

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCC No. 38 OF 2021

GESAKA ONGERI
..... PLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF NYAMIRA
DEFENDANT

RULING

1. Judgment was delivered in this matter on 14th March 2024, in favour of the Plaintiff. The full scope of the judgment was reduced into decree given on 14th March 2024, as follows:

BY JUDGMENT of this Court dated the 14th day of MARCH 2024, IT IS ORDERED AND DECREED that:

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i. A permanent injunction is hereby issued restraining the defendant, her agents and/or servants from any further trespass into Plot No. 32A - Metamaywa Market with a view of causing further excavation and/pr earth-pushing to create an illegal road on the Estate of a deceased person;

ii. The Plaintiff is awarded special damages of Ksh 1,050,000/= made as follows:

- a. Demolitions - Ksh 750,000/=;**
 - b. Loss of income not proved**
 - c. Loss of building materials - Ksh 200,000/=;**
 - d. Stolen materials not proved**
 - e. Damages for trespass - Ksh 100,000/=;**
- Total - Ksh 1,050,000/=**

iii. The Plaintiff is awarded costs plus interest on the same from the date of filing suit till payment in full;

GIVEN under my HAND and SEAL of this Honourable court this 14th day of March, 2024.

2. Following delivery of the judgment, the Plaintiff filed Party and Party Bill of Costs which was taxed by the Deputy Registrar on 8th July 2024 in the sum of KShs 214,215 (Two Hundred Fourteen Thousand, Two Hundred Fifteen) and a Certificate of Costs dated 13th August 2024 duly issued.
3. Additionally, a “Certificate of Order against the County Government” was issued on 28th November 2024 in the following terms:

By a judgment of this Honorable Court dated 14th March 2024, it was adjudged and decreed that: -

A. A permanent injunction to restrain the defendant, her agents and/or servants from any further trespass into Plot No. 32A - Metamaywa Market with a view of causing further excavation and/or earth-pushing to create an illegal road on the Estate of a deceased person.

B. In the case of special damages, I will award Kshs. 1,050,000/= made as follows:-

- **Demolitions - Kshs. 750,000/=**
- **Loss of income not proved**
- **Loss of building materials Kshs. 200,000/=**
- **Stolen materials not proved**

Total - Ksh. 950,000/=

C. I will also give Damages for trespass of Kshs. 100,000/= bringing the total figure of Kshs. 1,050,000/=.

D. Costs of the same to the plaintiff plus interest on the same from the date of filing suit till payment in full.

PARTICULARS:

a) Special Damages Kshs. 1,050,000/=

b) Interest from the date of filing suit till payment in full Kshs. 1,225,000/=

c) Assessed costs Kshs. 214,215/=

Total Kshs 2,489,215/=.

4. Subsequently, the Defendant filed Notice of Motion dated 13th April 2025, seeking among other orders, recall, review and setting aside the Certificate of Order against Government which was issued on 28th November 2024. The application was dismissed with costs to the Plaintiff, through ruling delivered on 30th June 2025.
5. Thereafter, Notice to Show Cause dated 23rd October 2025 was issued against the Defendant and scheduled for hearing on 2nd February 2026. The Defendant opposed the Notice to Show Cause through its Notice of Preliminary Objection dated 2nd February 2026, which is the subject of this ruling.
6. The Notice of Preliminary Objection is pleaded as follows:
 1. *The execution proceedings as initiated herein, vide notice to show cause issued on 2025-10-23 are defective, invalid ab initio and precluded in law for reasons that: -*
 - 1.1. *Whereas it is trite law under section 21 of the Government Proceedings Act Cap. 40 that -*
 - 1.1.1. *the procedure for enforcement of decretal payments against Government is as exclusively*

spelt out under section 21 (1) - (3) of the Government Proceedings Act Cap. 40;

1.1.2. decretal payments against Government shall not be enforced through any form of execution process, outside the procedure spelt out under section 21 (1) - (3) of the Government Proceedings Act Cap. 40; and

1.1.3. 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, outside the procedure spelt out under section 21 (1) - (3) of the Government Proceedings Act Cap. 40;

1.2. The execution proceedings as initiated herein, vide notice to show cause issued on 2025-10-23 are contrary to and precluded by section 21 (4) (5) of the Government Proceedings Act Cap. 40;

2. REASONS WHEREFORE it shall be submitted that the execution proceedings as initiated herein, vide notice to show cause issued on 2025-10-23 are defective, invalid ab initio and precluded in law.

7. The objection was canvassed through written submissions. The Defendant filed submissions dated 11th February 2026 while the Plaintiff filed submissions dated 17th February 2026.

