



**Mbukua v Water Services Trust Fund; Dancy Auctioneers (Interested Party)
(Cause 1323 of 2017) [2025] KEELRC 1652 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1652 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1323 OF 2017
CN BAARI, J
JUNE 5, 2025**

BETWEEN

ROSAITA NGINA MBUKUA CLAIMANT

AND

WATER SERVICES TRUST FUND RESPONDENT

AND

DANCY AUCTIONEERS INTERESTED PARTY

RULING

1. For determination is the Respondent’s Motion dated 9th April, 2025, seeking stay of execution and to stop proclamation carried out by the Interested Party herein, on the premise that the Respondent is a government entity, and that no execution can take place as against government.
2. The Respondent relies on the ruling of this Court (differently constituted) where Hon. Justice Rika held that the Respondent is a government entity, hence no execution by way of proclamation can take place against it.
3. The Claimant opposed the motion vide a Replying affidavit sworn on 16th April, 2025. The Claimant avers that the Respondent is a Fund and that though it is a government entity, it is liable to attachment as it is not the government itself that is being attached, but money held under the Fund, and it cannot therefore hide behind that to avoid execution.
4. It is the Claimant’s position that this Court had earlier ruled that there is money owed to the Claimant that is still outstanding, and that the Respondent has not provided a schedule of how it intends to satisfy the decretal sum.
5. It is the Claimant’s assertion that this court cannot stop the execution when the Respondent/ Applicant has not made any measures to make the payments due to the Claimant.



6. The Claimant prays that the motion herein be dismissed.

Determination

7. I have considered the Motion, the grounds and affidavit in support thereof, the Replying affidavit in opposition and the oral submissions by counsel for both parties.

8. The issue for determination is whether proclamation against the Respondent is proper/legal in view of a ruling of this Court (differently constituted) delivered on 19th April, 2023.

9. The Respondent who is also the Applicant herein, argues that it is a government entity and execution cannot be carried against it. The Claimant on her part contends that the Respondent is a Fund and is an independent body which does not rely on the government on its administration of funds payable from its docket.

10. In her oral submissions, counsel for the Claimant maintained that the Respondent is not a government entity and the Court should thus allow the execution to proceed.

11. The issue of whether or not the Respondent is a government entity and thus precluded from execution and attachment in the manner conducted by the Claimant, was addressed by Hon. Justice Rika in a ruling rendered on 19th April, 2023 where the Hon. Judge opined thus:-

“The Respondent is described at paragraph 2 of the Statement of claim as a State Fund, established under the Water Act,2002.

It is a Government entity, which is protected under Section 21(4) of the Government Proceedings Act and Order 29 Rule 2 (2) of the Civil Procedure Rules, from execution or attachment.”

12. The Court in the afore mentioned ruling, proceeded to declare warrants of execution and proclamation issued illegal and set them aside.

13. As submitted by counsel for the Respondent this ruling has neither been reviewed nor has it been set aside in any other way.

14. This Court has no reason to contradict a previous decision of a Court of concurrent jurisdiction, as to do so, would amount to sitting on appeal on the decision.

15. The Claimant has since 19th April, 2023, not appealed or sought review of the said decision if indeed it holds the view that the Court erred in finding that the Respondent is a Government entity. This therefore, means that the decision remains in force.

16. In the circumstances, I find the Respondent’s Motion merited and orders granted as follows:-

- a. That the warrants of execution and proclamation dated 1st April, 2025 by Dancy Auctioneers be and are hereby set aside.
- b. The Claimant is at liberty to execute in the normal manner for execution of decrees against Government.
- c. The Respondent shall bear the Auctioneers costs.

17. It is ordered.



SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5TH DAY OF JUNE, 2025.

C. N. BAARI

JUDGE

Appearance:

N/A for the Claimant

Ms. Kioko h/b for Mr. Waigwa for the Respondent

Ms. Esther S - C/A

