



REPUBLIC OF KENYA



KENYA LAW
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Nithi & another v Nkoroi & 5 others (Environment and Land Appeal E004 of 2025) [2025] KEELC 8327 (KLR) (25 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND APPEAL E004 OF 2025**

BM EBOSO, J

NOVEMBER 25, 2025

BETWEEN

**THE CHIEF EXECUTIVE OFFICER, R CHIEF EXECUTIVE OFFICER,
ROADS & TRANSPORT, COUNTY GOVERNMENT OF THARAKA
NITHIOADS & TRANSPORT, COUNTY GOVERNMENT OF THARAKA
NITHI 1ST APPELLANT
COUNTY GOVERNMENT OF THARAKA NITHI 2ND APPELLANT**

AND

**PETER KANGETHE NKOROI 1ST RESPONDENT
PENSHAWA CONTRACTORS COMPANY LIMITED 2ND RESPONDENT
NEBERT NTWIGA 3RD RESPONDENT
ASHFORD MUTEMBEI 4TH RESPONDENT
ANTONY MWITI 5TH RESPONDENT
TAMANI CONSTRUCTION COMPANY LIMITED 6TH RESPONDENT**

RULING

1. This appeal challenges the judgment of the Senior Principal Magistrate Court at Chuka (Hon D. A Ocharo, SPM) rendered on 24/4/2025 in Chuka CMC E & L Case No E180 of 2017. Through the impugned judgment, the trial court decreed the County Government of Tharaka Nithi and its Chief Executive Officer for Roads and Transport (the appellants) to pay Peter Kangethe Nkoroi (the 1st respondent) Kshs 6,168,267. The trial court also awarded the 1st respondent costs of the suit and interest on the principal award and on the awarded costs, from the date of judgment.



2. Subsequent to the said judgment, the 1st respondent moved the trial court and obtained a certificate of costs dated 27/6/2025, in which his costs were assessed at Kshs 269,855. After that, the 1st respondent obtained a certificate of order dated 18/7/2025.
3. Thereafter, the 1st respondent filed an application dated 15/9/2025 seeking an order granting him leave to execute the decree of the trial court against the County Government. Vide an order issued electronically on 16/9/2025, the Senior Principal Magistrate Court granted the 1st respondent leave to execute the decree against the appellants as sought.
4. On 30/9/2025, the Senior Principal Magistrate Court issued warrants of attachment and warrants of sale of movable assets of the County Government, authorizing M/s Quickline Auctioneers to attach and sell by auction movable assets of the County Government. On 1/10/2025, M/s Quickline Auctioneers proclaimed the following movable assets of the County Government and issued notice that the proclaimed assets would be sold by auction on 3/12/2025 to recover the decretal sum together with the auctioneers' costs: (i) One Motor Vehicle Reg. No. 13G069A – Isuzu Pickup; (ii) One motor Vehicle Reg. No. 13G045A – Nissan Pickup; (iii) One Motor Vehicle Reg. No. 13G208A – Isuzu Pickup; (iv) One Motor Vehicle Reg. No. 13G079A – Isuzu Pickup; (v) One Motor Vehicle Reg. 13G039A – Subaru; and (vi) Several Office Furniture i.e Computer, Sofa Sets, Office Tables.
5. The above actions by the 1st respondent and the trial court attracted a notice of motion dated 2/10/2025 by the appellants. The said application is the subject of this ruling. Through the motion, the appellants seek: (i) an order quashing the order issued by the Senior Principal Magistrate Court on 16/9/2025 in Chuka CMC E & L Case No E180 of 2017 purporting to grant the 1st respondent leave to execute against the appellants; (ii) a declaration that the proclamation notice issued by M/s Quickline Auctioneers, dated 1/10/2025, attaching the movable properties of the County Government is in err, irregular, unlawful, null and void abinitio for contravening Section 21 (4) of the [Government Proceedings Act](#); (iii) an order that satisfaction of the decree shall only be undertaken strictly in accordance with Section 21 of the [Government Proceedings Act](#) and no payment or levy shall be made or effected other than through the County Accounting Officer acting under statutory procedure; and (iv) an order providing for costs of the application.
6. In summary, the case of the appellants/applicants is that execution against the Government is governed by the framework in the [Government Proceedings Act](#) (the Act), specifically the framework in Section 21 of the Act. They argue that the Act does not permit attachment of movable assets of the Government. It is their case that the Senior Principal Magistrate Court erred in granting the 1st respondent leave to enforce the decree outside the framework in Section 21 of the Act. They further contend that the Senior Principal Magistrate Court erred in issuing warrants of attachment and warrants of sale of the movable assets of the County Government. They urge the court to grant the orders sought.
7. The 1st respondent opposed the application through his replying affidavit dated 21/10/2025 and through his oral submissions tendered in court on 27/10/2025. The case of the 1st respondent is that the application is an afterthought and a deliberate effort to delay and deny him the benefits of the trial court's judgment/award. He points out that on the date of judgment, the appellants made an oral plea for an order of stay of execution and the oral plea was declined. He contends that the appellants should have applied for review or appealed against the said order of the trial court, adding that the present application is an abuse of the process of the court. He faults the appellants for withdrawing their subsequent formal application in the lower court seeking orders of stay of execution.
8. The 1st respondent argues that because the trial court granted him leave to execute the decree, he procedurally and legally enforced the decree, adding that he duly served on the appellants the judgment; the decree; the certificate of costs; and the certificate of order, adding that the appellants failed/ignored