8. The Defendant submitted that **Section 21 (4) (5)** of the **Government Proceedings Act** expressly prohibits levying of execution proceedings against both the national and county governments. Relying *inter alia* on the case of **Muigai & 3 others v Estate of Captain Kariuki (DCD). - SVC No. 020788 & 8 others [2022] KECA 1138 (KLR)** and the provisions at **Order 29 rule 2 (2)** of the **Civil Procedure Rules**, the Defendant submitted that the execution proceedings as initiated through the Notice To Show Cause are defective, invalid *ab initio* and precluded in law. It urged the Court to recall and nullify the Notice To Show Cause.
9. On his part, the Plaintiff relied on the cases of **Republic v Principal Secretary, Ministry of Lands and Physical Planning Ex Parte Orbit Chemicals Limited [2017] KEHC 1751 (KLR)** and **Kiama Wangai v John N. Mugambi & Another [2012] KEHC 5453 (KLR)**.
10. I have considered the Notice of Preliminary Objection and the parties' submissions. The only issue that arises for determination is whether the objection should be upheld or dismissed.
11. The law on preliminary objections was succinctly summed up in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696** by Law JA as follows:

So far as I'm aware, a preliminary objection consists of a point of law which has been

pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

12. The effect of the foregoing is that for a preliminary objection to be valid, it must raise a pure point of law which is argued on the assumption that all the facts pleaded by the party against whom it is raised are correct. If it is upheld, a valid preliminary objection should result in summarily terminating the suit or proceedings against which it is raised.

13. I have perused the preliminary objection, and I am satisfied that it raises pure points of law. I will therefore proceed to consider it.

14. There is no dispute that Notice to Show Cause dated 23rd October 2025 was issued in an effort to recover the decretal sum in this matter. It was addressed to the County Executive Committee Member for Finance, Nyamira County and the Chief Officer Finance, Nyamira County and read as follows:

WHEREAS ADVOCATE OF THE DECREE HOLDER HEREIN has/have made application to this Court for Notice to show cause why JDS should not be arrested and committed to civil jail in default of

payment Decretal amount plus costs and interest as shown on the cause list of the day of 2nd Day of February 2026 in person or by an advocate of this Court, or agent duly authorised and instructed to show cause, if any, why execution should not be granted.

Your presence will be dispensed with if the sum of Decretal Amount plus cost and interests Kshs. 2,489, 215/= awarded in ELC Case No. 38 of 2021 being the Decretal sum, Costs, Interest thereon together with court collection fees of Ksh. 1,500 making the total to Kshs. 2,490, 715/= are lodged in court before the said date.

15. The objection herein is founded on **Section 21** of the **Government Proceedings Act** which provides:

(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.

(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.

16. The decree herein was passed against the Defendant, a County Government within the meaning of **Section 21** of the **Government Proceedings Act**. The Court of Appeal discussed the requirements for executing a decree against the government in **Muigai & 3 others v Estate of Captain Kariuki (DCD)**. - **SVC No. 020788 & 8 others** (supra) as follows:

From the above Section, the following are the requirements in executing a decree against the government. First, the decree holder must apply for and obtain a certificate in the prescribed form containing particulars of the order. Secondly, the certificate must state the amount required to be paid by way of damages or otherwise, and any costs (unless a separate certificate has been issued for costs). Thirdly, the decree holder or his advocate must serve the Hon. Attorney General with the certificate. Fourthly, upon production and service of the stated documents, the Accounting Officer for the government department concerned, shall pay to the decree holder or his advocate the amount appearing on the certificate together with interest if any. Finally, the court which issued a decree or the court to which an appeal against the order lies may issue an order of stay of execution.

... Section 21(4) of the Government Proceedings Act which we have already set out at paragraph 23 specifically prohibits execution or attachment process for enforcing payment by the government against an individual officer of the government, and provides that no officer shall be individually liable under any order for payment by the government or any government

department. This means that the appellants who were all officers of the government could not be held personally liable for payment of a debt due from the government.

17.As noted earlier in this ruling, a Certificate of Order against the County Government was issued on 28th November 2024. Further perusal of the record herein reveals that the Plaintiff filed **Nyamira ELCLJR No. E001 of 2025** against the Defendant and that judgment was delivered in the said case on 19th March 2025 wherein an order of mandamus was issued to compel the Defendant to settle the decretal sum herein.

18.A reading of **Section 21 (4)** of the **Government Proceedings Act** and **Order 29 rule 2 (2) (b)** of the **Civil Procedure Rules** leaves no doubt that no execution or attachment can issue against the Government. The Notice to Show Cause herein was issued following an application for execution of decree that was filed under **Order 22 rule 7** of the **Civil Procedure Rules**. That is clearly contrary to **Section 21 (4)** of the **Government Proceedings Act** and **Order 29 rule 2 (2) (b)** of the **Civil Procedure Rules**.

19.I agree with the Defendant that the Notice to Show Cause dated 23rd October 2025 is invalid and precluded in law. I find merit in the Notice of Preliminary Objection dated 2nd February 2026. The Plaintiff will have to pursue recovery of the decretal sum through lawful means.

20. Arising from the foregoing, I make the following orders:

- a) Notice of Preliminary Objection dated 2nd February 2026 is upheld.**
- b) Notice to Show Cause dated 23rd October 2025 is set aside.**
- c) The Defendant shall have costs of the preliminary objection.**

Dated, signed, and delivered at Nyamira, this 8th day of April 2026.

**D. O. OHUNGO
JUDGE**

Delivered in the presence of:

Mr Bigogo for the Plaintiff

Ms Moeche for the Defendant

Court Assistant: B Kerubo