



**Wangalwa v County Assemblies Forum (CAF) & 2 others; Kcb Bank Ltd (Garnishee)  
(Petition E069 of 2023) [2025] KEELRC 2075 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2075 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E069 OF 2023**

**HS WASILWA, J  
JULY 10, 2025**

**BETWEEN**

**JUDITH ODUMA WANGALWA ..... PETITIONER**

**AND**

**COUNTY ASSEMBLIES FORUM (CAF) ..... 1<sup>ST</sup> RESPONDENT**

**HON PHILEMON SABULEI, CHAIRMAN - CAF ..... 2<sup>ND</sup> RESPONDENT**

**HON CHEGE MWAURA, SEC GEN - CAF ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KCB BANK LTD ..... GARNISHEE**

**RULING**

1. The 1<sup>st</sup> Respondent/Judgment Debtor filed a Notice of Motion dated 4<sup>th</sup> February 2025 seeking orders THAT: -
  1. spent
  2. the court grants stay of execution of the decree issued on 29<sup>th</sup> November 2024 pending the hearing and determination of this application.
  3. the court be pleased to allow the Judgment Debtor to satisfy the decretal sum amount in four monthly instalments of Kshs. 290,504 from February 2025 until payment in full.
  4. as a consequence, to order no. 3, the court grants a stay of execution of the decree issued on 29<sup>th</sup> November 2024.
  5. this Honourable Court be pleased to make any other orders as it deems fit in the circumstances.
  6. costs of this Application be provided for.



### **1<sup>st</sup> Respondent/Judgment Debtor's Case**

2. The Judgment Holder avers that this court delivered judgment in this matter on 16<sup>th</sup> July 2024 and a subsequent decree was issued on 29<sup>th</sup> November 2024. The Decree Holder thereafter demanded the decree is settled within 14 days vide a letter dated 11<sup>th</sup> December 2024.
3. The Judgment Debtor avers that the decree did not expressly state the decretal sum, however, it computed the amount payable as Kshs. 1,162,016 and in response to the demand, it proposed settling the decretal sum through four monthly instalments of Kshs. 290,504 commencing in February 2025 to May 2025.
4. The Judgment Debtor avers that the Decree Holder declined its proposal without any reason or offering a counter proposal and instead asserted that execution proceedings would proceed without reference to the Judgment Debtor.
5. The Judgment Debtor affirms that it is committed to satisfy the decree but is constrained by its financial operations as it must await subscriptions from various county assemblies across Kenya, which has not yet been received to date and as a result it is unable to settle the decretal sum in a single lumpsum.
6. The Judgment Debtor avers that if the orders sought are not granted, it will suffer prejudice as it will incur additional costs associated with execution proceedings which will further delay the settlement of the decretal sum.
7. The Judgment Debtor avers that it is a government agency not subject to execution proceedings. Additionally, the *Government Proceedings Act* shields public officers including the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from personal liability for court orders requiring the government to pay money arising out of a court order

### **Judgment Debtor's Submissions**

8. The Judgment Debtor submitted on four issues: whether the court is functus officio; whether the Applicant has provided sufficient reasons to defray the decretal sum by way of monthly instalments; whether stay of execution of the decree be granted pending the payments of the decretal sum in instalments; whether the Application was filed without unreasonable delay.
9. On the first issue, the Judgment Debtor relied on the case of *Telkom Kenya Limited v John Ochanda (Suing On His Own Behalf and on Behalf Of 996 Former Employees of Telkom Kenya Limited)* [2014] KECA 600 (KLR) where the Court of Appeal held that: "Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon." It continued to state that:

"The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued. There do therefore exist certain exceptions and these have been captured thus in *Jersey Evening Post Ltd Vs Ai Thani* [2002] JLR 542 at 550, also cited and applied by the Supreme Court; "A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are



finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available.”

