



REPUBLIC OF KENYA



**Orodo v University of Nairobi (Employment and Labour Relations Cause
1191 of 2018) [2025] KEELRC 222 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 222 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1191 OF 2018**

**MN NDUMA, J
JANUARY 30, 2025**

BETWEEN

REUBEN ONDIGU ORODO CLAIMANT

AND

UNIVERSITY OF NAIROBI RESPONDENT

RULING

1. Serving before court is an application dated 23/8/2024 by the Respondent/ Applicant seeking an order in the following terms: -
 1. Spent
 2. Spent
 3. Spent
 4. That this Honourable Court be pleased to set aside the warrants of attachment and sale in execution of the decree herein dated 08/08/2024 pending the hearing and determination of this application inter-parties.
 5. That this Honourable Court be pleased to make such further orders to meet the end of justice.
 6. That costs of this application be in the cause.
2. The application is premised on grounds (a) to (g) set out on the face of the notice of motion and buttressed in the supporting affidavit of Kenneth K. Sawe, the Registrar Administration of the Respondent/Applicant.
3. The nub of the grounds is that the Respondent/Applicant is a Government institution established under the *University of Nairobi Act* No. 13 of 1988, *University of Nairobi Act* No. 11 of 1992 and amended and consolidated by the University of Nairobi Act Cap 210 of 2012 and hence the Applicant



is not subject to execution in the manner provided under order 23 Rule 1 of the [Civil Procedure Rules 2010](#) which clearly provides that no order against government may be made under order 23 in regards to attachment of debts.

4. That the procedure for execution against government institution is stipulated in sections 21 (4) and 22 of [Government Proceedings Act](#), Cap 40 by way of judicial review proceedings seeking an order of mandamus to compel the Applicant to settle the instant decretal sum.
5. That the mode for execution applied by the Respondent is unlawful and the application be granted setting it aside.

Replying Affidavit

6. The Claimant/Respondent filed a replying affidavit of Reuben Ondigu Orodo stating that the application is a non-stater and utterly incompetent. That the Respondent/Applicant does not constitute the Government of Kenya to be exempted from execution as prayed under order 29 of [Civil Procedure Rules](#). That this suit was not instituted against the Hon. Attorney General or County Attorney to qualify to be government proceeding. That the Claimant/Respondent was not a civil servant.
7. That the Respondent/Applicant has the means to make good the decretal sum but has not offered to pay the same at all and instead provides excuses to defeat the ends of justice by delaying the enjoyment of the judgment of court.
8. That the Respondent has satisfied all the pre-execution procedures under [Civil Procedure Rules](#). That the application for stay of execution and for setting aside the attachment is not merited and it be dismissed.

Determination

9. The court has carefully considered the application as filed and noted several major flaws including:
 - a. The Applicant did not expressly seek any orders for grant upon hearing and determination of this application. The Respondent only sought 2 interim orders pending the hearing and determination of the application which matter was considered by Hon. Justice Rika exparte on 20th August 2024 where he granted a temporary order of stay of execution of the warrant of attachment and sale in execution of decree herein for a period of 10 days. The same orders were extended by this court until 30/1/2025 the date of the delivery of this ruling.
10. As it is, the application as filed by the respondent does not contain any orders capable of grant after the hearing and determination of this application. For this reason alone, the application dated 23/8/2024 is totally defective.
11. The court also notes that despite the fact that no appeal has been filed against the judgment of the court dated 5/10/2023 and a ruling on computation dated 13/6/2024, the Respondent has not made any efforts to satisfy the decretal sum to avoid execution by the Claimant/Respondent against the Respondent/Applicant.
12. The court has however considered the rival submissions and following the Court of Appeal decision in the case of *Kenya Revenue Authority versus Habi Mana Suel Hamad and another* [2015] eKLR that the Respondent/Applicant is a body corporate with capacity to sue and be sued and it has its own



corporate seal different from that of the Government of Kenya. It therefore had capacity to sue and be sued as the Court of Appeal held: -

The University of Nairobi is not an organization of the Government as contemplated under the *Government Proceedings Act*. The Respondent/Applicant must therefore meet its debts and in particular satisfy any decretal sums made against it pursuant to civil litigation by its employees as in the matter to avoid any execution proceedings being made against it be it by way of attachment or issuance of mandamus against its officials”.

13. The Respondent/Applicant must satisfy the judgment debt herein accordingly.

14. The application lack merit and is dismissed with costs

DATED AT NAIROBI THIS 30TH DAY OF JANUARY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Omongo for Claimant/Respondent

Mr. Kipkorir for Respondent/Applicant

Mr. Kemboi – Court Assistant