to pay the decretal sum together with costs and interest, prompting him to apply for leave to attach the movable assets of the County Government.

9. The 1st respondent contends that the judicial review order of mandamus is not applicable in the impugned execution proceedings. He faults the appellants for not offering security for the due performance of the decree of the trial court. Lastly, he argues that he should be allowed to proceed with the above mode of execution because he is suffering economic hardship and inconveniences.
10. The court has considered the application; the response to the application; and the parties' rival submissions. The court has also considered the relevant legal frameworks and jurisprudence. The key issue to be determined in this ruling is whether execution against the County Government and its officers through attachment and sale of movable assets of the County Government is permitted under the law.
11. Enforcement of monetary decrees/awards and orders against either of the two levels of Government and their officers is governed by the framework in Section 21 of the [Government Proceedings Act](#) which provides as follows:

“ 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 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.

2. A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
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:

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.

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.”

12. It is clear from Section 21 (4) of the Act that Government and its officers are protected against enforcement of awards by way of attachment and sale of movable assets of the Government. In *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security; Exparte Fredrick Manoah Egunza* (2012), the court outlined the law as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regard to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs has been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*.

13. What the 1st respondent did is precisely what Section 21 (4) of the Act forbids. One of the reasons why Government assets are protected against attachment and sale as a way of enforcing court judgments is that Government assets are public assets that are used for public good and that public services would suffer disruption if public assets were to be the subject matters of attachment and sale in enforcement of court judgments.
14. In light of the clear provisions of Section 21 of the Act, the trial court had no jurisdiction to grant an order whose effect was to render Section 21(4) of the Act redundant. Clearly, there was an err on part of the trial court.
15. In opposing the application, the 1st respondent contended that because the appellants made an oral plea for an order of stay of execution at the time of delivery of the impugned judgment, they are precluded against making the present application. The focus of the present application is the legality of the order of 16/9/2025; the two sets of warrants dated 30/9/2025; and the consequential proclamation of Government assets made on 1/10/2025. The issue is not whether or not the appellants deserve an order of stay of execution. In any event, no law bars the appellants against bringing a formal plea for orders of stay under Order 42 rule 6 (2) of the Civil Procedure Rules at this stage if there are proper reasons for that.



16. The 1st respondent urged the court to decline to grant the orders sought because the applicants have not provided security as required under Order 42 rule 6 (2) of the Civil Procedure Rules. This, too, is a misapprehension of the law. Apart from the fact that the application under consideration focused on the legality of the execution, it is clear from Order 42 rule 8 of the Civil Procedure Rules that the requirement for security does not apply to the Government.
17. For the above reasons, this court finds that attachment of County Government assets as a way of enforcing a judgment/ award/decree/order against the County Government is not permitted under Section 21 of the *Government Proceedings Act*. The court further finds that the leave granted to the 1st respondent on 16/9/2025; the warrants of attachment dated 30/9/2025; and the warrants of sale dated 30/9/2025 were all issued against the appellants contrary to the law and were issued in err. The court further finds that the proclamation of the County Government's assets on 1/10/2025 was illegal and in err.
18. The result is that the application dated 2/10/2025 succeeds in the following terms:
 - a. The order issued by the Senior Principal Magistrate Court on 16/9/2025 in Chuka CMC E & L Case No. E180 of 2017 granting the 1st respondent leave to execute against the appellants is hereby set aside.
 - b. The consequential warrants of attachment dated 30/9/2025 and the warrants of sale dated 30/9/2025 against the appellants are hereby recalled and cancelled.
 - c. The proclamation dated 1/10/2025 is vacated.
 - d. Costs of the application shall be in the appeal.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF NOVEMBER, 2025.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. Munene for the Applicants

Mr. Nyamu Nyaga for the 2nd, 5th and 6th Respondents

1st Respondent – Peter Kangethe - Present in person

Court Assistant – Mr. Mwangi