10. The Judgment Debtor submitted that the application herein is premised on Order 21 Rule 12 of the Civil Procedure Rules which provided that a court may, for sufficient reason order the postponement of payment or allow payment of a decreed amount in instalments either at the time of passing the decree or upon subsequent application by the judgment-debtor. The proceedings which this court has been called upon to undertake is incidental to its decision to ensure that its order is perfected but it is not geared towards re-trying the cause or touch on the merit of the court’s determination to warrant this court to down its tools. In this regard, the court retains the duty and jurisdiction to determine this application.
11. On the second issue, the Judgment Debtor submitted that Order 21 Rule 12 of the Civil Procedure Rules grants the court authority to allow settlement of a decree by instalment at its discretion and only in circumstances that justify the same. It relies on the case of *Keshval Jethabhai & Brothers Ltd v Saleh Abdul* [1959] EA 26 that held that “mere inability to pay in full at once is not sufficient reason for exercising discretion, the debtor should show bona fides by arranging prompt payment and that hardship may be a factor.”
12. The Judgment Debtor further relied in *Freight Forwarders Ltd v Elsek & Elsek (K) Ltd* (2012) eKLR where the court laid down the principles regarding what amounts to sufficient cause as: the debtor is unable to pay in lumpsum; the debtor can pay by reasonable monthly instalments; and the application is made in utmost good faith.
13. The Judgment Debtor submitted that it is unable to pay the decretal sum in a single lumpsum as it would destabilize its operations. It relies on annual subscriptions from county assemblies which are yet to be received, however, it is willing to commit to pay the decretal sum in four instalments or in such terms the court may direct despite the prevailing economic challenges.
14. It is the Judgment Debtor’s submission that the Decree Holder has not responded to the amount or proposed mode of payment, therefore, Judgment Debtor takes that it has no objection to the same and prays the court allows the application. The Judgment Debtor submits that to demonstrate its commitment to the proposal, it has ready cheques drawn in the Decree Holder’s name for the month of February and March.
15. The Judgment Debtor submitted that the Respondents having issued her a notice to show cause letter and invited her for a disciplinary hearing, and absent the injunction restraining the Respondents from taking any further steps in the disciplinary process and the Respondents unlawfully terminate her employment which will leave the Applicant without source of livelihood.
16. On the third issue, the Judgment Debtor submitted that stay of execution of the decree is necessitated by the Respondent’s threat to initiate execution proceedings despite its willingness to settle the decretal sum and the justifiable reasons provided. The Judgment Debtor contends that the intended execution would cause it unprecedented prejudice as it is a government agency.
17. The Judgment Debtor submitted that it is an umbrella body for all 47 county assemblies providing public services aimed at supporting county assemblies in legislative matters, therefore, it qualifies as a state agency or public body. It relied on the test for determining whether an entity is government body or not by Justice Lenaola in *Ayuma & 11 others* (Suing on their own Behalf and on Behalf of Muthurwa Residents) v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 2 others; *Kothari* (Interested Party) (Petition 65 of 2010) [2013] KEHC 6003 (KLR), guided by



the Indian Supreme Court case of International Airport Authority(RD Shetty v The International Airport Authority of India & ors (1979) 1 SCR 1042, as follows;

- “(1) 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;
2. 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;
3. it may also be relevant to consider whether the corporation enjoys monopoly status conferred by the state;
4. whether the body has deep and pervasive State control,
5. 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
6. if a department of a government is transferred to a corporation then it becomes an instrumentality or agency of the government. The court went on to state that if after the consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would be an 'authority' and therefore, part of the definition of 'state' within the meaning of the expression used in article 12 of the Indian Constitution.”

18. It is the Judgment Debtor's case that Section 21 of the [Government Proceedings Act](#) and Order 29 Rule 2 (2)(b) of the Civil Procedure Rules prohibits execution of decrees against government agencies by way of attachment and sale of immovable property. It is crucial that the stay orders are granted even as the Judgment Debtor continues to pay the decretal sum in instalments; if not there would be risk of disruption of government operations due to the unregulated attachment and interference of government property. It could also lead to public suffering driven by private interest.
19. On the final issue, the Judgment Debtor submitted that the seven-week period between the demand for payment and filing of this application does not amount to inordinate delay considering it promptly responded to the demand. The delay resulted from attempts to resolve the matter amicably before approaching the court immediately.

#### **Decree Holder's Submissions**

20. The Decree Holder submitted on two issues: whether the Judgment Debtor's application for stay of execution is merited; and whether the Judgment Debtor is entitled to the orders sought in its application dated 14<sup>th</sup> February 2025.
21. The Decree Holder submitted that this court has not been properly moved to grant the orders sought; an application for stay of execution can only be made under Order 22 Rule 22 and Order 42 Rule 6 of the Civil Procedure Rules which give the court discretion to stay the execution of judgment and decrees where an applicant demonstrates sufficient cause or stay pending appeal.
22. The Decree Holder submitted that this application is brought under Order 21 Rule 12 of the Civil Procedure Rules which does not provide for stay of execution but for payment of a decretal amount



in instalments. This is an admission that the Judgment Debtor is indebted to the Decree Holder, therefore, an order for stay of execution serves no purpose.

