



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Wambugu & 5 others v County Public Service Board, Kirinyaga County (Petition 6, 7, 8, 9, 10 & 11 of 2019 (Consolidated)) [2023] KEELRC 638 (KLR) (3 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 638 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
PETITION 6, 7, 8, 9, 10 & 11 OF 2019 (CONSOLIDATED)
ON MAKAU, J
MARCH 3, 2023

BETWEEN

EUNICE NJERI WAMBUGU 1ST PETITIONER
BEATRICE WAMUTIRA GITARI 2ND PETITIONER
JACINTA WANJIRU MURIITHI 3RD PETITIONER
BEATRICE MWARI MIRITI 4TH PETITIONER
ANN WARUGURU NYAGA 5TH PETITIONER
ALICE WAMBUI WAMBUGU 6TH PETITIONER

AND

COUNTY PUBLIC SERVICE BOARD, KIRINYAGA COUNTY .. RESPONDENT

RULING

1. The petitioners brought separate applications dated May 6, 2022 seeking the following orders:-
 1. That this application dated May 6, 2022 be and is hereby certified urgent, be heard on a priority basis and service on the respondent be and is hereby dispensed with in the first instance.
 2. That the County secretary Newton Njenga and all members of the Kirinyaga County Public Service Board namely; Dr Catherine Karimi Mwangi, Raymond Karinga Thomas, Esther Wanjiru Muchiri, Leah Margaret Wanjeri Kabui and Patrick Tarzan Matu appear before this court to show cause why each of them should not be committed to civil jail for a period of 6 months for failure to comply with the judgment and decree of this court dated March 31, 2020.



3. That the costs of this application be paid by the respondent
2. On October 28, 2022, the Applications were consolidated under this file and thereafter both sides filed written submissions to dispose of the motions.
3. The respondents did not file any Replying Affidavit but opposed the application on points of law only.

Submissions

4. The applicants' case is that the court entered judgment for each of them on March 31, 2020 in the following terms:
 - a. Injunction restraining the respondent from re-designating them and instead to reinstate them to their rightful positions.
 - b. Award of Kshs 500,000.00 damages to each of them.
 - c. Costs of the suit plus interest at court rates.
5. The respondent failed to comply with the judgment and the applicants served it with copy of the decree, certificate of costs, certificate of order against the government, three demand letters through their advocate, but still the respondent failed to honour the decree of the court to pay damages, and salary arrears, for over 2 years now. Consequently they pray for the secretary and all the members of the respondent to be committed to civil jail for 6 months for failure to comply with judgment.
6. However, respondent submitted that the application is fatally and incurably defective by dint of Section 21 (4) of the Government Proceedings Act, Cap 40 Laws of Kenya, Article 176 (1) of the [Constitution](#) and Order 29 Rule 2 (2) of the [Civil Procedure Rules](#) which expressly bars execution proceedings against the Government.
7. It was further submitted that the proper procedure for execution against the government is through filing of a judicial Review application to obtain order of mandamus to compel the Accounting Officer of the County Government to pay the decreed sum. For emphasis reliance was placed on several precedents including [Kilimanjaro Safari Club Ltd v Governor-Kajiado County \(in place of County of Ol Kejuado\)](#) (2014) eKLR, [Republic v Attorney General & Another, Ex parte Stephen Wanyee Roki](#) (2016)eKLR, [Republic v County Secretary, Nairobi City County & another, Ex parte Wachira Nderitu Ngugi & Co Advocates](#) and [Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security, Ex parte Fredrick Manoah Egunza](#) (2012) eKLR.
8. In the end the respondent submitted that the application is premature, frivolous and an abuse of the process of the court, and ought to be dismissed with costs.

Determination

9. There is no dispute that the respondent has failed and/or neglected to satisfy the decree of this court which was passed on March 21, 2020. The issues for determination are:-
 - a. Whether the application is premature and fatally incompetent.
 - b. Whether the application should be allowed.



Premature and Incompetent application

10. There is no dispute that the application herein seeks to execute the decree of the court by committing the secretary and all the members of the respondent Board to civil jail for failure to satisfy the decree of the court. Such execution is provided for under Order 22 Rule 31 of the Civil Procedure Rules. However, Order 29 Rule 2 provides that:-

“No order against the Government may be made under-

- a. Order 14 rule 4 (impounding of documents)
- b. Order 22 (Execution of decrees and orders)
- c. ...”

11. The foregoing provision is express and unambiguous that no order can be made against the government for execution of decree or order under order 22 of the Civil Procedure Rules. A County Government enjoys the status of Government by virtue of Section 21 (5) of the Government Proceedings Act which provides that:-

“This section shall, with necessary modification, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is party.”

12. In the case Stephen Wanyee Roki v K-Rep Bank Ltd & 2 others (2016) eKLR, it was held that:-

“...the County Government of Nairobi is “The Government” as envisaged by the Government Proceedings Act and also Order 29 Rule 2 of the Civil Procedure Rules.”

13. Also in the case of Kilimanjaro Safari Club Ltd v Governor-Kajiado County (in place of County of Ol Kejuado) (2014) eKLR the court held that:-

“The draftsman in coming up with the Government Proceedings Act, had in mind the interest of the Government as a whole. The County Government is not an exception.”

14. Having satisfied myself that the respondent is part of “the government”, and that the application before me seeks to execute a decree of the court against the government, I must agree with the respondent that the application is premature and fatally incompetent. It stands outside the four corners of the law and therefore it is ruled off side. It cannot yield any valid orders from the court as it offends the law.

15. The law and a legion of judicial pronouncements agree that execution against the government ought to be as provided by the Government Proceedings Act, and by filing judicial Review Proceedings to obtain order of mandamus to compel the accounting officer of the concerned department to satisfy the decree. Only then can the accounting officer be summoned to the court to show cause why he/she should not be arrested and committed to civil jail for failure to settle the decree of the court.

16. I gather support from the case of Republic v Attorney General & Another, Ex parte Stephen Wanyee Roki (2016)eKLR where the court held that:-

“...execution under the Civil Procedure Rules is barred in so far as the County Governments are concerned. 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...”

17. Again in *Republic v County Secretary, Nairobi City County & another, Ex parte Wachira Nderitu Ngugi & Co Advocates* (2016) eKLR the court held that:-

“The law as it stands presently is that no execution can be levied against the property of a Government or settlement of a decree in a civil case and hence the only recourse available is for a decree holder to apply for mandamus against the chief officer of the Government, and upon obtaining such orders, the decree holder will be at liberty to apply for committal of the chief officer if the order of mandamus is not complied with...”

18. This case is on all fours with the cited precedents and since the applicants have not sought any order of mandamus against the secretary and the respondents’ Board members, the application herein has no legs to stand and must now fall on its face. Consequently, I dismiss it with costs and direct that the matter is now closed except for execution through the stated manner.

DATED, SIGNED AND DELIVERED AT NYERI THIS 3RD DAY OF MARCH, 2023.

ONESMUS N. MAKAU

JUDGE

