



**Masha v Kenya Wildlife Service; Standard Chartered Bank & another
(Garnishee) (Tribunal Appeal 37 of 2020) [2023] KENET 488 (KLR)
(Environment and Land) (1 September 2023) (Ruling)**

Neutral citation: [2023] KENET 488 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
ENVIRONMENT AND LAND
TRIBUNAL APPEAL 37 OF 2020
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
SEPTEMBER 1, 2023**

BETWEEN

JACKSON NZARO MASHA APPLICANT

AND

KENYA WILDLIFE SERVICE RESPONDENT

AND

STANDARD CHARTERED BANK GARNISHEE

KENYA COMMERCIAL BANK GARNISHEE

RULING

1. Before us for determination is the Respondent's Notice of Preliminary Objection dated April 6, 2023, premised on the following grounds:
 - a. That the Judgment of this Hon. Tribunal and the resultant Decree dated March 1, 2023 is directed to the Cabinet Secretary to pay the Decretal sum of Kshs. 2,000,000/= and not the Respondent, and as such, the Garnishee Application is irregular and violates the provisions of Section 34 of the [Civil Procedure Rules](#) cap 21.
 - b. That the Respondent is a state organ and/or a public entity as stipulated under and, therefore, part of the National Government of which no attachment can be issued against its movable or immovable properties.



- c. That Order 29 Rule 2(2) and Rule 4(1) of the Civil Procedure Rules prohibits the execution of Decrees and Orders against the Government and also prohibits Attachment of debts/deposits owing to the Government, especially by way of Garnishee Proceedings.
 - d. That the Applicant has not complied with the mandatory provisions of Section 21 of the [Government Proceedings Act](#) requiring the extraction and issuance of a Certificate of Order against the Government before compliance and satisfaction of an Order/Decree against the Government can commence.
 - e. That the Applicant has failed to invoke the requisite procedure seeking prerogative orders as envisaged by Section 8 of the [Law Reform Act](#) and as applied under Order 53 of the [Civil Procedure Rules](#).
 - f. That the Decree Holder/Applicants have proceeded to execute their Decree contrary to the mandatory legal procedure requiring taxation of costs prior to execution of a Decree and have also failed to seek leave of the court on execution of the Decree without taxation of costs.
 - g. That the Decree Holders' mode of execution is highly irregular, and thus their application dated March 10, 2023 is not only incompetent but fatally defective. Reasons whereof the same ought to be Struck Out / dismissed with costs to the Respondent.
2. When parties appeared before us on April 6, 2023, we directed that the Preliminary Objection be canvassed by way of written submissions. As of the time of writing this Ruling, the only submissions forming part of our record are those filed by the Applicant/Decree Holder.

Issues for determination

3. Having considered the Respondent's Notice of Preliminary Objection, the Applicant's submissions and all other documents filed by the parties, we find that the only issue that presents itself for determination is whether the Respondent can be the subject of garnishee proceedings.

Whether the Respondent can be the subject of garnishee proceedings.

4. The Respondent is a State Corporation established under the [Wildlife Conservation and Management Act](#). Section 6(2) of the Act clothes the Respondent with corporate personality and the capacity to sue and be sued in its corporate name.
5. The Respondent contends that garnishee proceedings cannot issue against it by virtue of it being a state organ and/or public entity and, therefore, part of the National Government.
6. This does not appear to be the position. In [Kimoi Ruto & another v Samuel Kipkosgei Keitany & Another](#) 2014 eKLR, Hon. Justice Munyao held as follows:

“..It will be seen from the above that State Corporations may be established by the President (Under S.3) or through an Act of Parliament. They are ordinarily body corporate with capacity to sue and to be sued and with capacity to hold property. I find it difficult to hold that they should be considered as “government” because if they were, then litigation would be governed by the [Government Proceedings Act](#) (CAP 40) and I am more prepared to hold that they are not strictly “Government”, unless the context otherwise prescribes, but rather, that they are independent agents of Government, formed by government in order to undertake and perform certain functions on behalf of government, which functions cannot adequately or efficiently be performed within the structure of Government Ministries.”



7. Picking cue, in *Ikon Prints Media Company Limited v Kenya National Highways Authority & 2 Others* [2015], eKLR Hon. Justice Onguto held as follows:

“Foremost though, it is important to point out that it would not be tenable to invoke the *Government Proceedings Act* (Cap 40) as a bar to any execution herein. The 1st Respondent is a body corporate with perpetual succession and a common seal. It is a corporate entity capable of subsisting independently. It is dependent on government funding but it is not government or servant of or agent of Government for the purposes of the *Government Proceedings Act*. The 1st Respondent is an independent judicial person capable of being sued and suing. Its litigation does not involve the Government. Any judgments decreed against the 1st Respondent are not judgments against the government but against an independent juridical body.”

8. We are persuaded by the submissions filed by the Applicant and find that garnishee proceedings can indeed issue against the Respondent/Judgment Debtor.

Orders

9. The Notice of Preliminary Objection dated April 6, 2023 is devoid of merit and is hereby dismissed.

Dated at Nairobi this 1st day of September 2023

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

