



Nkaduda v County Assembly of Tana River & 4 others (Petition 6 of 2021) [2025] KEELRC 1244 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1244 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION 6 OF 2021
M MBARŪ, J
MAY 5, 2025
FORMERLY GARSEN CONSTITUTIONAL PETITION NO. E002 OF 2021**

BETWEEN

HON MICHAEL JUSTICE NKADUDA PETITIONER

AND

THE COUNTY ASSEMBLY OF TANA RIVER 1ST RESPONDENT

THE CLERK, THE COUNTY ASSEMBLY OF TANA RIVER 2ND RESPONDENT

HON MOHAMED BUYA YUSA 3RD RESPONDENT

HON GALOLE SADDAM HUSSEIN 4TH RESPONDENT

HON ABDI ERGAMISO GOBU 5TH RESPONDENT

RULING

1. The petitioner filed an application dated 19 September 2024 seeking orders
 1. The court be pleased to issue a Notice to Show Cause against the speaker of the County Assembly of Tana River Court, Osman Galole and the Clerk of the County Assembly of Tana River, Abdullahi Hussein Dayib, to attend court and show cause why they should not be committed to civil jail for a term not exceeding six (6) months for disobedience of the court orders in respect to the judgment and or decree dated 29 July 2022 and the Certificate of Costs dated 21 May 2024.
 2. This court do issue an order for committal against the speaker to the County Assembly of Tana River, Osman Galole and the Clerk of the County Assembly of Tana River, Abdullahi Hussein Dayib to civil jail for a period not exceeding six (6) months or any such period as this court



may deem fit for willfully disobedience of the Court orders in respect to the judgment and or decree dated 29 July 2022 and the Certificate of Costs dated 21 May 2024 issued by this court.

3. The court is pleased to order the 1st and 2nd respondents to pay the petitioners/applicant within 14 days a sum of Ksh. 2,500,000, which was awarded to the petition as special damages, Ksh. 764,318.33, which was awarded to the petitioner as the cost of the suit, and Ksh. 1,200,000 as reimbursement of the illegally deducted tax from his salary and/or gratuity withheld to the motor vehicle reimbursement benefit amount and all his allowances and/or benefits he is entitled to.
4. The cost of this application.
2. The petitioner filed his Affidavit supporting the application and averred that on 29 July 2022, the court delivered judgment in his favour. He extracted the Decree and served the respondents, particularly the Speaker of the County Assembly of Tana River County, Osman Galole, and the Clerk of the County Assembly of Tana River, Abdullahi Hussein Dayib, who are the accounting officers and hold the greatest responsibility for the respondents. They have, however, failed to make payment.
3. The petitioner avers that the respondents have individually and personally failed to honour the judgment and decree of the court or pay the due costs vide the Certificate of Costs dated 21 May 2024 for Ksh. 764,318.33.
4. The petitioner abandoned the claim for the tax deductions on the due payments.
5. However, for the blatant disobedience of the court orders and decree herein. The respondents' unlawful acts should be punished through committal to a civil jail. The respondent's acts have caused the petitioner loss and damage, and further brought disrepute to the court, as there is an affront to the court's authority. The deliberate refusal to obey court orders compromises the rule of law and administration of justice; hence, the application should be allowed with costs.
6. The petitioner also filed his Supplementary Affidavit, averring that the documents filed by the respondents are inadmissible and filed contrary to Rule 9 of the *Oaths and Statutory Declarations Rules*. The respondents partly complied with the decree and paid a salary of Ksh. 2,805,482, but a balance of Ksh. 2,500,000 in damages and Ksh. 764,318.33 in costs remain unpaid.
7. In reply, the respondents filed the Replying Affidavit of the 2nd respondent, Abdullahi Dayib Hussein, who avers that the court delivered judgment on 29 July 2022 in favour of the petitioner. The court held that the impeachment of the petitioner by the respondents was null and void, yet the petitioner had not lost office and benefits. The 1st respondent was ordered to pay the due salary plus the award of Ksh. 2,500,000 in damages and costs were taxed on 21 May 2024 at Ksh. 764,318.33.
8. Hussein avers that the respondents have paid the petitioner his salaries and gratuities at Ksh. 2,808,542. The remaining payments for damages and costs have not been settled due to financial constraints within the government and allowed expenditures. The respondents have no intention of denying the petitioner his lawful due. The speaker and clerk cannot be personally liable for a public debt. The payment requires the County Treasurer's allocation and budget.
9. Hussein avers that under section 21(4) of the *Government Proceedings Act*, no executive, attachment or process like execution can be issued against the government or the property of the government. The 2nd respondent and the speaker of the 1st respondent cannot be committed to civil jail for failure to settle a judgment debt against the Country Assembly. The procedure for obtaining payments of judgment debts from the government is prescribed under section 21(1) of the *Government Proceedings Act* as held in *Republic v Permanent Secretary, Ministry of State for Provincial Administration and*



