



**Ireri t/a Ireri & Company Advocates v County Government of Embu
(Miscellaneous Civil Application 54, 53 & 55 of 2019 (Consolidated))
[2024] KEHC 10981 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10981 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CIVIL APPLICATION 54, 53 & 55 OF 2019 (CONSOLIDATED)
LM NJUGUNA, J
SEPTEMBER 18, 2024**

BETWEEN

ELIJAH N IRERI T/A IRERI & COMPANY ADVOCATES ADVOCATE

AND

COUNTY GOVERNMENT OF EMBU RESPONDENT

RULING

1. The applicant filed a notice of motion dated 01st August 2023 seeking orders that:
 - a. Leave be granted to enter judgment against the respondent;
 - b. Judgment be entered in favour of the applicant against the respondent for the sum of Kshs.530,560.80/= in Miscellaneous Application *No. 54 of 2019*, a sum of Kshs.595,150/= in Miscellaneous Application *No. 53 of 2019* and a sum of Kshs.938,498/= in Miscellaneous Application *No. 55 of 2019*;
 - c. The respondent to pay the applicant the requisite costs of this application together with interest on the taxed sum; and
 - d. The costs of this suit be in the cause.
2. The application is premised on the grounds set out on its face and in the supporting affidavit.
3. The bills of costs were taxed at the sum of Kshs.530,560.80/= in Miscellaneous Application *No. 54 of 2019*, a sum of Kshs.595,150/= in Miscellaneous Application *No. 53 of 2019* and a sum of Kshs.938,498/= in Miscellaneous Application *No. 55 of 2019* and a certificate of taxation were issued to that effect but the same are yet to be paid. The applicant seeks for an order that the respondent settles the said taxed amounts.



4. The application is unopposed. The court directed that the application be canvassed by way of written submissions but only the applicant complied.
5. It was the applicant's submission that under the *Government Proceedings Act*, the court can grant him leave sought and judgment in default of appearance by the respondent. That the respondent was duly served with the proceedings but it has not bothered to file any response although it participated in the taxation proceedings. That the applicant cannot proceed to execute without the leave of court hence the application herein. He urged the court to exercise its discretion to grant the orders prayed for.
6. The issue for determination is whether the application has merit.
7. Section 21 of the *Government Proceedings Act* provides that where an order is made against the government in a civil suit and a party intends to execute, in the case of taxed costs, the certificate of taxation is to be served upon the government officer or department within 21 days. Section 21(5) of the said Act states;

“This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party”.
8. The respondent herein is a County Government, therefore the provisions of section 21 of the *Government Proceedings Act* applies mutatis mutandis. The applicant has demonstrated that the certificates of taxation were served upon the respondent. However, it should be noted that execution against the government (any level of government) takes a specific procedure laid down under Order 53 of the Civil Procedure Rules being judicial review (see the case of Republic v. AG and another ex parte Stephen Wanyee Roki (2016) eKLR). That is to say that the orders sought herein should be sought through judicial review proceedings as was stated in the case of Republic v. Attorney General & Another Ex parte James Alfred Koroso (2013) eKLR.
9. In the case of Permanent Secretary Office of the President, Ministry of Internal Security & Another ex parte Nassir Mwandishi (2014) eKLR the court observed that the procedures in seeking an order of mandamus under *Government Proceedings Act* are strictly complied with in respect to issuance of certificate of costs and certificate of order against the Government. Meanwhile, the Court of Appeal in the case of Kisyia Investments Ltd v. AG (2005) 1 KLR 74 explained why execution against the government is an affair shielded by strict procedures.
10. In light of the foregoing, it is my view that the orders sought should be brought through the relevant form and procedure for consideration by this court. I am guided by the recent decision of the Court of Appeal in the case of *Five Star Agencies Limited & another v. National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023 (Consolidated))* [2024] KECA 439 (KLR) where it was held:

“Having stated the foregoing and since decrees will from time to time be issued against the Government, what then is the option available to a party who holds a decree against the Government? The only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus to compel the Government to settle the decree in question.”
11. I find that the applications lacks merit and they are hereby struck out.
12. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF SEPTEMBER, 2024.



L. NJUGUNA

JUDGE

.....for the Applicant

..... for the Respondent

