



**Kasisi & 10 others (Suing in a Representative Capacity in Respect to Employees of Kenya Broadcasting Corporation) v Kenya Broadcasting Corporation (Cause 845 of 2017) [2024] KEELRC 13379 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13379 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 845 OF 2017**  
**NJ ABUODHA, J**  
**DECEMBER 6, 2024**

**BETWEEN**

**CHARLES KASISI & 10 OTHERS & 10 OTHERS ..... CLAIMANT**  
**SUING IN A REPRESENTATIVE CAPACITY IN RESPECT TO EMPLOYEES OF**  
**KENYA BROADCASTING CORPORATION**

**AND**

**KENYA BROADCASTING CORPORATION ..... RESPONDENT**

**RULING**

1. By an application dated 2<sup>nd</sup> February, 2024 the applicant sought orders inter alia that:
  - a. That this Application be certified as urgent to be heard ex-parte in the first instance (spent).
  - b. That the Honourable Court be pleased to direct the Respondent’s Managing Director to attend Court and show cause why execution by way of arrest and committal to civil jail should not issue against the Respondent being the Judgment Debtor who has refused, failed and/or ignored to fully satisfy a pending Court Decree/Judgment.
  - c. That the Respondent/Judgment Debtor be condemned to pay the costs of this application.
  
2. The application was supported by the Affidavit of one Charles Kasisi who deponed among others that:
  - a. That I am the 1<sup>st</sup> Claimant/Decree Holder in this matter and duly authorized by my Co-Claimants to swear this Affidavit for and on their own behalf.



- b. That we moved the Honourable Court by way of Plaint dated 6th July, 2006 following our unlawful retrenchment.
  - c. That the Honourable Court delivered Judgment in our favour on 11<sup>th</sup> of November, 2022 in the sum of Kshs.39,807,518/= together with the Interest accrued rates from the date of the judgment which amount has accumulated to Kshs.57,491,646/= to date.
  - d. That the Respondent/Judgment Debtor only paid a partial sum of Kshs.5,000,000/= of the total decretal sum leaving a balance of Kshs.52,491,646/= that continues to accrue interest.
  - e. That the costs in the matter were taxed and a Certificate of Taxation was issued on the 27<sup>th</sup> of May, 2021.
  - f. That the Respondent/Judgment Debtor filed an application dated 20<sup>th</sup> June, 2023 seeking for Orders of injunction prohibiting execution of proclamation notices dated 12<sup>th</sup> May, 2023 and any future proclamation notices in execution of Decree issued by Superior Court on 17<sup>th</sup> of September, 2021 against it and the Honourable Court in the Ruling on 17<sup>th</sup> November, 2023 dismissed the Application.
  - g. That our Advocates on record wrote to the Respondent/Judgment Debtor to pay the balance of Kshs.57,491,646/=-, however, the same has remained unsettled.
  - h. That more than a year has passed since the Decree of this Honourable Court was issued and we are advised by our Advocates on record which advise we verily believe to be true that the Respondent/Judgment Debtor is required to show cause why execution by committal to Civil jail should not issue and also attachment of the Respondents' attachable Assets.
3. The respondent filed a replying affidavit through one Paul Jilani who deponed among others that:
- a. That I am the Corporation Secretary of the Respondent/Judgement Debtor to the application dated 2nd February, 2024, conversant with the facts hereof, and duly authorized to depose to this Affidavit on its behalf, thus I am competent to depose to this Affidavit on behalf of the Respondent/Judgement debtor herein.
  - b. That I have read and understood, and where necessary, I have had our advocates on record, M/S Murugu Rigoro & Co. Advocates explain to me the contents of the Notice of Motion Application dated 2nd February, 2024, and the Supporting Affidavit sworn by Charles Kasisi sworn on even date and wish to respond as follows:
  - c. That I am advised by my Advocates on record, whose advice I verily believe to be sound that the instant application is an abuse of the Court's process and is grossly defective as it is premised for the reason the wrong provisions of law.
  - d. That the application herein has been filed prematurely before the Honourable Court.



- e. That the Respondent/Judgement Debtor is a state corporation established under the Kenya Broadcasting Corporations Act CAP 221 Laws of Kenya to assume the Government functions of producing and broadcasting programmes or parts of programmes by sound or television; to provide for the management, powers, functions and duties of the Corporation; and for connected purposes.
- f. That it is well known that one cannot move to commit a state officer to civil jail without filing for the writ of Mandamus through Judicial Review Proceedings as against a state corporation.
- g. That the application herein is an abuse of the Court process as it seeks to circumvent known and settled procedures in law. The same is a notice to show cause filed outside known realms of law.
- h. 8. THAT further to the above but without prejudice to the foregoing, the Respondent/Judgement debtor is a state corporation and is not in the business of profit making as is thus purely and fully dependent on the exchequer to sustain its day to day operations.
- i. That further to the above, the decretal sums herein is not the only debt that the Respondent/Judgement debtor is currently owing to other entities and or parties and it employs a delicate balance of its budgetary allocations to settle ALL debts that the Respondent/Judgement debtor not only owes the applicant herein but all other entities and or parties.
- j. That the Respondent/Judgement debtor has partially paid part of the decretal sum owed by paying Kshs. 5,000,000/- to which the applicant herein has confirmed receipt.
- k. That from the above, it is evident that the respondent/Judgement debtor is keen on settling the decretal sums but the same is dependent on the balance as explained in hereinabove.

