



**Republic v City Council of Nairobi (Nairobi City County Government) & 2 others; Wambugu & another (Exparte Applicants) (Miscellaneous Application E180 of 2023) [2024] KEHC 9497 (KLR) (Judicial Review) (30 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9497 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW**

**MISCELLANEOUS APPLICATION E180 OF 2023**

**JM CHIGITI, J**

**JULY 30, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CITY COUNCIL OF NAIROBI (NAIROBI CITY COUNTY GOVERNMENT) ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY NAIROBI CITY COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER FINANCE NAIROBI CITY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JACOB KIOI WAMBUGU ..... EXPARTE APPLICANT**

**SHELMITH GATHONI WAMBUGU ..... EXPARTE APPLICANT**

**JUDGMENT**

**Applicants Case**

1. The application that is before this court for determination is the notice of motion dated 27<sup>th</sup> November 2023 wherein the applicant is seeking for an order of Mandamus to issue to compel the Respondents to pay to the Applicants the sum of Ksh.29, 571,067/=plus interest at court rates in accordance with the decree dated 23<sup>rd</sup> January 2023 and as per the Certificate of order dated 3<sup>rd</sup> October 2023 issued in the Environment and Land Court Case No.402 of 2014(formerly HCC No. 2835 of 1988).
2. The Respondents to be condemned to pay costs of this application plus further interest and any other relief the court may deem fit and just to grant.



## Brief Background

3. The applicant moved the court in ELC cause No. 402 of 2014.
4. Judgment was delivered on 23<sup>rd</sup> January 2023 in favour of the Applicants for the sum of Ksh.25,300,000 plus costs and interest which was to accrue 60 days after judgment.
5. A decree was thereafter issued on 29<sup>th</sup> September 2023 and a certificate of order against the government for a total amount of 29,571,067/=was issued on 3<sup>rd</sup> October 2023.
6. The amount of Ksh.29,571,067/=comprising the award, interest as at 3<sup>rd</sup> October 2023 and costs which were taxed at Ksh.2,935,227/= .The certificate of taxation issued on 2<sup>nd</sup> November 2023.
7. The Respondents were served with all the aforementioned documents severally through their advocates and directly to them. The amount remains outstanding.
8. Reliance is placed on the Court of Appeal in Republic vs Kenya National Examinations Council Ex-parte Gathenji and 9 Others, [1997] eKLR where it was held:

“The next issue we must deal with is this: What is the scope and efficacy of an ORDER OF MANDAMUS? Once again we turn to HALSBURY’S LAW OF ENGLAND, 4th Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”

9. From the above holding of the court, the order of mandamus is intended to compel the Respondents to comply with the court orders on payment. Their failure in making the payment is detrimental to the Applicants as it is akin to denying them justice since justice delayed is justice denied.
10. Mativo J. in Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another [2018] eKLR held that:

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in Apotex Inc. vs. Canada (Attorney General), and was also discussed in Dragan vs. Canada (Minister of Citizenship and Immigration) The eight factors that must be present for the writ to issue are: -

- i. There must be a public legal duty to act;
- ii. The duty must be owed to the Applicants;



- iii. There must be a clear right to the performance of that duty, meaning that:
  - a. The Applicants have satisfied all conditions precedent; and
  - b. There must have been:
- iv. A prior demand for performance;
- v. A reasonable time to comply with the demand, unless there was outright refusal; and
- vi. An express refusal, or an implied refusal through unreasonable delay;
- vii. No other adequate remedy is available to the Applicants;
- viii. The Order sought must be of some practical value or effect;
- ix. There is no equitable bar to the relief sought;
- x. On a balance of convenience, mandamus should lie.

11. Section 21 of the [Government Proceedings Act](#).

“(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, into 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.”

12. The *Government Proceedings Act* is applicable to the Respondents and we are guided in our submissions by the holding of Odunga J. in Republic v Attorney General & another ex-parte Stephen Wanyee Roki [2016] eKLR:

“ 20 Although the provisions of the *Government Proceedings Act* do not expressly refer to County Governments, section 7 of the Sixth Schedule to *the Constitution* (Transitional and Consequential Provisions) provides that:

All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.

21. It follows that the provisions of the *Government Proceedings Act*, a legal instrument enacted before the effective date must be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with *the Constitution*. One such construction would be the reality that Government is now at two levels and Article 189(1) (a) of *the Constitution* requires that the Constitutional status and institutions of government at both the National and County levels be respected. In my view such respect cannot be achieved unless both levels of Government are treated equally and one such area would be with respect to execution proceedings.”

13. The Respondents jointly with the County Executive Committee Member of Finance who is the head of the Treasury as per section 103 of the *Public Finance Management Act* are liable and owe a legal duty to the Applicants to pay the decretal sum. We are guided by the holding of the court in Republic v County Government of Kiambu Ex Parte Laban J Macharia Muiruri [2021] eKLR

“This Court therefore finds that arising from these provisions; the Respondent is jointly responsible with the County Executive Committee Member of Finance for the satisfaction of Court orders and decrees on payment of money owed by the Kiambu County by virtue of their roles and functions.”

14. The applicants submit that indeed the Order of Mandamus should be issued against the Respondents as it is the only remedy that is available to the Applicant to ensure that they can enforce the Decree since the Government enjoys immunity from having its properties attached to satisfy the judgment debt.

### **Disposition;**

15. I am satisfied that the applicant has made out a case for the grant of the order sought.

### **Order**

16. The application dated 27<sup>th</sup> November 2023 is allowed with costs to the applicants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JULY, 2024.**



.....

**J. CHIGITI (SC)**  
**JUDGE**

