

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC MISCELLANEOUS CASE NO. E002 OF 2026

**IN THE MATTER OF THE EXECUTION OF A DECREE ISSUED BY THE
LAND ACQUISITION TRIBUNAL**

AND

**IN THE MATTER OF SECTIONS 13 AND 26 OF THE ENVIRONMENT AND
LAND COURT ACT, SECTIONS 128 OF THE LAND ACT, NO. 6 OF 2012,
ORDER 22 AND ORDER 51 OF THE CIVIL PROCEDURE RULES, 2010**

AND

**IN THE MATTER OF TRLAP/E094/2025 - LAKEVIEW PANORAMA
LIMITED V KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED**

BETWEEN

**LAKEVIEW PANORAMA LTD.....APPLICANT/DECREE
HOLDER**

VERSUS

**KENYA ELECTRICITY TRANSMISSION COMPANY
LIMITED (KETRACO).....RESPONDENT/ JUDGMENT DEBTOR**

RULING

1. Vide a Notice of Motion dated 21st January 2026 brought pursuant to the provisions of Sections 13 and 26 of the Environment and Land Court Act, Sections 128 of the Land Act, No. 6 of 2012, Section 1A, 1B & 3A of the Civil Procedure Act, Order 22 and Order 51 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law, the Applicant herein sought for the following orders:
 - i. **Spent.**
 - ii. That the Honourable Court be pleased to recognise, adopt and register as a Decree of the Court the Decree issued on

20th November 2025 by the Land Acquisition Tribunal in
TRLAP/E094/2025 – Lakeview Panorama Limited v KETRACO;

- iii. That upon adoption, the Honourable Court be pleased to issue execution orders against the Respondent for:
 - a. Principal sum: Kshs. 28,705,842.00
 - b. Accrued interest: Kshs. 13,647,465.10
 - c. Continuing interest at CBK base lending rates and court rates until payment in full.
 - d. Costs as awarded.
- iv. That the Honourable Court be pleased to issue Warrants of Attachment and Sale in execution of the Decree;
- v. That the costs of the Application be borne by the Respondent.

2. The Notice of Motion Application was premised on the grounds stated on its face as well as on the Supporting Affidavit of equal date sworn by Peter Kinge Njoroge, one of the Applicant’s directors.

3. In response to the said Notice of Motion, the Respondent filed a Notice of Preliminary Objection and a Replying Affidavit, both dated 6th February 2026.

4. On 11th February 2025, the Court directed that the Preliminary Objection be dispensed with in the first instance.

5. Subsequently, what is before me for determination is the Respondent’s Notice of Preliminary Objection dated 6th February 2026 pursuant to the provisions of Order 51 Rule 14 of the Civil Procedure Rules in which the Respondent has raised a Preliminary Objection on the Applicant’s Notice of Motion Application herein and prayed that the same be struck out on the following Grounds:

- i. That the Honourable Court therefore lacks jurisdiction over the Application by the Applicant/Decree Holder as the Application offends Section 6 of the Civil Procedure Act, Cap 21 since an Application touching on execution proceedings is awaiting Ruling in Land Acquisition Tribunal Case NO.

TRLAP/E094/2025 OF 2025, Lakeview Panorama Limited -vs- KETRACO.

- ii. That the Application is fatally defective, incompetent and bad in law as it offends Section 21(4) of the Government Proceedings Act, Cap 40, which expressly prohibits execution proceedings against the Government or public bodies infused with governmental character.
 - iii. That notwithstanding being a state corporation, the Respondent is infused with Governmental Character and execution proceedings against it are therefore statutorily barred, for reasons apparent on the face of the law, for the following reasons: -
 - a. The Respondent was established pursuant to Sessional Paper No.4 of 2004 on Energy, therefore emphasizing its governmental nature;
 - b. The functions of the Respondent are core governmental functions of Public Importance, being the Transmission of Electricity;
 - c. The Respondent has deep and pervasive State control sanctioned under the State Corporations Act; and
 - d. The Respondent enjoys a monopoly status conferred by the state.
 - iv. That consequently, the Application as filed is bad in Law, misconceived, and the reliefs sought are barred in law, rendering it fatally and incurably defective; hence, the Application is nullity *ab initio*, grossly incompetent and a blatant abuse of the process of this Honourable Court.
6. In response to the Respondent's Notice of Preliminary Objection, the Applicant filed its Grounds of Opposition dated 9th March 2026 pursuant to the provisions of Order 51 Rule 14 of the Civil Procedure Rules, 2010 opposition the said Preliminary Objection and praying that the same be dismissed with costs on the following grounds:

