Garnishee Proceedings is provided, learned counsel submitted that the institution of Judicial Review cases, in form and procedure is set out under **Order 53 of the Civil Procedure Rules**. Thus, whereas Judicial Review proceedings are special in nature, its procedure is governed by the Civil Procedure Rules, right from institution to execution.

15. Further, it was submitted that execution by way of Garnishee Proceedings is provided for under **Order 23** of the Civil Procedure Rules, that governs Judicial Review proceedings. Impeding execution by disallowing garnishee proceedings against the Respondent would amount to a serious breach to a constitutional right to fair hearing. Learned counsel cited several authorities as follows:

- i. **Blue Shield Insurance Company Limited V County Government of Mombasa; National Bank of Kenya and another (Garnishee) [2019] eKLR** where the Court held that; -

"In light of Article 159 (2) (d) and Article 48 of the Constitution of Kenya 2010, I am of the view that

both judicial review and garnishee proceedings are procedures of execution of a decree.

ii. Joseph Nyanamba & 4 others vrs Kenya Railways Corporation (2015), where the court of appeal held that Section 21, of Government Proceedings Act, which does not apply to this case anyway, impedes the provisions of access to justice as provide for by Article 48 of the Constitution. Thus, disallowing the garnishee Proceedings will obviously amount to unconstitutionality.

iii. African Commuter Services Ltd vrs The Kenya Civil Aviation Authority & 2 others (2014) e KLR also fortifies the position in the Court of Appeal decision in Joseph Nyanamba (Supra) where Mabeya J, held:

“That all litigants be treated equally without exception.....the greater public interest require that the applicant be allowed to enforce its and thereby maintain and sustain the constitutional value and prince of governance by the rule of law than uphold narrow interests of allowing a state and public corporations to prevaricate or suspend the sale of land by refusing to obey a court decision”.

This court therefore finds that the preliminary objection cannot be sustained for reasons that it breaches the provisions of the Constitution and that it will not bring this matter to an end. The Preliminary

objecting is therefore overruled and the garnishee order absolute is hereby issued given that the decretal sum has been outstanding for more than 15 years.”

16. Learned counsel urged the court to stick to its earlier decision which had addressed the same issue in its previous ruling over the legality of Garnishee proceedings in Judicial Review matters where it held that indeed, garnishee proceedings are applicable in Judicial Review matters for purposes of enforcing the lawful orders where the same is for payment of damages.
17. Learned counsel urged this Honourable Court to re-affirm the position already set and allow the application and order the Garnishee herein to release the Judgment Debt of Kshs. 3,000,000.00 it holds on behalf of the Judgment Debtor in settlement of the Judgment Debt herein together with the costs of this application.
18. I have considered the application, rival affidavits, ground of opposition and submissions. It is not in dispute that the Applicant herein had earlier filed an application dated 10/3/2025 seeking for an order of mandamus against the Respondent. He later filed the substantive Notice of Motion dated 2nd April 2025 which was granted on 23/7/2025 and that the Judgment Debtor herein was ordered to release Kshs3,000,000/= to the Applicant. It is also not in dispute

that the said Judgment Debtor did not pay up the money and hence the present application. It is also not in dispute that the Garnishee has confirmed that it has funds on behalf of the Judgment Debtor. The issue for determination is whether the application has merit.

19. The main issue which is in contention is whether the 1st Respondent 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 1st Respondent and the Garnishee have contended that the 1st Respondent 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 1st Respondent is a corporation and more particularly a parastatal.

20. The 1st Respondent 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 1st Respondent and the Garnishee have attempted to seek refuge under the Government Proceedings Act. More particularly, Section 21 (4) thereof. The same provides as follows:

“Save as aforesaid no execution or attachment or process in 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.”

Since the 1st Respondent 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 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.”

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.

21. Again, in the case of **Kenya National Highways Authority - Versus Ahmednassir Maalim Abdullahi [2021] eKLR** wherein he held that a successful litigant should not be barred from enjoying the fruits of litigation. Further, the Judge posited that the failure by The Judgement Debtor, in this case a state corporation, would seriously violate the Decree Holder’s right of access to justice thus ***Contra constitutonem.***

22. Also, in **Blue Shield Insurance Company Limited V County Government of Mombasa; National Bank of Kenya and another (Garnishee) [2019] eklr** where the Court held that; -

“In light of Article 159 (2) (d) and Article 48 of the Constitution of Kenya 2010, I am of the view that both judicial review and garnishee proceedings are procedures of execution of a decree.

23. Also, in **African Commuter Services Ltd vrs The Kenya Civil Aviation Authority & 2 others (2014) e KLR** also fortifies the position in the Court of Appeal decision in Joseph Nyanamba (Supra) where Mabeya J, held:

“That all litigants be treated equally without exception.....the greater public interest require that the applicant be allowed to enforce its and thereby maintain and sustain the constitutional value and prince of governance by the rule of law than uphold narrow interests of allowing a state and public corporations to prevaricate or suspend the sale of land by refusing to obey a court decision”.

This court therefore finds that the preliminary objection cannot be sustained for reasons that it breaches the provisions of the Constitution and that it will not bring this matter to an end. The Preliminary objecting is therefore overruled and the garnishee order absolute is hereby issued given that the decretal sum has been outstanding for more than 15 years.”

24. From the foregoing observations, it is clear that the Respondent 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 Respondent and held by the Garnishee ought to be available for attachment in order to satisfy the decree herein. Hence, the objections raised by the Respondent should be rejected because it is obliged to satisfy the decree and that the garnishee has confirmed that the funds in its possession belongs to the Respondent and that the Respondent being the Judgment Debtor ought to allow the Decree Holder access the funds in settlement of the decree. The Respondent's vociferous objection to the application is unwarranted in view of the fact that it is indebted to the Applicant in the sum of Kshs 3,000,000/= which should be recovered/garnished from the garnishee. The Respondent 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. The Garnishee has also sought for its costs of Kshs30,000/=. It is noted that the Respondent/Judgment debtor did not react to the Garnishee's request for costs. Indeed, costs follow the event and hence I find the sum of Kshs30,000/= sought by the Garnishee is reasonable and ought to be paid by the Judgment debtor by way of deducting the same from the Judgment debtor's account with the Garnishee.

12. In the final analysis, it is my finding that Exparte Applicant's application dated 1/9/2025 has merit. The same is allowed in terms of prayer Number 4 and 5 thereof. The costs of the Garnishee in the sum of Kshs30,000/= be paid by the Respondent/Judgment debtor out of the sums held by the Garnishee.

Dated and delivered at Siaya this 20th day of November 2025.

D. KEMEI

JUDGE

In the presence of:

Opondo.....for Applicant/Decree Holder

N/A Walubengo.....for Judgment Debtor

M/s Oduor.....for Garnishee

Maureen/Kimaiyo.....Court Assistant