



**Prigal Limited & another v Kenya Electricity Transmission Company Ltd (Environment & Land Petition 4 of 2021) [2023] KEELC 115 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 115 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND PETITION 4 OF 2021  
A OMBWAYO, J  
JANUARY 19, 2023**

**BETWEEN**

**PRIGAL LIMITED ..... 1<sup>ST</sup> PETITIONER**

**MICHAEL MWANGI MUTURI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**KENYA ELECTRICITY TRANSMISSION COMPANY LTD ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 23<sup>rd</sup> April 2022 the applicant /Petitioner seeks order that warrants of attachment and sale of assets of the Respondents assets do issue in execution of the Order of this court given and issued on 28<sup>th</sup> October 2021 and 17<sup>th</sup> November 2021 respectively in this matter. That warrants of arrest do issue against the said Acting and or Managing Director of the Respondent one Eng. Antony Wamulota or anyone holding such office in the respondent for his committal to civil jail for willful contempt /disobedience of the Orders given issued on 17<sup>th</sup> November 2021 by this Court in this matter until there is compliance of the Order of this Court given and issued on 28<sup>th</sup> October 2021 and 17<sup>th</sup> November 2021 respectively in this matter.
2. That the OCS- South B Police Station and or any OCS of the nearest Police Station where the said the Acting and or Managing Director of the Respondent one Eng. Antony Wamulota or anyone holding such office in the Respondent may be so located do effect the warrants of arrest so issued in Order 5 above. That the costs of this application be provided for.
3. The application is based on grounds that on 28<sup>th</sup> October 2021, the Honorable Court delivered a ruling /Order directing and requiring the Respondent to deposit KES.65,797,788 being wayleave compensation to the Petitioners in a joint interest earning account at Kenya Commercial Bank Limited and or Cooperative Bank of Kenya Limited opened and operated in the names of parties advocates within 45 days from the date of the said ruling/Order.



4. On 15<sup>th</sup> November 2021 the Respondent duly appointed a firm of Advocates on record and on 19<sup>th</sup> November 2021, the petitioners duly served the Respondent a copy of the Order of this Court given and issued on 28<sup>th</sup> October 2021 and 17<sup>th</sup> November 2021 respectively.
5. On 24<sup>th</sup> November 2021, parties firm of advocates herein duly opened a joint interest earning account at Kenya Commercial Limited - Upperhill Plantinum Centre-Nairobi Account No. 1291xxxxxx.
6. The 45 days period for compliance of the order dated 28<sup>th</sup> October 2021 by the respondent lapsed on 12<sup>th</sup> December 2021 without any compliance by the respondent or at all.
7. On 24<sup>th</sup> January 2022, the respondent sought and the petitioners advocates allowed the respondent 90 days from the above date to enable the respondent source funds from the National Government *vide* Supplementary Budge and comply with the terms of order hereof.
8. Despite the above indulgence having lapsed on 23<sup>rd</sup> April 2022 and the National Government of Kenya having published its budget on 7<sup>th</sup> April 2022 thereby allocating and availing funds to the Respondent, the respondent willfully and deliberately continues to default on express terms of the Order of this Court of 28<sup>th</sup> October 2021 and has threatened to continue with the default which default on express terms of the order of this court of 28<sup>th</sup> October 2021 and has threatened to continue with the default which default will render the petition nugatory, is contemptuous to this court and will cause the petitioners to suffer irreparable loss.
9. Despite having been served and having notice of the court given on 28<sup>th</sup> October 2021, the respondent has threatened and intends to continue with the said disobedience of the concise and unequivocal terms of the above court order against the respondent with impunity.
10. It is just and fair that the Acting Managing Director and Contemnor herein be urgently examined as to the Respondent's means and assets for purposes of attachment and sale to realise the security ordered by this court on 28<sup>th</sup> October 2022 and or the said Acting Managing Director be committed to civil jail until the order of 28<sup>th</sup> October 2021 is satisfied.
11. By reason of the respondent's default and continuous default of the order of 28<sup>th</sup> October 2021, the mischief, purpose and intents of the said Order of this court can only be achieved by examination of the Respondent on her means on assets for purposes of attachment and sale and or committal of its Managing Director to Civil jail until the said order is satisfied.
12. Unless this application is urgently heard and interim reliefs granted, the respondent and its Acting Managing Director herein who have for over 120 days disobeyed Court Orders, were recently allocated and will at any time receive fund from the National Government of Kenya which the Petitioners are apprehensive that the funds will be redirected to other projects, wasted away, spend and completed without any compliance of the Court Order of 28<sup>th</sup> October 2021 consequently rendering this application, the Order of 28<sup>th</sup> October 2022 and the Petition herein nugatory and the Petitioners will suffer substantial and irreparable loss.
13. The respondent has stated in response that it is a public corporation which is funded by the National Treasury. That in the financial year 2021/2022 (1<sup>st</sup> July 2021- 30<sup>th</sup> June 2022), Ketraco sought a sum of Ksh.3,469,864,672.57 from the National Treasury to settle pending bills for the Olkaria – Lessos-Kisumu Transmission Line project.
14. Out of this Ksh.1,928,238,342.00 was to settle compensation for affected land owners.



15. That the National Treasury had earlier allocated the Respondent the sum of 800,000,000.00 which at the time the dispute arose, culminating into these proceedings, the Respondent had utilized 100% of the allocated funds to pay pending claims.
16. That the respondent has applied for a budgetary allocation from National Treasury for the financial year 2022-2023 to enable us comply with the Court order and pay other pending claims by project affected.
17. That despite their request, they have not been allocated funds to the project contrary to the Petitioner's advocates contents which speak for themselves.
18. The facts of this case are that on 28<sup>th</sup> October 2021 respondent to deposit Ksh65,797,788 being compensation in respect of wayleave through the petitioner land. The same was to be deposited with 45 days of the order. The respondents were served with the order.
19. There is on record an affidavit of service of the order. The respondent have not complied with the order as they have failed to deposit to court of money in the joint account opened by parties. The explanation given by the respondent does not hold water as the respondent should prioritize paying monetary decrees as ordered by the court to ensure that the rule of law is upheld.
20. Dealing with the question of contempt in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (emphasis)

21. In *T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

22. I do find that the respondent are in contempt of court and do hereby order:-

1. That warrants of attachment and sale of assets of the Respondents assets do issue in execution of the Order of this court given and issued on 28<sup>th</sup> October 2021 and 17<sup>th</sup> November 2021 respectively in this matter.



2. That warrants of arrest do issue against the said the Acting and or Managing Director of the Respondent one Eng. Antony Wamulota or anyone holding such office in the respondent for his committal to civil jail for willful contempt /disobedience of the Orders given issued on 17<sup>th</sup> November 2021 by this Court in this matter until there is compliance of the Order of this Court given and issued on 28<sup>th</sup> October 2021 and 17<sup>th</sup> November 2021 respectively in this matter.
  3. That the OCS- South B Police Station and or any OCS of the nearest Police Station where the said the Acting and or Managing Director of the Respondent one Eng. Antony Wamulota or anyone holding such office in the Respondent may be so located do effect the warrants of arrest so issued in Order 5 above.
23. Cost of the application to the petitioners.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 19<sup>TH</sup> DAY OF JANUARY 2023.**

**A O OMBWAYO**

**JUDGE**

