



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.263 OF 2016

BOARD OF TRUSTEES, NATIONAL WATER

CONSERVATION AND PIPELINE CORPORATION

(NWCPC) SUPERANNUATION SCHEME.....CLAIMANT

VERSUS

ELDAMA RAVINE WATER & SEWERAGE

COMPANY LIMITED.....RESPONDENT

AND

KENYA COMMERCIAL BANK LIMITED.....GANISHEE

RULING

The ruling herein relates to objections filed by the respondent, Eldama Ravine Water & Sewerage company Limited filed Notice of Objections to the application dated 22nd November, 2018 by the claimant. The objections are that;

- a) *The application is incompetent, incurably defective and amounts to abuse of court process.*
- b) *The application offends the mandatory provision of Order [section] 21(4) of the government Proceedings Act.*
- c) *The application should be struck out.*

To the objections the Garnishee maintained neutrality save for the payment of the costs for attending these proceedings. The garnishee is holding a current account Numbers 1111359409 and 1105641945 with a closing balance at 26th November, 2018 at ksh.138, 885.90 and 191,612.15 in the name of the respondent, the judgement debtor.

The respondent and claimant made their oral submissions.

The respondent objections are on the grounds that the application by the claimant seeking for an order Nisi attaching the bank accounts they hold with the garnishee with Ksh.7, 791,576.51 in Account Number 1105641945 and 1111359407 offend s the provisions of section 21 of the Government Proceedings Act. The respondent water company is an agent and subsidiary of the Water Service Board under section 47 of the Water Act and water companies are subsidiaries of the county government and its property cannot be attached without the compliance with the law. the status of the respondent water company is conferred by statue as held in the case of **National Union of Water & Sewerage Employees versus Mathira Water and Sanitation Company Limited & 2 others [2013] eKLR**. The court held that water companies perform public duties as subsidiaries of the local government. The respondent is under the Baringo County Government and section 21 of the Government Proceedings act prohibit attachment of government property and which includes the prohibition of garnishee proceedings.

In the case of **Stephen Wanyee Roki versus K-Rep Bank limited & others [2016] eKLR** the court struck out an application for offending the provisions of section 21 of the Government Proceedings Act. The claimant's application should be struck out.

The claimant submits that the respondent as a subsidiary of the Water Board has a corporate status which can be sued and be able to sue and

is not a government agency as defined. The protection of County government under the Government Proceedings Act is not conferred upon the respondent as a corporate entity.

Under section 51(33) of the Water Act the respondent is defined as a company and not as a government agency. The funds held by the garnishee should be released to the claimant to pay for the judgement debt.

Judgement herein was delivered on 20th July, 2017 with orders made against the respondent to pay the claimant the sum of ksh.7, 479,072.83 with compounded monthly interest of 3% on the outstanding arrears. The respondent was also ordered to pay costs.

The claimant moved the court with application dated 22nd November, 2018 seeking for an order to issue for a Garnishee order Absolute against the judgement debtor and for the payment of the judgement sum of ksh.7, 497,072.83 and costs assessed at ksh.312, 503.68.

Is the respondent Eldama Ravine Water & Sewerage Company limited a government agency or subsidiary protected under the provisions of section 21(4) of the Government Proceedings Act?

The judgement of the court delivered on 20th July, 2017 was premised on facts that the respondent entered appearance but failed to defend the suit. In the Memorandum of Claim, the respondent is defined as a Limited Liability Company established under the provisions of the Water Act, 2002. Without a defence, these facts are not challenged.

Such definition thus establishes the respondent as an independent legal entity capable of being sued and suing in its own capacity. The registration of the respondent as a *limited liability company* gives it status separate and distinct from a government agency, subsidiary even where the service provided is of a public nature and recognised under the Water Act. By separating the respondent from other agencies recognised under the Water Act such as the Water Services Board, the respondent entity is given a corporate status to operate independently in its mandate.

In the case cited by the respondent in **National Union of Water & Sewerage Employees versus Mathira Water and Sanitation Company Limited & 2 others [2013] eKLR** the court made a finding that Water Companies registered under the Water Act are limited liability companies, registered as agents and instrumentalities of the local government. They are private companies rendering public services controlled by public authorities. They however in such capacity as private companies have the capacity to sue and be sued as was the case if what the court therein referenced for *Eldoret Water and Sanitation Company* and *Nairobi City Water and Sewerage Company limited*. Equally, the respondent herein cannot escape liability under the provisions of section 21 of the Movement proceedings Act.

The respondent is a limited liability company with capacity to sue and be sued even where it performs a public duty of water and sanitation as regulated under the Water Act.

The other cited cases in **Stephen Wanyee Roki versus K-Rep Bank limited and others** and in **Nahashon Omwoha Osiako and others versus the AG and Others** the court reading of this case is that the facts and the basis of the issues addressed by the court therein are fundamentally different from the case herein.

The respondent is not a government agency or subsidiary with protection under the provisions of the government Proceedings Act. Being registered as a limited liability company and holding property with the Garnishee, such can be attached for the satisfaction of any court decree. Such decree and assessment of costs have since been confirmed by the court herein.

Accordingly, the objections made by the respondent are found without merit, the property held by the garnishee for the respondent under current account Numbers 1111359409 and 1105641945 shall be released to the claimant in satisfaction of the judgment debt herein. The respondent shall meet the costs due to the claimant and those of the Garnishee.

Delivered at Nakuru this 28th day of February, 2019.

M. MBARU

JUDGE

In the presence of:

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