



**Langi v KUPPET & 3 others; M/S High Class Auctioneers (Interested Party)  
(Cause 521 of 2019) [2023] KEELRC 302 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 302 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 521 OF 2019  
B ONGAYA, J  
FEBRUARY 10, 2023**

**BETWEEN**

**KEPHA OGUWI LANGI ..... CLAIMANT**

**AND**

**KUPPET ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF EDUCATION ..... 2<sup>ND</sup> RESPONDENT**

**TEACHERS SERVICE COMMISSION (TSC) ..... 3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**M/S HIGH CLASS AUCTIONEERS ..... INTERESTED PARTY**

**RULING**

1. The 3<sup>rd</sup> respondent filed an application by the notice of motion dated December 21, 2022 and through Cavin Anyuor advocate. The application was under article 50(1) and 159 of the Constitution, order 10 rule 11, order 12 rules 7, order 51 rule 1 of the Civil Procedure Rules. Sections 3A and 63 of the Civil Procedure Act cap 21 Laws of Kenya, section 21 of the Government Proceedings Act cap 40 of the Laws of Kenya and the inherent powers of the court. The 3<sup>rd</sup> respondent prayed for orders:

- i) .... (spent).
- ii) .... (spent)
- iii) The honourable court be pleased to find and declare that the mode of execution of decree and in particular the warrants of attachment and notice of proclamation of moveable property issued by M/s High Class Auctioneers and dated December 19, 2022 is illegal and irregular hence null and void.



- iv) The honourable court to issue a permanent order of injunction restraining the claimant or his agents and proxies from executing the instant judgment against the applicant.
  - v) Costs of the application be awarded to the 3<sup>rd</sup> respondent, the applicant.
2. The application was based on the supporting affidavit of Cavin Anyuor advocate and upon the following grounds:
- (i) That no money is owing to the claimant from the applicant in terms of the judgment.
  - (ii) The court has repeatedly clarified to the parties that under the judgment the decretal sum is recoverable from the 2<sup>nd</sup> respondent who illegally deducted union dues from the claimant and those he represents. It was the 2<sup>nd</sup> respondent who deducted union dues irregularly as the employer long after the claimant and those he represents ceased to be employees of the applicant.
  - (iii) The execution against the applicant is calculated to embarrass the applicant. Against the government per section 21 of *Government Proceedings Act* and order 29 rule 3 of *Civil Procedure Rules*. Further the mode of execution is against section 21 of the *Teachers Service Commission Act* No 20 of 2012 read with order 29 rule 2 of the *Civil Procedure Act*.
  - (iv) The employment relationship between the applicant and the claimant and other 3, 780 lecturers ended effective September 1, 2018 as they were released to be employees of the 2<sup>nd</sup> respondent in the State Department of Vocational and Technical Training.
  - (v) On December 10, 2021 the court delivered judgment (Onyango J) and at paragraph 47 stated, “The deductions made from the salary of the claimant and all the other parties that he represents who had also resigned from the membership of the 1<sup>st</sup> respondent or who had been transferred to the 2<sup>nd</sup> respondent was thus a violation of section 19(1) of the *Employment Act* and is recoverable from the 2<sup>nd</sup> respondent.” Thus, the court found that the deducted amounts were recoverable from the 2<sup>nd</sup> respondent.” At paragraph 48 (v) of the judgment the court ordered, “The 2<sup>nd</sup> and 3<sup>rd</sup> respondents each refunds any monies deducted from the salaries of the claimants and the persons on whose behalf he filed this suit and remitted to the 1<sup>st</sup> respondent on account of union dues or agency fees after the date they ceased to be employees of the 3<sup>rd</sup> respondent.” The order was not to apply jointly and severally but to apply to each of the respondents if and when it was ascertained which respondent deducted any money due to the claimant. The applicant never made such deductions and therefore, no money is recoverable from it.
  - (vi) Recognising that the 2<sup>nd</sup> respondent was the judgment debtor and not the 3<sup>rd</sup> respondent, on September 26, 2022 the court struck out the claimant’s application dated July 4, 2022 seeking garnishee orders against the 3<sup>rd</sup> respondent’s bank account. The ongoing execution proceedings against the applicant are therefore in bad faith.
  - (vii) It is just to set aside the execution proceedings.



3. The claimant opposed the application by filing his affidavit sworn on January 16, 2023. The claimant has exhibited a consent order given on March 1, 2019 in ELRC Petition 97 of 2018 and issued on July 15, 2019. By consent of the parties it was ordered, inter alia,

4. "That the current employer of trainers do immediately recover and remit union dues and urgency fees to KUPPET."

Further, the claimant states that in the judgment delivered herein on December 10, 2021, the court ordered that all amount deducted be refunded by the 3<sup>rd</sup> respondent. Thus on December 19, 2022 the auctioneers visited the 3<sup>rd</sup> respondent with all documentation in a valid execution process. Further, by consent of parties, on December 10, 2021 the parties recorded a consent order herein partly stating,

5. "That the 2<sup>nd</sup> and 3<sup>rd</sup> respondents each refunds any monies deducted from the salaries of the claimant and the persons on whose behalf he filed this suit and remitted to the 1<sup>st</sup> respondent on account of union dues or agency fees after the date they ceased to be employees of the 3<sup>rd</sup> respondent.

