



Koceyo t/a Koceyo & Company Advocates v Nairobi City County; Cooperative Bank of Kenya Limited (Garnishee) (Environment and Land Miscellaneous Application 343 of 2014) [2024] KEELC 4361 (KLR) (29 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 343 OF 2014**

JA MOGENI, J

MAY 29, 2024

BETWEEN

**TITUS OTIENO KOCEYO T/A KOCEYO & COMPANY
ADVOCATES PLAINTIFF**

AND

NAIROBI CITY COUNTY DEFENDANT

AND

COOPERATIVE BANK OF KENYA LIMITED GARNISHEE

RULING

1. It is the application dated the 17/5/2021 brought by the Applicant/ Decree holder seeking the following orders;
 - a. Spent
 - b. That an order of Garnishee *nisi* be issued so that a sum of Kshs. 298,198.00 plus further interest of Kshs. 107,351.20 from the funds held by the Garnishee in the Account of the Defendant known as Bank Account No. 01141232396600, Cooperative Bank of Kenya Limited, be attached so as to satisfy the decree herein.
 - c. That the Garnishee do forthwith pay to the Plaintiff/Decree Holder the Decretal sum herein of Kshs. 298,198.00 plus further interest of Kshs. 107,351.20 from the funds held by the Garnishee in the Account of the Defendant known as Bank Account No. 01141232396600 Cooperative Bank of Kenya Limited
 - d. That the cost of this proceeding be provided for.



2. The Application is premised on the grounds annexed thereto together with the supporting affidavit of Koceyo Titus the Applicant sworn on the 02/04/2024.
3. The deponent avers decree issued in his favor on 20/03/2018 totaling Kshs. 298,198.00 plus interest (TOK -1 is the extract of the decree). That the said decree remains unsatisfied to date. That the money the Respondent holds in its account No. 01141232396600 at Cooperative Bank need to be preserved through issuance of Garnishee *Nisi* pending the hearing of the application.
4. That Order 23 (1) of the [Civil Procedure Rules](#) provide for *ex parte* hearing for an application of this nature to avoid money being removed from the Garnishee bank since the Respondent has neglected and or refused to make good the payment. That unless the application is granted the Respondent is likely to transfer the monies to further frustrate the decree holder.
5. That the defendant and the applicant are all equal before the law as provided under Article 27 (1). He referred two cases *Dr Ann Kinyua v Attorney General and 3 Other* (2015)eKLR and [James Muigai Thungu v County Government of Trans Nzoia & 2 Others](#) (2015) eKLR.
6. In response, the Judgment Debtor filed a Preliminary Objection dated 29/04/2024 and Replying Affidavit sworn on 29/04/2024 by Komo Mary, its Principal Litigation Counsel. In the replying affidavit she averred that the Application as filed is misconceived, bad in law having been filed against a County Government and this contravenes Article 176 (1) (2) of the [Constitution](#). Further that the execution being sought by the applicant offends Order 29 rules and incurably defective as it 2 and 3 of the [Civil Procedure Rules](#). The application made and orders sought also offend Section 21 of the [Government Proceedings Act](#).
7. She urged the Court to discharge the *ex parte* orders issued on 9/04/2024 attaching the funds of the County Government.
8. The content in the preliminary objective reiterated the averments in the replying affidavit. It was her contention that the applicant had violated the express provisions of section 21 of the [Government Proceedings Act](#). Further that the application offends Article 176 (1) (2) and Article 6(2) of the [Constitution](#) that creates two levels of government and the County Government is a government against whom garnishee proceedings cannot issue.
9. That the application is untenable in law contrary to Order 29 rule 2 of the [Civil Procedure rules](#).
10. The parties were directed to file submissions as at the time of writing this ruling the only submissions filed are those by the application dated 6/05/2024. Which I have considered as in writing this ruling.
11. From my reading of the pleadings and documents submitted in evidence in the instant application I find that there is only one issue for determination which address the issues raised in the preliminary objection and the application and this is Whether a County Government can be a subject of Garnishee proceedings?
12. The laid-out procedure in law in executing decrees against the Government is provided under section 21(1) of the Government:

“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.”

