



**Muchendu t/a Icon Auctioneers v Abdi (Miscellaneous Case
E190 of 2022) [2023] KEELRC 717 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 717 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE E190 OF 2022**

AN MWAURE, J

MARCH 16, 2023

BETWEEN

JEREMIAH KIARIE MUCHENDU T/A ICON AUCTIONEERS CLAIMANT

AND

IDRIS OMAR ABDI RESPONDENT

RULING

1. The applicant has filed an ex parte application via notice of motion dated November 1, 2022 and seeking the following prayers.
 1. That this matter be certified as urgent.
 2. That this honourable court be pleased to grant me or my authorized agent police assistance to accompany me during physical execution of the warrants of attachment against Garissa water & Sewage company Limited in order to maintain law and order and enable us remove the attached movable goods/assets and issue notification of sale for purpose of auctioning the same to recover the decretal amount totalling Kshs 1,160,200/- plus other incidental costs of the attachment.
 3. That the officer in charge Garissa Police station or an officer under his command in the rank of assistant inspector to hereby give assistance for the purpose of maintaining law and order.
 4. That the cost of this application be borne by the respondent/judgment debtor.
2. There is Jeremiah Muchendu T/A Icon Auctioneers who describes himself as a class B licenced auctioneer who says he received a warrant of attachment and sale against judgment debtors movable goods and assets to recover decretal amount of Kshs 1,160,200/-.
3. He depones that on October 14, 2022 he proceeded to the premises of the judgment debtor with the proclamations and that after the proclamation the judgment debtor did not pay the decretal sum.



4. He says on the expiry of the 7 days' notice on October 24, 2022 he proceeded to the judgment/debtor's premises and employees of judgment/debtor threatened to lynch them and so they departed for the sake of peace.
5. He says the warrants cannot be executed without police assistance during the attachment of the proclaimed assets.
6. He says that the officer commanding Garissa Police Station or an officer under his command to the rank of an Assistant Inspector to give assistance in order to maintain law and order to enable to execute so as to recover from the judgment debtor Garissa Water & Sewerage company limited the decretal amount amounting to kshs 1,160,000/-.

Grounds of Opposition by the Judgment/Debtor

7. The defendant or judgment debtor in his grounds of opposition states that the grounds prayed cannot be granted in view of provisions of section 21 of Government Proceedings Act as read with order 29 of rule 2(b) of the Civil Procedure Rules.
8. He said that the defendant being a government department for the County Government of Garissa no order of execution can ensue being a government entity.
9. He therefore says that the order sought cannot be granted against the defendant and the decree holder has other available avenues to pursue.
10. He concludes that the application against the defendant is scandalous and frivolous and abuse of court process and ought to be struck off with costs.

Determination

11. The issue for determination by this court is whether the court can grant an order to authorise police assistance during execution of a decree against Garissa Water & Sewerage Company Limited in order to attach the proclaimed goods to satisfy a decree of Kshs 1,160,200/-.
12. The respondent is under the county government of Garissa for purposes of water provision and sewerage services. The county government is part of the government of Kenya since the promulgation of the Constitution of Kenya 2010.
13. As to whether Government Proceedings Act should apply as well to the county government the court in the case of Republic vs AG & Another Exparte Stephen Wanyee LLI (2016)

“Although the provisions of the Government Proceedings Act do not expressly refer to county government, section 7 of the sixth schedule to the constitution (transitional and consequential provisions) provides that all laws in force immediately before the effective date continues in force and shall be construed with alteration adaptations, qualification and exceptions necessary to bring into conformity with this constitution. The government now is into two levels and article 189(1) (a) of the constitution requires that the constitutional status and institutions of government at both national and county levels be respected. In such view such respect cannot be achieved unless both levels of government are treated equally and one such area would be with respect to execution proceedings”



14. Being guided by the above, the court then finds that the respondent herein is guided by section 21 of the [Government Proceedings Act](#) which states:

(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant. (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General. (3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon: Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein. (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.

15. The court as regards the procedure of satisfaction of orders against the government pronounced itself in the case of [County Secretary Migori vs Linet Magambo](#) Judicial review 2 of 2020 where it stated.

"The reason why this strict procedure is followed was explained in the Court of Appeal Kenya in *investment Ltd vs AG*[2005] 1KLR 74 where court said under order 28 rules 2(1)(a) 2 & 4 of Civil Procedure Rules subject themselves to the provision of [Government Proceedings Act](#) which prohibit execution against attaching in respect of the government. The said rules themselves expressly preclude such actions. In pursuance of ends of justice the courts are bound to apply the law as it exists. In the case of *Permanent Secretary Office of President, Ministry of Internal security & another ex parte Nassir Mwandibi* [2014] eKLR the court observed that procedure in seeking an order of mandamus under [Government Proceedings Act](#) are strictly complied with in respect to issuance of certificate of costs and certificate of order against the government. The judge further went to state that the elaborate procedure is meant to give adequate notice to the government to make arrangements to satisfy the decree and that it is not meant to relieve government of its obligations to satisfy decrees and orders of this court."

16. The court therefore flowing from the above holds that the judgment/debtor must go back to the drawing board and follow the mandated procedures and lawful available avenues to execute decrees against the Government where county governments bodies are part of. In the premise the court



declines to give the order to authorise police assistance to execute warrants against Garissa Water & Sewerage Company Limited being a government agency for purposes of recovering the decretal amount totalling Kshs 1,160,200 plus costs of the attachment.

Costs will remain in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16TH DAY OF MARCH 2023.

ANNA NGIBUINI MWAURE

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 March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