### **Applicant's Submissions**

- 4. Mr. Museve for the applicant submitted that it was not in dispute that the Court delivered its judgment in favour of the claimants on the 11<sup>th</sup> of November, 2022 in terms that the respondent was to pay each claimant his/her salary as per the attached detailed schedule of payments due against each as adopted on 26<sup>th</sup> January, 2021 and that the respondent further pays costs of the suit plus interest at Court rates. These orders according to Counsel still remain in force as they have not been varied and or set aside and are therefore binding on the respondent and failure to obey them warranted sanction by the Court to safeguard the rule of law.
- 5. According to Mr. Museve the respondent being a public body bears greater responsibility in public interest. According to Counsel, court orders or rulings cannot be negotiated but must be complied with fully without fear or favour against all regardless of any social/employment status and therefore assertion that the respondent cannot be held in contempt of court without orders of mandamus does not hold as they have never taken any steps to fully comply with the decree.



## Respondent's Submissions

6. Mr. Odhiambo for the respondent on the other hand submitted that the respondent is a state corporation established under the KBC Act to assume government functions of producing and broadcasting programs or part of programs by sound or television among other functions. According to Counsel, the application as filed seeks to circumvent known and settled procedures in law when it comes to execution against a state corporation and its officers.
7. According to Counsel, no judicial review application for mandamus post judgment has been filed by the decree holders against the judgment debtor. No order of mandamus as against the respondent has been obtained by the applicant in order to enforce the decree against the respondent through its officers. Counsel further submitted that the Managing Director has never been a party in these proceedings. There is no court order attached to the application that can be cited as having been breached by the Managing Director warranting proceedings against him. In support of this submission Counsel relied on the case of Republic vs- KBC ex parte Musakari Kombo [2018] eKLR.

## Determination

8. The status of this matter seem not to be in dispute between the parties. That is to say, there is judgment against the Respondent delivered on the 11<sup>th</sup> of November, 2022 in the sum of Kshs.39,807,518/-. The decretal sum was to attract interest at Court rates from date of judgment until payment in full. The respondent was further ordered to pay costs of the suit. It is further not in dispute that the respondent/judgment debtor has only paid to the decree-holders the sum of Kshs.5,000,000/-.
9. This matter has since passed through the hands of several judges of this Court on the single issue of settling the decretal sum. Further, the respondent/judgment-debtor is on record as having sought stay of execution pending appeal in the Court of Appeal and were granted stay on condition that they deposit Kshs.15 million as security which condition the respondent did not meet hence the stay lapsed.
10. Hon. Lady Justice Monica Mbaru in her ruling on respondent's Application dated 18<sup>th</sup> March,2022 seeking to stay execution of the decree of court noted that section 47 of the KBC Act prohibited the attachment of the Applicant's property by proclamation however the Managing Director was mandated to give permission to the said attachment of the Corporation's property. The court therefore stayed the execution but ordered that the Applicant's Managing Director attends court within 14 days to furnish in writing, the modalities of payment of the Judgment sum. He was to attend court on 6<sup>th</sup> June,2022 but never did which was a clear disobedience of the Court's order.
11. The issue of the execution or enforcement process of monetary decrees against the Government was well discussed in the case of Republic vs- KBC ex parte Musakari Kombo [2018] eKLR relied on by the respondent and the Court is quite in agreement however as was once expressed by this Court when the matter was placed before me, the bottom line in this matter is the issue of payment of the decretal sum herein. The legal/technical objections may sound tactful and unsurmountable defence but that is as far as they go. The decretal sum herein remains unpaid and continues to accrue interest. The sad aspect of it is that the decretal sum herein is terminal dues that the respondent owes its employees it prematurely retired through retrenchment. It is therefore quite some doublespeak to raise legal-technical objection to defeat or delay payment of terminal dues of employees the respondent prematurely terminated their service sending them to add numbers to the already swollen pool of unemployment. What a classic case of unfair labour practice!



12. This Court persuaded by the decision in Republic vs KBC ex parte Musakari Kombo [2018] eKLR will rule that the applicant ought to move the Court as was discussed in that case and in line with section 21 of the *Government Proceedings Act*.
13. The Court however relying on article 159(2)(c) would like to encourage the parties involved in this matter particularly the respondent/judgment-debtor to engage and come up with practical ways of liquidating the decretal sum herein which in any event the respondent does not dispute.
14. The Court will therefore slate this matter for mention on 3<sup>rd</sup> February, 2025 to allow parties reflect and consider the sentiments expressed by the Court and allow the applicant/decreed-holder to move the Court appropriately if necessary.
15. It is so ordered.

**DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024**

**DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