- i. That the Preliminary Objection is misconceived, frivolous, and an abuse of the court process, as it seeks to frustrate the Applicant's legitimate right to execute a valid Decree issued by the Land Acquisition Tribunal on 20th November 2025 in TRLAP/E094/2025 - Lakeview Panorama Limited v KETRACO, which the Honourable Court has jurisdiction to adopt and enforce under Sections 13 and 26 of the Environment and Land Court Act, Section 128 of the Land Act, No. 6 of 2012, and Order 22 of the Civil Procedure Rules, 2010.
- ii. That contrary to Ground 1 of the Preliminary Objection, the Honourable Court has jurisdiction over the Application dated 21st January 2026, as there is no pending suit or application in a court of competent jurisdiction that offends Section 6 of the Civil Procedure Act, Cap 21 for reasons that:
 - a. The Judgment Debtor`s application for stay filed with the Land Acquisition Tribunal was settled by the Ruling delivered on 16th February 2026 dismissing the same with costs to the Decree Holder, as such, Ground No. 2 has been overtaken by events and in any event, the Tribunal lacks enforcement powers and as such, it was not competent to entertain the Respondent`s application in the first place;
 - b. The matters before the Court (adoption and execution of the Decree) are distinct from any review which may be contemplated before the Tribunal, and thus do not constitute *res sub judice*.
- iii. That Grounds 2, 3, and 4 of the Preliminary Objection are fatally flawed, as the Application does not offend Section 21(4) of the Government Proceedings Act, Cap 40, which prohibits execution only against the Government or entities strictly analogous thereto:

- a. The Respondent, Kenya Electricity Transmission Company Limited (KETRACO), is a state corporation incorporated under the Companies Act as a body corporate with perpetual succession, capable of suing and being sued in its own name, and is distinct and separate from the Government of Kenya;
- b. The Decree in question is not against the Government, a Ministry, a County Government, or a Government Department, but against the Respondent in its independent corporate and commercial capacity, rendering Section 21 of the Government Proceedings Act inapplicable;
- c. The Respondent's reliance on Sessional Paper No. 4 of 2004 on Energy to assert immunity is misplaced, as the Paper merely outlines policy for the energy sector and does not confer governmental immunity from execution; it emphasizes the Respondent's role as a commercial entity in electricity transmission, subject to market dynamics and independent operations, not as an arm of the executive shielded from commercial liabilities;
- iv. That the instant Application is competent, properly before the Court, and seeks reliefs that are statutorily available, including adoption of the Decree and issuance of Warrants of Attachment and Sale, as the Respondent has failed to satisfy the Decree within the stipulated 45 days in the judgment, having only paid Kshs. 4,000,000/= out of Kshs. 42,353,307/= (principal plus accrued interest as at 11th December 2025), with continuing interest accruing.
- v. That allowing the Preliminary Objection would unjustly deprive the Applicant of the fruits of its Judgment, contrary to the overriding objective under Sections 1A and 1B of the Civil Procedure Act to facilitate just, expeditious, and

proportionate resolution of disputes, and would reward the Respondent's non-compliance.

- vi. That it is in the interests of justice that the Preliminary Objection be dismissed, and the Application dated 21st January 2026 be heard on its merits.

7. The Preliminary Objection was disposed of by way of written submissions wherein the Respondent, in its submissions dated 26th February 2026 in support of its Preliminary Objection dated 6th February 2026 framed two (2) issues for determination as follows:

- i. Whether the Respondent is a Public Entity analogous to the Government;
- ii. What is the procedure for execution against the Respondent?