13. Section 21 (4) of [Government Proceedings Act](#) provides:

“Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, 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.”

14. Order 29 Rule 4 (1) of the [Civil Procedure Rules](#) provides:

“No order for the attachment of debts under Order 23 or for the appointment of a receiver under Order 41 shall be made or have effect in respect of any money due or accruing or alleged to be due or accruing from the Government.”

15. Order 29 Rule 2 (2) of the [Civil Procedure Rules](#) 2010 provides:

“No order against the Government may be made under: -

- (a) Order 14, rule 4 (Impounding of documents);
- (b) Order 22 (Execution of decrees and orders);
- (c) Order 23 (Attachment of debts);
- (d) Order 40 (Injunctions); and
- (e) Order 41 (Appointment of receiver)

16. The above cited legal provisions confirm that the process of execution with regard to Government institutions is prescribed by [Government Proceedings Act](#). The [Civil Procedure Act](#) & [Rules](#) 2010 also prescribes the execution process and exempts Government from the said process. This means although execution is a right enforced by a decree holder against judgment debtor execution shall be carried down where it involves Government it shall be within the purview of [Government Proceedings Act](#). Therefore, the Garnishee proceedings herein against the Judgment debtor; County of Nairobi are improper in law to the extent of the recovery procedure. However, the judgment debt remains unchallenged and valid order and decree of the Court.

17. The [Constitution](#) of Kenya 2010 states as follows in relation to the Government;

Article 6

- (1) The territory of Kenya is divided into the counties specified in the First Schedule.
- (2) The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.



18. The import of the above provision of the Constitution is that the Government in Kenya is split into two levels. One is the Government at the National level and the second is Government at the County level, both form “governments” that are separate and distinct with different functions as set out in the Constitution.
19. The import is that the Constitution is supreme law of the land and Article 6 of the Constitution dictates that Government consists of National and County Governments that are distinct and interdependent. Thus County of Nairobi, defendant herein is part of Government and is subject to Government Proceedings Act.
20. To the defendant’s Preliminary objection’s main thrust is as already stated the same issues raised in averred in the replying affidavit and I see no value on addressing the same issues addressed herein above. In Club Limited V the Governor, Kajiado County Government & Kenya Commercial Bank Misc Application No. 442 of 221 Ogola J stated;

“The draftsman, in incoming up with the Government Proceedings Act had in mind the interest of the Government as a whole. The County Government is not an exception.

I think I have said enough to show that the County Government is “Government” as per the Government proceedings Act. Therefore, the provisions of the said Act apply to proceedings brought against County Governments. Having made the foregoing observations, it therefore follows that the Garnishee proceedings instituted by the applicant are not sustainable.”
21. There are a myriad of cases that I could refer to, to illustrate the question of whether the County Governments are part of Government but as already elaborated above this question is now moot. Based on the law as quoted above and authorities cited, much has been said and the matter is now settled.
22. For avoidance of doubt, whereas garnishee proceedings cannot be brought against a county government, it is important to note and that the applicant herein retains a valid decree against the Defendant/Judgment debtor. To the extent of the process of realization of decree through Garnishee proceedings, this Court finds that with regard to Government institutions it is not the proper and legal procedure in law. That does not deprive the applicant’s right of enforcement of decree within the confines of law. Therefore, the defendant’s Preliminary Objection is upheld.

Disposition

1. The Preliminary Objection by Defendant dated 29/04/2024 is upheld.
2. The plaintiff/decree holder may pursue execution of the decree against the Defendant/Judgment Debtor in the laid down, proper and legal process.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF MAY, 2024

MOGENI J

JUDGE

In the Virtual presence of

Ms. Njeri Kariuki holding brief for Mr. Koceyo for Applicant/Decree Holder

Ms. Komo for Defendants/Judgement Debtor



Caroline Sagina: Court Assistant

MOGENI J

JUDGE

