



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Dairy Board v Nyaga (Appeal 5 of 2020)
[2023] KEELRC 415 (KLR) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 415 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
APPEAL 5 OF 2020
ON MAKAU, J
FEBRUARY 15, 2023**

BETWEEN

KENYA DAIRY BOARD APPELLANT

AND

EUNICE NYAGA RESPONDENT

RULING

1. This ruling relates to the notice of motion dated November 29, 2022 filed by the respondent in the appeal herein. The motion is brought under order 51 rule 1 and order 42 rule 7 of the [Civil Procedure Rules](#) and seeks the following orders:
 - 1) That the honourable court do issue orders to release the entire decretal amount deposited in court to the Firm of Joshua Mwiti Law Advocates deposited *vide* orders issued on 8th day of January, 2021.
 - 2) That cost of the application be provided for.
2. The motion is premised on the grounds on the body of the motion and is supported by an affidavit sworn by the applicant on even date. The gist of the application is that the appellant deposited the decretal sum, the subject of the appeal, in court as a condition for stay; that the appeal was dismissed on October 7, 2022 for want of prosecution; and that the decretal sum should now be released to her.
3. The appellant has filed grounds of opposition to oppose the application. In brief the appellant contends that the court is *functus officio* since it has already dispensed with the appeal; that the application is made in bad faith and it offends section 21 of the [Government Proceedings Act](#) and article 201 (e) of the [Constitution](#) as it fails to annex orders against the government for proper accountability; and that the application is vague as it lacks details of the amount to be released.



4. During the hearing, Mr Mwiti Advocate for the applicant relied on the supporting affidavit to argue the motion. Further, he submitted that the application does not offend section 21 of the Government Proceeding Act since the money was deposited in court *vide* a decree of the court. Consequently he contended that section 21 of the said Act is not applicable in the present motion.
5. Mr Mwenda Advocate for the respondent relied on the grounds of opposition to oppose the motion and submitted that section 21 of the Government Proceedings Act is instructive on the procedural requirement before payment by the government. He contended that the applicant has not availed the required documents for accountability in line with the principles of accountability of public finances as required under article 201 of the Constitution.
6. In his rejoinder, Mr Mwiti submitted that section 21 of the said Act deals with cases where decree and certificate is unknown unlike in this case where the decretal sum was deposited by the appellant with full knowledge that it was security pending appeal. Since the appeal has been dismissed the security ought to be released to the applicant as prayed in the motion.

Determination

7. The application herein is fairly straight forward as it seeks for the release of money deposited in court as security pending the appeal herein. The appeal was dismissed about five months ago. The issue for determination are:-
 - a) Whether the application offends section 21 of the Government Proceedings Act and article 201 of the Constitution.
 - b) Whether the decretal sum should be released to the applicant.

Section 21 of the Government Proceeding Act

8. Section 21 of the Government Proceeding Act requires that a person seeking payment of damages or costs arising from proceedings where Government is a party is required to have the court issue him with a certificate in the prescribed form containing particulars of the order.
9. The applicant contends that the provisions of section 21 of the said Act does not apply to the case before the court. I have carefully considered the provisions of section 21 aforesaid, and i agree with the applicant that such provision is irrelevant to this matter. The appellant is not the Government or an agent of the Government within the meaning of section 2 of the Act. The appellant is an independent legal entity established under section 4 of the Dairy Industry Act. It is a body corporate.
10. I gather support from the case of Greenstar Systems Ltd v Kenyatta International Conference (KICC) [2018] eKLR where the High Court held that:

“Section 21(4) makes reference to “the government”, “any government department” or any officer of the government.” No specific reference is made at all to state corporations.

...The applicant is a tourism agency established under the Tourism Act. It is not a government department. The fact that the applicant is a state corporation cannot lead to the inference that it is a government department as envisaged by the Government Proceedings Act.”
11. The foregoing supports the view that the judgment entered against the appellant was not entered against the Government of Kenya because the appellant is a body corporate capable of suing and being sued in its own name. Consequently, execution against it is not execution against the Government per se and as such the application herein does not offend section 21 of the Government Proceedings Act.



12. Besides, accountability principles under article 201 of *Constitution* are not violated by the release of the decretal sum herein because the money was deposited in court *vide* a decree from the subordinate court and stay order from this court. Such documents are sufficient for accountability of the finances deposited in the court.

Release of The Decretal Sum

13. Having found that releasing the decretal sum to the applicant does not offend the law, I see no harm or prejudice to be suffered by the appellant If The decretal sum is released to the applicant. The purpose of ordering depositing of security as a condition for stay pending appeal is to enable a decree holder to access the decreed sum immediately the appeal is dismissed. Consequently, I allow the notice of motion dated November 29, 2022 as prayed with costs to the applicant.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF FEBRUARY, 2023.

ONESMUS N MAKAU

judge

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