8. On the first issue for determination as to whether the Respondent is a Public Entity analogous to the Government, he relied on the definition of a Public body under the provisions of Section 3 (1) of the Interpretations and General Provisions Act and the decided case of **Association of Retirements Benefits Scheme Vs. Attorney General & 3 Others (2017) (eKLR)**. He further relied on the following cases to buttress the foregoing:

- i. **Satrose Ayuma & 11 Others vs Trustees of the Kenya Railway Staff Benefits Corporation & 2 Others (2010) (eKLR)**, where the Court had, while citing the Indian Supreme Court's case of **Shetty vs Airport Authority of India (1979)** proceeded to craft a criterion for determining whether an entity was a Government body.
- ii. **Five Star Agencies Limited vs National Land Commission & The National Bank of Kenya (2023) (eKLR)** where the ELC Court had at paragraph 107 held that although the Judgment Debtor enjoys a monopoly status conferred by the Constitution; its functions are of public importance and closely related to Governmental

functions, and it is wholly funded by the State to meet almost its entire expenditure. Although independent, it is impregnated with governmental character”

iii. **Five Star Agencies Ltd & another v National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023 (Consolidated)) [2024] KECA 439 (KLR) (12 April 2024) (Judgment)** that had adopted the aforementioned ELC’s decision and affirmed the position in the **Shetty’s** case (supra).

9. It is submitted that the Respondent is a body corporate under the State Corporations Act, which performs functions of a Public Nature. Furthermore, its role was assigned by Parliament through Sessional Paper No.4 of 2004 on Energy. It relied on the introductory paragraph of Sessional Paper No. 4 of 2004 to submit that the said paper proposed that KPLC be unbundled into two entities: one for transmission, which will be 100% state-owned, and the other for distribution, which will be private-sector-owned. It is clear that KPLC distributes power while KETRACO transmits it, and that the latter aligns with the criteria espoused in the **Shetty Case**.

10. It relied on the decision in the case of **Mbaraka & 8 Others Vs. Kenya Electrical Transmission Company Limited & 2 Others (ELC Petition No. 9 of 2021) (Judgment 2025) (KLR)** where the Court had dealt with the question of the Respondent’s nature as a governmental body that is immunized against execution. It was thus their submission that the Respondent is a Government Body with immunity under the Government Proceedings Act and therefore execution may only be as provided by law under the provisions of Section 21 of the Government Proceedings Act.

11. With regards to the procedure for execution against the Respondent, it cited the decision in the case of **Five Star Agencies Ltd** case (supra) where the Court of Appeal had held that the Government Proceedings Act recognizes only one avenue, which is Judicial Review. It is submitted that the mode of execution being sought herein could not pierce the immunity

under the provisions of Section 21 of the Government Proceedings Act, since the rationale was founded on jurisprudence.

12. To further buttress its position, it relied on the High Court's decision in **Kisya Investments Ltd vs. The Attorney General & Another (2005) eKLR**, where the Court highlighted the history and rationale for the Government's immunity from execution, while citing the decision in **Viscount Haldane in Auckland Harbour Vs. R (1924)**, which had pointed out the need for parliamentary approval and time to have the approvals forwarded to the respective ministry, thereby warranting immunity from execution.
13. It thus submitted that the mode of execution sought in the Applicant's Notice of Motion Application dated 21st January 2026 was unlawful, as it contravened the provisions of Order 29 Rule 2 of the Civil Procedure Rules, 2010, which provides that such action can only be undertaken by way of Judicial Review.
14. In conclusion, they urged the court to dismiss the Applicant's Application with costs and allow their Notice of Preliminary Objection dated 6th February 2026.
15. The Applicant, on the other hand, vide its submissions dated 18th March 2026, summarized the factual background of the matter before framing two (2) issues for determination as follows:
 - i. Whether the Court lacks jurisdiction by reason of Section 6 of the Civil Procedure Act (Ground 1 of the PO).
 - ii. Whether execution is barred by Section 21(4) of the Government Proceedings Act, Cap 40 because the Respondent is allegedly "infused with governmental character" (Grounds 2-4 of the PO).
16. On the first issue for determination as to whether the Court lacks jurisdiction by reason of Section 6 of the Civil Procedure Act, it submitted in the negative and argued that the Respondent's first ground in its Notice of Preliminary Objection was now completely dead since the alleged Application that was pending Ruling before Land Acquisition Tribunal had

been heard and dismissed on 16th February 2026 thus there was no pending matter anywhere that could trigger *res sub judice*.

