



**Gitonga & 4 others v National Environment Management Authority;
Law Society of Kenya & another (Interested Parties) (Cause
547 of 2018) [2025] KEELRC 3397 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3397 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 547 OF 2018
S RADIDO, J
DECEMBER 1, 2025**

BETWEEN

**ERASTUS K GITONGA 1ST CLAIMANT
EDWARD K WABWOTO 2ND CLAIMANT
CICILIA W GITHAIGA 3RD CLAIMANT
JUDITH N KITHONJI 4TH CLAIMANT
SIMON NGARA 5TH CLAIMANT**

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .. RESPONDENT

AND

**LAW SOCIETY OF KENYA INTERESTED PARTY
THE ATTORNEY GENERAL INTERESTED PARTY**

RULING

1. The Court delivered judgment in favour of the Claimants on 10 April 2019.
2. The Respondent was not satisfied and it lodged a Notice of Appeal with the Court. Pending the determination of the Appeal, the Respondent moved the Court seeking stay of execution pending the hearing and determination of the Appeal.
3. The Court granted a conditional stay of execution and the Respondent deposited Kshs 13,000,000/- in an interest earning account in the name of the parties' advocates.



4. However, the Respondent did not pay interest and monthly prosecutorial allowances as decreed by the Court.
5. On 11 February 2021, the Court ordered the extension of the stay on condition that the Respondent pays a further deposit of Kshs 3,000,000/- to cover interest within 14 days and in default, the stay would lapse.
6. On 6 May 2025, the Court directed that the monies deposited with the bank be released to the Claimants advocate on record.
7. Thereafter, Claimants caused their Party-to-Party Bill of Costs to be taxed on 16 June 2025.
8. The Claimants then moved to execute. The Court issued the appropriate warrants on or around 31 July 2025 for a total of Kshs 23,822,869/-.
9. The Claimants followed with a Motion dated 20 August 2025 to garnishee the Respondent's bank accounts in the sum of Kshs 29,329,455/-.
10. The Duty Court certified the Motion as urgent and directed that the Respondent be served ahead of further proceedings on 22 September 2025.
11. When the Motion was placed before the trial Court on 22 September 2025, she recused herself from the Cause and on the same day, the Presiding Judge of the Division reassigned the file to this Court.
12. The parties appeared before this Court on 29 September 2025. The Respondent through an advocate called Mr Kanimu confirmed that the Motion had been served and made no further comment (the Court must observe that the said advocate appeared to handle the proceedings casually).
13. The Court granted an order nisi and directed that the garnishees be served and further proceedings be taken on 5 November 2025.
14. On 5 November 2025, because there was no evidence that the garnishees had been served, the Court directed the Claimants to serve the garnishees and file proof of the service.
15. When the Motion was called out on 11 November 2025, the Claimant admitted that the garnishees had not been served. The Respondent informed the Court that it had filed a replying affidavit to the Motion.
16. The Court directed the Claimants to serve the garnishees before 21 November 2025. The Court further directed the filing and exchange of responses and submissions within set timelines with mention set for 27 January 2026 to confirm compliance and set a Ruling date.
17. On or around 27 November 2025, the Honourable Attorney General filed a Motion seeking orders:
 - i. ...
 - ii. That this Honourable Court be pleased to set aside the ex-parte garnishee order nisi issued on 29th September 2025 with the effect of freezing Account Numbers 11022981158 held at KICC Branch and 1112705546 held at Gateway Branch.
 - iii. That any other orders the Court considers necessary to ensure that the ends of justice are served.
18. The Court directed the Honourable Attorney General to serve the Motion ahead of directions on 1 December 2025.
19. When served, the Claimants filed a Notice of Preliminary Objection contending:



The Hon Attorney General, the custodian and bastion of law in Kenya, has not been appointed to represent the National Environment Management Authority as required by Order 9 of the Civil Procedure Rules –

- (a) No Notice of Change of Advocate from M/s Mwaura Wachira & Co. Advocates (on record) has been filed and served contrary to the provisions of Order 9 Rule 5 of the Civil Procedure Rules; and
- (b) No application for change of Advocates after judgment has been filed and served and or an order obtained contrary to the provisions of Order 9 Rule 9 of the Civil Procedure Rules.

Consequently, and inevitably, as we stand, the Attorney General has no capacity to represent the Respondent in this suit and therefore, the Respondent's application dated 26th November 2025 is for striking out in limine.

- 20. The Court took oral submissions from the parties earlier today and reserved the Ruling.
- 21. The Claimants submitted that the Motion was a non-starter because it was drawn and filed by the Honourable Attorney General yet the Respondent had an advocate on record and that the Honourable Attorney General had not filed and or served a Notice of Change of Advocate to act for the Respondent contrary to the requirements of Order 9 Rules 5 and 9 of the Civil Procedure Rules.
- 22. The Honourable the Attorney General however opposed the Objection and urged that a consent dated 17 April 2025 had been filed allowing the firm of Lumumba & Ayieko Advocates to act for the Respondent and that the Honourable Attorney General was merely acting as co-counsel; the Honourable Attorney General had the constitutional mandate to represent the interests of the national government in litigation and the Respondent was part and parcel of the national government, and that the Motion had public interest considerations and implications.
- 23. In a brief reply, the Claimants asserted that litigation must be guided by the rules of procedure and that the Motion as drawn was incompetent.
- 24. The Court has considered the record and the Notice of Preliminary Objection and makes the following determinations.
- 25. One, the firms of Lumumba & Ayieko Advocates and Mwaura & Wachira Advocates filed a consent dated 17 April 2025, to allow the firm of Lumumba & Ayieko Advocates to come on record for the Respondent.
- 26. There is nothing on record to suggest that the consenting parties ever sought the indulgence of the Court for the firm of Lumumba & Ayieko Advocates to come on record.
- 27. That is an irregularity which the Court can cure after the fact and the Court permits the firm of Lumumba & Ayieko Advocates to come on record for the Respondent in the interest of justice, otherwise the record of the Court after April 2025 would be messy and confusing.
- 28. Two, the Respondent, even if part and parcel of the national government has been given the capacity to sue and be sued. It was sued and it appointed external advocates to act and represent its interest.
- 29. It is the Respondent's bank accounts which were garnisheed and not those of the national government.
- 30. The Respondent has not remotely indicated that it is not capable of representing its interests. The Honourable Attorney General cannot claim a superior right to represent the interests and rights of the Respondent in the name of public interest.



31. Three, the Honourable the Attorney General was joined to the proceedings as an Interested Party and the role of an Interested Party in any legal proceedings is well demarcated and set.
32. Lastly, the record indicates that the Claimants were paid about Kshs 16,000,000/- (initial deposit of Kshs 13,000,000/- and further deposit of Kshs 3,000,000/-) in terms of the Court orders of 6 May 2025.
33. It is apparent that the outstanding sums garnisheed are not correct and may need reconciliation.

Orders

34. The Motion dated 26 November 2025 is found incompetent and is struck out with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 1ST DAY OF DECEMBER 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimants Gachara Mahinda & Co. Advocates

For Respondent Lumumba & Ayieko Advocates

For 1st Interested Party did not participate in the Objection

For 2nd Interested Party Kaumba S.O, Deputy Chief State Counsel

Court Assistant Wangu