23. The Decree Holder submitted that the Judgment Debtor is neither a state department nor government institution as provides under the *Government Proceedings Act*. The Judgment Debtor is a society registered under the *Societies Act* with the capacity to sue and be sued thus the Government Proceedings Act does not apply to it or shield it from execution proceedings.
24. The Decree Holder further submitted that throughout the proceedings herein, the Judgment Debtor held itself as an independent society from the government including not seeking legal representation from the Attorney General. This is a clear manifestation that the Judgment Debtor is not a government institution and it cannot at this stage purport to be government agency and hide behind the provisions of the *Government Proceedings Act*.
25. It is the Decree Holder's submission that even if the Judgment Debtor is a government agency, it is not exempt from satisfying a decree issued as alleged. She relied in *Tom Ojienda & Associates v National Land Commission & another* [2019] KEHC 4807 (KLR) where the court held:

“I take the view that, inasmuch as the Respondent is independent, and clothed with requisite constitutional powers to sue and be sued in its own corporate name, it is not “the Government” or a “Government Department” for purposes of the *Government Proceedings Act*. Indeed, it was in recognition of this independence that it engaged the services of the Applicant herein to offer it legal representation. Consequently, my considered view is that the Respondent is amenable to the usual legal consequences flowing from such processes, including execution of ensuing decrees. This is because there is no such protection afforded by its organic legislation, the *National Land Commission Act*, to shield the Respondent from the execution process.”

26. It is the Decree Holder's submission that the Judgment Debtor's argument on its financial position does not exempt it from settling the decretal sum.
27. The Decree Holder submitted that the application is not merited and this court having rendered its judgment on 16<sup>th</sup> July 2024, is functus officio.
28. On the second issue, the Decree Holder submitted that it has not shown sufficient cause to warrant the grant of an order for payment of the decretal sum in instalments as it has not provided any evidence of its alleged economic hardship. In the absence of any evidence exhibiting financial challenges, the Judgment Debtor is not entitled to the said orders. Reliance was placed in *Reliable Concrete Works v Ngewanji Company Ltd* [2022] KEHC 12594 (KLR) where the court held:

“In the present case, the plaintiff/applicant has not demonstrated any reason for its inability to settle the decretal sum in one lump sum. There is no iota of evidence save the statement that it is was in an environment of tough economic hardship. This statement is relative. One must demonstrate sufficient reason so as to attract the courts discretion. In this regard this court is unable to do so for these observations.”

29. The Decree Holder submitted that the Judgment Debtor is not deserving of the orders sought as it is guilty of inordinate delay. Judgment was delivered on 16<sup>th</sup> July 2024 and the decree issued on 29<sup>th</sup> November 2024, the Judgment Debtor made no attempt to settle the decretal award for almost one year; it not until the Decree Holder wrote to it indicating she was proceeding with execution proceedings, that the Judgment Debtor rushed to file this application.



30. The Decree Holder submitted that the Judgment Debtor has come to court with unclean hands. She contends that at the time of termination she was earning a gross salary of Kshs. 498,750, having been awarded general damages equivalent to four months, the decretal sum payable to her is Kshs. 1,995,000. However, the Judgment Debtor proposes to pay her Kshs. 1,162,016 in four instalments of Kshs, 290,540.
31. The Decree Holder submitted that the proposal indicates a deduction of Kshs. 178,600 from the decretal sum for an alleged laptop; this reeks of malice as the issue is not pleaded before this court. Further, the Judgment Debtor in its proposal asserted it is not subject to execution proceedings and threatened to deduct any costs arising from execution against it from the decretal sum. This is evidence that the proposal was not made in good faith and the Judgment Debtor was intimidating her into accepting the proposal.
32. It is the Decree Holder's submission that the Judgment Debtor's actions are an attempt to frustrate the Decree Holder's execution of her lawful decree therefore not deserving of the exercise of this court's discretion in its favour.
33. I have examined the averments and submissions of the parties herein. The applicant avers that they have not refused to pay the decretal sum but are constrained with finances the finances having not been submitted by the various County Assemblies across the country.
34. The applicants are prepared to settle the decretal sum in 4 equal instalments which I find is reasonable in the circumstances. In order to avoid any further miscarriage of justice, I will allow the stay order on condition that the applicants settle the decretal sum in 4 equal instalments with effect from end of July 2025 and at end of each subsequent month until payment in full. In default of any one instalment, execution may proceed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**HELLEN WASILWA**

**JUDGE**