17. That in any event, the Tribunal itself had no enforcement powers whatsoever since the Court was the only forum vested with jurisdiction to adopt and enforce the Decree under the provisions of Sections 13 and 26 of the Environment and Land Court Act as read with Section 128 of the Land Act. Furthermore, the Respondent had filed the instant Preliminary Objection on 6th February 2026, ten days before the Tribunal had delivered its Ruling. Accordingly, the Objection was stillborn and was a blatant abuse of process. Allowing it to stand would reward forum-shopping and delay tactics.
18. It thus urged the Court to strike out Ground 1 of the Preliminary Objection as being unmerited and having been overtaken by events.
19. On the second issue for determination as to whether execution is barred by Section 21(4) of the Government Proceedings Act, Cap 40 because the Respondent is allegedly “infused with governmental character”, it submitted in the negative and argued that such contention is fatally flawed and unsupported by law.
20. It relied on the provisions of Section 21(4) of the Government Proceedings Act to submit that the same expressly prohibits execution only against the Government or entities that are strictly analogous to it, but does not extend to state corporations incorporated under the Companies Act as separate legal persons. That the said protection was expressly limited to the Government Ministries, Departments, or entities that are strictly analogous thereto, but does not extend to every state corporation incorporated under the Companies Act as a distinct body corporate with perpetual succession and the capacity to sue and be sued in its own name.
21. That KETRACO, being a limited liability company incorporated under the Companies Act, with perpetual succession, capable of suing and being sued in its own name, was distinct and separate from the Government of Kenya. That the Decree herein was not against the Government but against KETRACO in its independent corporate capacity, hence the

provisions of Section 21(4) of the Government Proceedings Act were inapplicable.

22. It submitted that the Respondent's reliance on Sessional Paper No. 4 of 2004 is misplaced and desperate since the said policy document had merely unbundled KPLC and assigned transmission to a 100% state-owned entity. but did not confer immunity from execution. On the contrary, it emphasized that KETRACO's role was a commercial player in the electricity market, subject to market dynamics, and not an arm of the Executive shielded from commercial liabilities. That the criteria in **Shetty v Airport Authority of India** that had been relied upon by the Respondent, had been adopted by the Court of Appeal in **Five Star Agencies Ltd & another v National Land Commission & 2 others [2024] KECA 439 (KLR)** which decision settled the law to the effect that the only entities that enjoy monopoly status under the Constitution and perform core constitutional functions, like the National Land Commission, qualify for immunity.
23. It was its submission that KETRACO was a commercial transmission company operating under the Companies Act whose functions, while important, were not constitutional functions under the provisions of Article 260; thus, the Respondent's attempt to stretch the **Five Star' decision (supra)** to itself was misleading and must be rejected.
24. That the Respondent's reliance on **Mbaraka & 8 Others v KETRACO (ELC Petition No. 9 of 2021)** was equally distinguishable since the same was a constitutional petition dealing with different issues, and did not bind the Court in an execution context. That in any event, even in **Mbaraka's case** (supra), the Court had acknowledged that "not all state corporations may be exempt from execution". It contended that KETRACO was one of such corporations.
25. It argued that the correct position had been articulated by the High Court in the case of **Absa Bank Kenya PLC v Kenya Deposit Insurance Corporation (Milimani Commercial Case No. E411 of 2023)**, where it was held that Sections 13A and 21 of the Government Proceedings Act do not apply to state corporations incorporated as bodies

corporate under the Companies Act (such as KDIC — and by extension KETRACO). The Court had expressly excluded such entities from the GPA's execution regime, noting that they are distinct legal persons capable of being executed against in the ordinary way.