6. That by consent the judgment sum be and is hereby recorded at Kshs 58, 317, 168.30." Further, the execution is lawful by way of attachment under section 14 of the Civil Procedure Act. It is urged for the claimant that the execution be allowed to proceed".

4. The claimant and counsel for the applicant filed submissions. Ms Akello advocate for the 1<sup>st</sup> respondent stated that her client had discharged its obligations under the judgment herein and was not objecting to the application. Despite service, the 2<sup>nd</sup> and 4<sup>th</sup> respondents did not attend court or file papers with respect to the application.

5. The court has considered the material on record and the parties' respective submissions. The court returns as follows:

a) The pertinent issue is whether, under the judgment and other orders on record, the claimant has established that the applicant owes and is liable to pay the Kshs 58, 317, 168.30 subject of the current execution proceedings. The answer rests in the terms of the judgment and the subsequent orders on record. At paragraph 47 of the judgment it is stated that the deductions made after the claimant and those he represents had transferred to the 2<sup>nd</sup> respondent were illegal and are recoverable from the 2<sup>nd</sup> respondent. At paragraph 48(v) of the judgment it was ordered that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents each refunds any monies deducted from the salaries of the claimant and the persons on whose behalf he filed the suit and remitted to the 1<sup>st</sup> respondent on account of union dues or agency fees after the date they ceased to be employees of the 3<sup>rd</sup> respondent. The same terms are repeated in the consent order (5) of December 10, 2021. As urged for the applicant, the order to pay was not made jointly and severally against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents – but directed at each separately. The court considers that under the terms of the two orders, the applicant would be liable to pay the claimant and those he represents such amount the that is shown to have been deducted by the applicant from the claimant and the others and then, remitted to the 1<sup>st</sup> respondent - for the period after the claimant and the ones he represents had ceased to be employees of the



applicant and become employees of the 2<sup>nd</sup> respondent. There is no material before the court showing such monies deducted and remitted by the applicant in favour of the 1<sup>st</sup> respondent over the material period. The court therefore returns that the claimant has failed to justify the on-going execution against the applicant and the same must be set aside.

- b) The court has considered the consent order No 6 given on December 10, 2021 fixing the decretal amount at Kshs 58, 317, 168.30. The applicant was a party to that consent. It remains to establish whether there would be apportionment of liability to the applicant to pay any of that decretal money within the terms of order 48(v) of the judgment as repeated in consent order (5) given on December 10, 2021. While it was urged for the applicant that it did not deduct and remit any union dues from the claimant after the claimant and those he represents became employees of the 2<sup>nd</sup> respondent, the terms of the consent order (5) given on December 10, 2021 and exhibited herein suggest the need to establish such apportionment, if any. Accordingly, while the initiated execution process is amenable to being set aside for want of established apportionment, the court is reluctant to grant the permanent injunction restraining execution against the applicant as prayed for in the instant application.

6. The parties have delved into whether the provisions of the *Civil Procedure Act* and rules as well as the *Government Proceedings Act*, apply in the execution proceedings against the applicant, a constitutional commission established as such under the *Constitution* of Kenya. The *Government Proceedings Act* does not define “Government”. Article 260 of the *Constitution* of Kenya 2010 on interpretation equally does not define Government. The article defines state organ to mean a commission, office, agency or other body established under the *Constitution*. Article 2(1) provides that the *Constitution* is the supreme law of the Republic and binds all persons and all state organs at both levels of government. In view of that provision, the court considers that state organs such as the applicant are creatures constituting government. It is that in a narrow common sense Government means the executive arm, but, in that wider constitutional sense as conceived in article 2(1) of the *Constitution*, Government encompasses the three arms of government as well as other institutions or agencies established by or under the *Constitution* and statutes for running public affairs – the governance establishments for running public affairs. Thus, section 3 of the *Interpretation and General Provisions Act* broadly defines Government to mean Government of Kenya. As submitted for the applicant, the court returns that section 21 of the *Government Proceedings Act* and order 29 rule 3 of the *Civil Procedure Rules* applied and a certificate of order was necessary but it has not been shown to have been applied for, issued, and served prior to the ensuing execution. The cited provisions applied as was held by Mbaru J in *Jamleck Waweru Karanja v County Government of Nakuru [2020] eKLR* that even though one may not pursue execution proceedings against the government per se, a party wishing to realize the fruits of a judgment against the government must first start by securing a certificate of costs and certificate of order against the government as held in the case of *Republic v Principal Magistrate’s Court at Mavoko & Another ex parte Joseph Ole Lenku, Governor Kajiado County & Another [2018] eKLR*. Thus the court finds that the execution as initiated herein was unlawful.
7. As the application will be partially allowed and taking into account the convoluted history of the case, each party to bear own costs of the application.
8. In conclusion, the application filed for the 3<sup>rd</sup> respondent the Teachers Service Commission by the notice of motion dated December 21, 2022 is hereby determined with orders:



a) The declaration that the mode of execution of decree and in particular the warrants of attachment and notice of proclamation of moveable property issued by M/s High Class Auctioneers and dated December 19, 2022 is illegal and irregular hence null and void as is hereby set aside.

b) Each party to bear own costs of the application.

9. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 10<sup>TH</sup> FEBRUARY, 2023**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

