



Magut v Commission & another; Kestem Company Limited (Interested Party); National Bank of Kenya Limited (Garnishee) (Environment & Land Case 7 of 2016) [2024] KEELC 6324 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6324 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 7 OF 2016
EO OBAGA, J
SEPTEMBER 30, 2024**

BETWEEN

JAPHET KIPKEMBOI MAGUT PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

KESTEM COMPANY LIMITED INTERESTED PARTY

AND

NATIONAL BANK OF KENYA LIMITED GARNISHEE

RULING

1. This is a ruling in respect of a Notice of motion dated 11.12.2023 in which the Petitioner/Applicant seeks the following orders:-
 1. Spent
 2. Spent
 3. That the garnishee does appear before this honourable court on an urgent date to demonstrate statements of account and to articulate any claim on the monies held in the accounts failing which the garnishee order Nis to be made absolute and the garnishee be and is hereby ordered to immediately settle the order. Costs in the sum of Kenya shillings Three Hundred and Seventeen Thousand Five Hundred and Eighty-one (Kshs. 317,581.00), being the costs of the petition herein, and to settle costs of this garnishee proceedings;



4. That the costs of this application be borne by the Judgement Debtor.
2. The Applicant contends that it has a decree for payment of costs in the sum of Kshs 317,581/= against the 1st Respondent/Judgement Debtor which has not been satisfied. This sum arose out of taxed costs. The Applicant learned that the Garnishee is holding money belonging to the 1st Respondent which the court should order that the same be used to settle the taxed costs.
3. The Garnishee while admitting that it is holding monies belonging to the 1st Respondent, the same is not for meeting costs but it is meant for specific individuals whose parcels of land were compulsorily acquired on behalf of various government entities.
4. The Applicant's application was orally argued. M/s Ochola for Applicant argued that the mere fact that the money being held by the Garnishee is meant for specific recipients is not a good reason to deny settling the same in favour of the Applicant.
5. Mr. Willy for the Garnishee argued that the money held by the Garnishee is meant for paying those whose properties were compulsorily acquired by the 1st Respondent on behalf of those persons or entities. He further submitted that the Applicant's application was incompetent and ought to be struck out. He relied on the case of *Five Star Agencies Ltd & another –vs- National Land Commission 2 others (Civil Appeal No. E290 & 328 of 2023* (consolidated) (2024) KECA 439 (KLR) 12 April 2024.
6. I have gone through the Applicant's application as well as the opposition to the same by the Garnishee. The only issue for determination is whether the Applicant can seek to execute against the 1st Respondent through Garnishee proceedings.
7. The National Land Commission is a Government organ and the only way one can seek to execute against it, is by following the provisions of the *Government Proceedings Act* (GPA). Section 21 of the *Government Proceedings Act* provides as follows: -

“(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.

8. If National Land Commission does not pay the amount shown in the certificate issued by court, the only option open to the Applicant is to commence Judicial review proceedings for an order of mandamus seeking to compel NLC to pay the costs. There is no evidence that the Applicant took any steps which are stipulated under the *Government Proceedings Act*. The Applicant instead opted to use the provision of the Civil Procedure Rules which are only applicable to ordinary execution not involving a government organ like National Land Commission.
9. In the Five Star Agencies Ltd case (Supra), I had granted an order mandamus in favour of Five Star Agencies Ltd which order was served upon NLC but was not complied with. There were subsequent applications made in the ELC file which were ruled upon. The aggrieved parties moved to the Court of Appeal. The Court of Appeal held that whereas I had given an order of mandamus, the same was of no effect as I had not satisfied myself that the provisions of the Government Proceedings had been complied with.
10. My brother Justice Angote had granted a Garnishee Order Nisi which he discharged upon full hearing of the Garnishee proceedings. The Court of Appeal in the Five Star Agencies (Supra) held that the commencement of the Garnishee Proceedings by Five Star Agencies Limited were incompetent. I also hold that the Garnishee Proceedings by the Applicant are incompetent, null and void. This is enough to dispose of this application but I need to make certain observations herein.
11. In 2000, the 3rd Respondent herein filed Eldoret HCCC No. 137 of 2000 (Kesten Company Limited – Vs- Ndala Shop Limited, Commissioners of Lands and the Attorney General). This suit was later transferred to the Environment and Land Court where it was renamed ELC 38 of 2012 and later on became ELC 95 of 2013.
12. In or around April 2016, the 3rd Respondent made a complaint to National Land Commission to investigate allocation of Eldoret Municipality Block 10/48. On 4.8.2018 NLC nullified the title held by Ndala Shop Limited and directed that the same be given to Kestem Limited. This is what prompted the Applicant to file the petition herein. The petition was heard and in a judgement delivered on 13.7.2017, Justice Ombwayo found that the 1st Respondent was wrong to hear and make a determination on a matter that was pending before court for determination in ELC 38 of 2012. He awarded the Applicant half of the costs of the petition.
13. The Deputy Registrar of the court taxed the bill of costs and delivered a ruling on 6.2.2018 where she granted the petitioner half of costs to him in the sum of Kshs. 317,581/=. On 24.4.2018, the 3rd Respondent made an application for review of the judgment of 13.7.2017. In a ruling delivered on 28.9.2018, the court appreciated that as at the time of judgement, there was no suit pending the same having been dismissed for want of prosecution on 7.4.2015 before this petition was filed. The court further observed that had the fact of dismissal of ELC 95 of 2013 been brought to its attention it would have dismissed this petition. The court further observed that this petition had been overtaken by events as the NLC had nullified its proceedings by consent. The court ordered that each party do bear their own costs. One then wonders on what basis the Applicant is seeking costs based on a judgement which was reviewed and each party ordered to bear their own costs.



14. From the above analysis, I find that the Applicant's application was a nonstarter. The same is hereby dismissed with costs to the Garnishee.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 30TH DAY OF SEPTEMBER, 2024.

E. OBAGA

JUDGE

In the virtual presence of;

Mr. Willy for Garnishee.

Mr. Mukuha for Mr. Bwire for Petitioner/Applicant.

Court Assistant – Laban

E. OBAGA

JUDGE

30TH SEPTEMBER, 2024