26. They thus invited the Court to find and hold that allowing the Respondent to hide behind "governmental character" would create a dangerous precedent since every state corporation that loses a money suit would simply claim immunity and frustrate decree holders indefinitely.
27. It was its submission that the Decree Holder's Application is competent and seeks reliefs that are statutorily available under the provisions of Order 22 of the Civil Procedure Rules on adoption of the Decree and warrants of attachment and sale. That the Respondent had failed to satisfy the Decree within the 45 days that had been ordered, and had mentioned nothing about it.
28. That to allow the instant Preliminary Objection would unjustly deprive the Applicant of the fruits of its judgment, reward the Respondent's deliberate non-compliance, and violate the overriding objective under the provisions of Sections 1A and 1B of the Civil Procedure Act, that is, just, expeditious, and proportionate resolution of disputes. That since the Respondent had already lost its stay application at the Tribunal, it could not be permitted a second bite at the cherry through technical objections. It thus urged the court to protect the integrity of the judicial process by dismissing the present Objection forthwith.
29. It concluded by maintaining that the Preliminary Objection dated 6th February 2026 was misconceived, overtaken by events, bad in law, and a blatant abuse of process, hence it deserves to be dismissed with costs on a full indemnity scale. That the court proceeds to hear and determine the its Notice of Motion dated 21st January 2026 on its merits, and to grant any other relief it may deem just.

Determination

30. I have considered the Respondents' preliminary objection pursuant to the Applicant's application by way of Notice of Motion dated 21st January 2026. I have further considered the Applicant's response to the same, the party's submissions, the applicable law, and authorities herein cited.
31. Briefly, the Applicant sought for the court to recognise and register the Decree issued by the Land Acquisition Tribunal on 20th November 2025 as a Decree of the Court and thereafter issue execution orders against the Respondent (KETRACO) for a Principal: Kshs. 28,705,842/=, Accrued interest of Kshs. 13,647,465.10/=, continuing interest at CBK/Court rates and costs. They had also sought the issuance of Warrants of Attachment and Sale to recover the debt.
32. In response, the Respondent raised a preliminary objection to the effect that the application violates the provisions of Section 6 of the Civil Procedure Act because a related application regarding execution was supposedly pending before the Land Acquisition Tribunal. Further, it argued that it (KETRACO) was infused with governmental character and performed core public functions (electricity transmission) and therefore Section 21(4) of the Government Proceedings Act (Cap 40) was applicable to them, and prohibited the attachment of government property.
33. They relied on Sessional Paper No. 4 of 2004 and the State Corporations Act to assert that their monopoly status and state control shield them from standard execution processes.
34. In response to the preliminary objection raised above, the Applicant (Lakeview Panorama Limited) noted that the Tribunal had already dismissed KETRACO's application for a stay of execution on 16th February 2026. Therefore, there was no pending matter to block the Court's jurisdiction. They argued that KETRACO was a limited liability company incorporated under the Companies Act and, therefore, was a distinct legal entity capable of being sued. It was not a Ministry or Government Department, and therefore did not enjoy immunity under the Government Proceedings Act.
35. They contended that the Sessional Paper No. 4 only outlined policy but did not grant KETRACO the status of the Crown. KETRACO operated

commercially and must satisfy its debts, having only made partial payment of Kshs. 4,000,000/= out of a debt exceeding Kshs. 42 million. That blocking the execution would unjustly deny them the fruits of their judgment.

36. I find the issue arising for determination as being:

- i. Whether the Applicant's application is sub judice.
- ii. Whether execution is barred by Section 21(4) of the Government Proceedings Act (Cap 40) because the Respondent is allegedly infused with governmental character.

37. In the precedent-setting case of **Mukisa Biscuit Manufacturing Co Ltd -vs West End Distributors (1969) EA 696**, the relevant principles on Preliminary Objections were set as follows:

"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."

38. It is evident that a Preliminary Objection consists of pure points of law, and it is also capable of bringing the matter to an end preliminarily.

39. The law under the provisions of Section 6 of the Civil Procedure Act provides as follows:

'No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.'

40. As seen above, Section 6 of the Civil Procedure Act, Cap 21, is intended to prevent a multiplicity of suits by prohibiting a court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties.