- Internal Security ex parte Fredrick Manoah Egunza* [2012] eKLR. The petitioner has not followed this procedure. Instead of initiating contempt of court proceedings, the petitioner should have filed a miscellaneous application.
10. The statutory deductions are lawful and legitimate, per the KRA requirements. The application, as couched, is bad in law and should be dismissed with costs.
 11. The participants and the respondents attended court and highlighted their submissions.
 12. The petitioner conceded that the claims for a refund of statutory deductions were withdrawn.
 13. What remains of the application is the citation of the responding officers for contempt of court orders through the judgment and decree herein and their committal to civil jail for the willful disobedience of these orders.
 14. The petitioner has also admitted that part of the complaint concerns the judgment and decree with payment of his due salaries. What remains unpaid are the general damages plus the costs through the Certificate of Costs dated 21 May 2024.
 15. Indeed, as submitted by the respondents, where a judgment creditor holds an order against the government as the judgment debtor, the applicable procedure in enforcement and execution is per section 21 of the Government Procedures Act. Under such provisions, a party is allowed to commence its proceedings against the government and seek the payment of money or costs due in an order or decree against the government in its favour. Such an order or decree can only be enforced through an order of mandamus compelling the accounting officer in the relevant government agency to pay the decretal amount, as the government is protected from execution or attachment of its property.
 16. In *Stephen Mwallyo Mbondo v County Government of Kilifi* [2021] KEELRC 42 (KLR), the court held that the procedure set out in section 21 of the *Government Proceedings Act* must be strictly followed before enforcing a court decree or order against a government agency, including the County Government.
 17. The rationale for applying under Section 21 of the *Government Proceedings Act* is stated in *Five Star Agencies Limited & another v National Land Commission & 2 others* [2024] KECA 439 (KLR) that;

“No ministry or department has any ready funds at all times to satisfy decrees or judgments - while existence of claims and decrees may be known to the ministries and departments, they have to notify the Ministry of Finance and Treasury of the same so that payment is arranged for or provisions made in the government expenditure. The second situation, which arises from the above, is that once a decree or judgment is obtained against the government, it would require some reasonable time to have it forwarded to the Ministry of Finance, Treasury, Controller and Auditor General etc. for scrutiny and approvals for it to be paid from the consolidated fund. The Ministries and Departments do not have their “own” funds to settle such decrees or payments and considering the nature of the government structure, procedures, red tape and large number of claims, this could take a long time. If execution and or attachment against the government were allowed, there is no doubt that the government will not be able to pay immediately upon passing of decrees and judgments and will be inundated with executions and attachments of its assets day in day out. Its buildings will be attached and its plants and equipment will be attached, its vehicles, aircraft, ships and boats will be attached. There will be no end to the list of likely assets to be attached and auctioned by the auctioneer’s hammer.No government can possibly survive such an onslaught. The government and therefore the state operations will ground to a halt and paralyzed and soon



the government will not only be bankrupt but its constitutional and statutory duties will not be capable of performance and this will lead to chaos, anarchy and the breakdown of the Rule of Law. This is the rationale or the objective of the law that prohibits execution against and attachment of the government assets and property”

18. However, in *Kennedy David Mwaniki Nyaga v County Government of Tharaka Nithi* [2021] KEELRC 1927 (KLR), the court emphasised that Section 21 of the *Government Proceedings Act* was intended to aid good governance but not frustrate and stumble it. These provisions should not be used as a cover for impunity or inertia on the part of governments in executing decrees against them.
19. However, on the face of part payment of the decree herein and the respondents' admission that they are aware of the unpaid dues to the petitioner, save for the want of a mode of initiating these proceedings, there is justification for the orders sought.
20. The petitioner shall move the court under an appropriate application against the government, such as the County Government of Tana River, the respondents, and their agencies.
21. The application dated 19 September 2024 is declined. No orders on costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 5TH DAY OF MAY 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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