



Kamanja & 2 others (Suing on their behalf and on behalf of the 26 workers of the Respondent) v Board of Management, Highway Secondary School (Cause 192 of 2018) [2023] KEELRC 1461 (KLR) (8 June 2023) (Ruling)

Neutral citation: [2023] KEELRC 1461 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 192 OF 2018
MN NDUMA, J
JUNE 8, 2023**

BETWEEN

**DANIEL NDAIGA KAMANJA 1ST CLAIMANT
JACKSON JUTSWA SHIRAKU 2ND CLAIMANT
GEOFREY KARAGU KARIUKI 3RD CLAIMANT
SUING ON THEIR BEHALF AND ON BEHALF OF THE 26 WORKERS OF THE
RESPONDENT**

AND

**BOARD OF MANAGEMENT, HIGHWAY SECONDARY
SCHOOL RESPONDENT**

RULING

1. The Notice of Motion Application dated October 31, 2022 seeks an order in the following terms:-
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to recall for lifting, raising and/setting aside the warrants of attachment and/or sale dated October 21, 2022 and assigned to M/S High Class Auctioneers.
 4. That this Honourable Court be pleased to lift, raise and/or set aside the warrants of attachment and/or sale dated October 21, 2022.
 5. That this Honourable Court allows our application for review dated May 18, 2022 and filed on May 24, 2022 under urgency.



6. That this Honourable Court be pleased to provide for the costs of this application to the defendants/applicants.
2. The application is premised on grounds 1 to 9 set out on the face of the notice of motion and buttressed in the supporting affidavit of Irungu Nduati, the Principal of Highway Secondary School. The nub of the grounds raised is that the Deputy Registrar issued warrants of attachment dated October 21, 2022 in favour of M/S Upstate Auctioneers who have proclaimed vital movable properties of the respondent on October 23, 2022.
3. That the amount proclaimed is Kshs 9,402,248.50 yet the proclaimed assets only total Kshs 1,156,000. That the said assets are vital for the running of the school, which would cease to operate if the execution is carried out.
4. That, the proclamation is perfectly illegal, and invalid as it offends the provisions of Section 21(4) of the *Government Proceedings Act*, (Cap 40 Laws of Kenya) which clearly exempts government and or governmental bodies like the respondent from execution otherwise than as strictly circumscribed under the said Act.
5. That the claimants ought to execute their decree in accordance with the law.
6. That the respondent ought to have followed Sections 21(1) and (2) of the *Government Proceedings Act*, which provides that payment in respect of a decree against government will be based on a Certificate of Costs obtained by the successful litigant from the Court issuing the decree which should be served on the Attorney General.
7. That Justice Githua in *Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* [2012] eKLR, stated:-

“The Certificate of order against the Government is served on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and Parliamentary approval of Government expenditure in the financial year subsequent to which Government liability occurs.”
8. That in *Republic vs County Executive Member in charge of Finance and Economic Planning, County Government of Mombasa and 2 Others Ex parte Harry Kitula Mumo* [2021] eKLR, the judge referenced the case of *Republic vs County Secretary Migori County Government and Another* [2019] eKLR and held:-

“In dealing with the application I have to address my mind to the procedure to be followed in execution of money decrees against government. It is settled that before an order of mandamus is issued the elaborate procedure provided for under Section 21 of the *Government Proceedings Act*, Cap 40 of the Laws of Kenya (hereinafter referred to as ‘the Act’) and Order 29 of the *Civil Procedure Rules* must be strictly complied with.”
9. The strict procedure to be followed is explained by the Court of Appeal in the case of *Kisya Investment Limited vs Attorney General* [2005] IKLR 74.
10. The Court of Appeal concluded that there is an objective rationale to prohibit execution against the assets of Government which mandates the procedure under Section 21 of the *Government Proceedings Act*, as read with Order 29 of *Civil Procedure Rules* aforesaid. The Court concluded that the law prohibits execution against and attachment of Government assets and property.



11. The claimants have not offered any tangible explanation in their replying affidavit or written submissions why they did not adhere to the lawful procedures that appertain with regard to execution of lawful decrees against government aforesaid.
12. Indeed, no lawful rationale exists for attachment and or proclamation of government assets as the claimants purported to do in the present case.
13. Accordingly, the application is granted and the warrants of attachment dated October 21, 2022 and the Proclamation set aside with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8TH DAY OF JUNE, 2023.

Mathews N. Nduma

Judge

Appearances

Chesiyna for Applicant

Mr. Were for claimant

Ekale – Court Assistant