41. The Supreme Court of Kenya in **Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] eKLR** had observed as follows:

“The term sub judice is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub judice rule is to stop the filing of multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of sub judice must therefore establish that; there is more than one suit over the same subject matter, that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

42. For sub judice to apply, there must be a pending matter in another court or tribunal. It is not in contention that the application for stay filed by the Respondent at the Land Acquisition Tribunal was heard and dismissed with costs on 16th February 2026, and therefore, once the Tribunal delivered its ruling, any alleged jurisdictional bar under Section 6 was immediately lifted. A stillborn objection filed while a ruling was

awaited cannot survive the delivery of that very ruling. To uphold this ground would be to ignore the reality that there is currently no conflicting litigation elsewhere.

43. Secondly, the Respondent's argument failed to distinguish between the nature of the proceedings at the Tribunal and those before this Court. As established under Sections 13 and 26 of the Environment and Land Court Act and Section 128 of the Land Act, the Land Acquisition Tribunal is a creature of statute with specialised but limited powers and therefore lacks the inherent power to execute its own decrees in the manner of a superior court of record.
44. The process of adopting a Tribunal award as a Decree of the Court is a distinct statutory procedure reserved for the Environment and Land Court. Therefore, the Application dated 21st January 2026 was not a duplication of the Tribunal case, but a necessary subsequent step for the realization of the fruits of judgment.
45. I find that the Respondent's objection fails on the above two critical fronts, and allowing the Preliminary Objection on this ground would reward what the Applicant correctly identifies as forum-shopping and delay tactics. The Respondent filed the Preliminary Objection on 6th February 2026, which was ten days before the Tribunal was set to rule, anticipating a conflict that ultimately did not materialize.
46. Under the overriding objective of Sections 1A and 1B of the Civil Procedure Act, the Court is mandated to facilitate the expeditious resolution of disputes. Thus, entertaining a res sub judice argument in a matter already concluded would be a mechanical and erroneous application of the law, serving only to frustrate the Decree Holder and waste judicial time.
47. I therefore find that on the first issue for determination, the Preliminary Objection is unmerited and overtaken by events. There is no suit currently pending that addresses the same issues.
48. On the second issue for determination as to whether execution is barred by Section 21(4) of the Government Proceedings Act (Cap 40) because the Respondent is allegedly infused with governmental

character, the core of the Respondent's objection rests on the claim that it is synonymous with the State. However, this position contradicts the established legal principle of corporate personality.

49. Section 21(4) of the Government Proceedings Act provides as follows:

" (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 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."

50. There is no doubt that KETRACO is a limited liability company incorporated under the Companies Act and therefore it is a body corporate with perpetual succession and the capacity to sue and be sued in its own name.

51. The immunity against execution provided under Section 21(4) of the Government Proceedings Act is a derogation from the general right of a successful litigant to enjoy the fruits of their judgment. As such, it must be interpreted strictly. This protection is reserved for the Crown, specifically Government Ministries, Departments, and the Attorney General, and does not automatically extend to every parastatal or state corporation.

52. The Respondent's reliance on Sessional Paper No. 4 of 2004 is legally misplaced because while the Sessional Paper outlines the policy to keep transmission 100% state-owned for strategic reasons, it does not transform a commercial company into a Government Department.

53. Indeed, a sessional paper is a document that outlines a government's policy proposals or actions, presented to Parliament for review and discussion. Legislation may or may not result from a sessional paper. The introduction to Sessional Paper No 4 of 2004 posted on Parliament's portal reads as follows:

'The aspiration of this session of paper is to lay the policy framework upon which caused effective affordable and

adequate quality energy services will be made available to the domestic economy on a sustainable basis over the 2004 to 2023. This sessional paper recognizes that the success of social economic and environmental transformation strategies pursued night and government at present and in the future is to a large extent dependent on the performance of the energy sector as an economic infrastructure. This sessional paper therefore articulates the current and future policies to realize this growth strategy.”

