



Munje v County Assembly of Tana River & 2 others; Majimbo & 2 others (Interested Parties) (Petition E005 of 2023) [2024] KEELRC 2721 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 2721 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
PETITION E005 OF 2023
M MBARÚ, J
NOVEMBER 7, 2024**

BETWEEN

ISAIAH NDISI MUNJE PETITIONER

AND

THE COUNTY ASSEMBLY OF TANA RIVER 1ST RESPONDENT

GOVERNOR, COUNTY GOVERNMENT OF TANA RIVER 2ND RESPONDENT

COUNTY GOVERNMENT OF TANA RIVER 3RD RESPONDENT

AND

GEORGIADIS A MAJIMBO INTERESTED PARTY

DANIEL WANDERA INTERESTED PARTY

ABDULLAHI HUSSEIN INTERESTED PARTY

RULING

1. The petitioner filed an application dated 21st August 2024 seeking orders that the court enter judgment for the petitioner against the 2nd respondent for the sum of Ksh.2, 425,500 as it appears on the Decree dated 17 May 2024 with interest. The petitioner also seeks costs against the 1st respondent and the 3rd interested party at ksh.700, 000 as per the Certificate of Taxation dated 21st August 2024. That the petitioner be allowed to execute the judgment against the respondents and their respective accounting officers, the County Executive Officer in charge of Finance and Economic Planning, the County Chief Finance Officer in charge of Finance and Economic Planning/Treasury and the Clerk of the County Assembly listed as interested parties respectively.
2. In response, the 1st respondent filed a Notice of Preliminary Objections dated 4 October 2024 on the basis;



1. The applicant's application is in contravention of Section 21(4) of the [Government Proceedings Act](#) in so far as it prohibits the issuance of execution orders, attachments or injunctions against the government or its property.
2. This application is incompetent, premature and therefore fatally defective as it is an affront to Section 21(1) of the [Government Proceedings Act](#) for failure to follow the appropriate procedures of seeking a Certificate of order serving the same on the 1st respondent when seeking payment of costs from the government.
3. The claim dated 21st August 2024 is vexatious, frivolous and a waste of court time and should therefore be dismissed with costs.
3. The 2nd and 3rd respondents supported these objections.
4. Parties attended for oral submissions.
5. Counsel for the 1st respondent Ms Komora submitted that under Section 21(4) of the [Government Proceedings Act](#), it prohibits attachment of government property. No execution should be issued against the government without the applicant taking a Certificate Order. The application by the petitioner seeking to execute the judgment herein is premature for want of the mandatory provisions of Sections 21 and 29 of the [Government Proceedings Act](#) and the application should be dismissed and the objections allowed.
6. Shisanya Advocate for the 2nd and 3rd respondents supported the objections and submitted that the Decree and Certificate for Costs have not been served upon the respondent. The orders sought in the application are a repetition as there is judgment herein allowing the same. The Certificate of Costs has since been issued and for execution, the petitioner should follow procedures under Section 21 of the [Government Proceedings Act](#) as held in the case of Five Star Agencies Limited & another v National Land Commission & 2 others [2024] KECA 439 (KLR) the Court of Appeal held that the procedure of execution against the NLC was as provided for under section 21 of the [Government Proceedings Act](#) which included applying for a certificate of order and costs against the government, and enforcing the same by way of an order of mandamus.
7. The respondents submitted that in Republic v Attorney General & Another ex-parte Stephen Wanyee Roki [2016] eKLR, it was held;

That being the position, execution under the Civil Procedure Rules is barred in so far as the County Governments are concerned. What then is the option available to a party in whose favour judgement has been decreed? ...It follows that the only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus compelling the County Government to settle the decree in question...
8. The petitioner has not applied the correct procedures and the notice of motion is a waste of court time as it violates Section 21 of the [Government Proceedings Act](#). The respondents have delayed making payments to the petitioner due to the collapse of the Finance Bill, 2024. Once the funds are received from the Treasury, the respondents have committed to pay.
9. The petitioner submitted through his Counsel Steve Biko that he holds a valid judgment of the court and has a legitimate expectation that the orders issued should be enforced. The delay in making payments is intended to frustrate the petitioner. Section 21 of the [Government Proceedings Act](#) is applied on the basis that no Certificate of Costs and Decree have been served whereas drafts for adoption were shared. Urging the court that the decree and orders sought are repetitive while there



is no payment is to fail to appreciate the context of the orders sought. Whereas objections should be purely on points of law, the instant case relates to facts and hence the principles upon which the 1st respondent has based the objections lost.

Determination

10. The petitioner is seeking to secure the judgment issued in his favour herein. He has since obtained the decree for Ksh.2, 425,500 and the Certificate of Taxation for Ksh.700, 000.
11. It is common cause that the 1st respondent is a government the 2nd respondent is the executive leader/head thereof and the 3rd respondent is the legislative arm. The government.
12. Indeed, under the *Government Proceedings Act*, a government is defined and includes the entity of the respondents. Where there is a judgment, order and decree against the government, enforcement against the respondents is regulated under Section 21(1) and (2) of the *Government Proceedings Act*. the applicant must obtain a Certificate of Costs upon which, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.
13. In the case of Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR, the Court held that;

Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. ...

15. In this regard, the court further held that the Certificate of Order should be issued;

... The certificate of order against the Government should be issued by the court after the expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.
16. This position is reiterated in the case of Naciti Engineers Limited v Moi University & Attorney General [2020] KEHC 3011 (KLR); the court held that the Certificates necessary under Section 21 of the *Government Proceedings Act* must first be issued before execution against the government can proceed. Therefore, execution against the respondents, as far as county governments are concerned, cannot be issued in the instant case. The petitioner holds a valid judgment subject to execution, so the only remedy available to him is to institute judicial review proceedings and seek an order of mandamus compelling the respondents to settle the decree and certificate of costs in question.



16. The 1st respondent's objections are justified in this instance. Save for the petitioner, who should not be punished in costs for seeking to secure his rights, the application dated 21 August 2024 is premature. Each party bears its costs.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 7TH DAY OF NOVEMBER 2024.

M. MBARŪ

JUDGE