54. KETRACO operates as a commercial player in the energy sector. Unlike a Government Ministry, KETRACO generates revenue, enters into private contracts, and operates under the State Corporations Act, which acknowledges its status as a separate entity from the National Treasury. The Respondent attempts to shield itself using the decision in **Five Star Agencies Ltd v. National Land Commission [2024] KECA 439 (KLR)** is therefore flawed for the reason that the National Land Commission (NLC) is a Constitutional Commission established under Chapter 15 of the Constitution were its functions are purely sovereign and non-commercial.
55. In the case of **Association of Retirement Benefits Schemes v Attorney General & 3 others [2017] KEHC 8534 (KLR)**, the High Court cited the decision of the Indian Supreme Court in the case of **International Airport Authority (R.D Shetty) vs The International Airport Authority of Indian & Ors {1979} 1 S.C.R. 1042** where the Court set the test for determining whether an entity is a Government body or not, as follows;

“(a) consider whether any share capital of the corporation is held by the Government and if so that would indicate that the corporation is an instrumentality or agency of Government;

(b) where the financial assistance of the State is so much as to meet almost the entire expenditure of the Corporation, that fact would afford some indication of the corporation being impregnated with Governmental character;

(c) it may also be relevant to consider whether the corporation enjoys monopoly status conferred by the State.
(d) whether the body has deep and pervasive State control,
(e) whether the functions of the corporation are of public importance and closely related to Governmental functions then that would be a relevant factor in classifying the corporation as an instrumentality or agency of Government and
(f) if a Department of a Government is transferred to a corporation then it becomes an instrumentality or agency of the Government.”

56. Under the criteria of the holding by the Supreme Court of India in **International Airport Authority (R.D Shetty)** case above, again KETRACO fails the test for total immunity because while its functions are of public importance, its operation under the Companies Act and its commercial mandate distinguish it from an entity impregnated with governmental character to the extent of being execution-proof.
57. In the case of **Kenya Electricity Transmission Co. Ltd (KETRACO) v Instalaciones Inabensa S.A [2022] KESC 64 (KLR)**, the Supreme Court addressed KETRACO’s primary argument for immunity, that it is a public institution run on public funds, when it held as follows:

“.....Finally, the respondent submits that the only argument advanced by the applicant is that it is a public institution run on public funds, yet both courts below have found that the dispute was purely commercial and not one relating to public funds; and that it is not enough for the applicant to claim that it is a custodian of public funds for which reason it ought to be shielded from execution without demonstrating the jeopardy likely to be suffered should the funds, the subject of the award be paid to the respondent; and....”

58. Just as in the **Inabensa** case (supra), the current matter (land acquisition compensation) is a statutory/commercial obligation to pay a specific sum. It is not a sovereign function that grants immunity. The Supreme Court acknowledged the principle that it is 'not enough' for KETRACO to claim that it is a public institution funded by public funds to be shielded from execution, especially where the underlying dispute is commercial in nature.
59. It is thus clear that KETRACO's status as a state corporation does not provide a "blanket immunity" from the consequences of its commercial dealings. The Land Acquisition award arose from a commercial/statutory transaction, not a sovereign act of the state. Per the **Inabensa** case, the courts have already ruled that KETRACO cannot hide behind its "public institution" status to frustrate creditors, and therefore, being a custodian of public funds is not enough to stay execution. KETRACO, being a commercial entity, is therefore subject to the ordinary rules of commercial litigation and execution.
60. I find that allowing KETRACO to hide behind governmental character when it is not a government entity creates a dangerous precedent that undermines the rule of law. If every state corporation could claim immunity from execution, no private entity would safely do business with them. It would effectively grant state corporations a licence to default on their commercial and legal obligations.
61. Under Sections 1A and 1B of the Civil Procedure Act, the court must ensure a proportionate resolution. KETRACO has already failed to satisfy the Decree within the 45-day grace period provided; to uphold this objection would be to reward a judgment debtor for its own non-compliance and leave the Applicant with a paper judgment.
62. In conclusion, since the Respondent is a separate legal person operating in a commercial capacity, and having engaged in a commercial process that led to this Decree, is liable to execution like any other corporate citizen because it does not fall within the narrow category of entities protected by Section 21 of the Government Proceedings Act.

Consequently, the Decree is executable against KETRACO in the ordinary way, and the Preliminary Objection is herein dismissed with costs.

**Dated and delivered via Microsoft Teams at Naivasha this 7th day of May
2026.**

M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE