



Republic v Attorney General & another; Muigai (Suing as the Next Kin and Legal Representative of the Estate of the Late Eunice Wanjiku Muigai - Deceased) (Exparte) (Judicial Review 1 of 2023) [2024] KEHC 10677 (KLR) (15 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW 1 OF 2023
DO CHEPKWONY, J
AUGUST 15, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**THE ATTORNEY GENERAL 1ST RESPONDENT
MINISTRY OF INTERIOR & COORDINATION OF NATIONAL
GOVERNMENT 2ND RESPONDENT**

AND

**JOSEPH KAHIGA MUIGAI (SUING AS THE NEXT KIN AND LEGAL
REPRESENTATIVE OF THE ESTATE OF THE LATE EUNICE WANJIKU
MUIGAI - DECEASED) EXPARTE**

RULING

1. The Ex-parte Applicant obtained court’s leave and filed Notice of Motion Application dated 11th May, 2024 under Sections 1A, 1B & 3A all of the *Civil Procedure Act*, Order 10 (11) and 22 (25) of both the Civil Procedure Rules and Section 8 and 9, both of the Law Reforms Act.
2. The Application seeks the following orders:
 - a. That an Order of Mandamus do issue to compel the Respondents to pay the Exparte Applicant the decretal sum of Kshs 1,849,844/- together with interest thereon from the date of delivery of judgment rendered on 18th November, 2022 against the Respondents herein in Kikuyu CMCC No. 306 of 2016.
 - b. That an Order of mandamus be issued to compel the Respondent to pay the exparte Applicant the costs of the suit in the trial court in the sum of Kshs. 125,200/= being the costs awarded as



per the decree and certificate of costs issued on 21st November, 2022 in Kikuyu CMCC No. 306 of 2016;

- c. That the Respondent be and is hereby ordered to comply by satisfying the Decree, Costs and Interest from the date of filing Kikuyu CMCC No. 306 of 2016 within fourteen (14) days from the date of service of the order of mandamus;
 - d. That in default, Notice To Show Cause do issue against the 2nd Respondent to show cause why he should not be cited for insubordination and contempt of court and he be personally summoned to court and personally committed to civil jail;
 - e. That this Honorable court do grant such further orders and other consequential orders, writs, dilutions and directions as this honorable court may consider appropriate for the purpose of enforcing of the provisions of [the Constitution](#) of Kenya;
 - f. That the costs of this suit be borne by the Respondent
3. The Application is based on the Supporting Affidavit of Joseph Kahiga Muigai sworn on the instant date. It is the Applicant's case that he is the Decree holder in Kikuyu Civil Case Number 306 of 2016 whose Judgment was delivered on 27th May 2022 against the Respondents. The Applicant has averred that the Principal Secretary to the Ministry of Interior & Coordination of National Government is under a public duty to make the said payment to the Applicant which he has failed to despite numerous demands. He further avers that no other remedy to compel or obtain the payment of the decretal sum exists in law and therefore has urged the court to grant the application as prayed.
 4. From the court record, the application was duly served upon the Respondents and an Affidavit of service sworn on 27th June, 2023 to confirm that they were served with the Notice of Motion Application dated 11th May, 2024 and a Mention Notice dated 13th May, 2024 to show that the matter was coming up for mention on 27th June, 2024, was filed in court. Be that as it may, the court is still under a duty to consider the merits of the application in view of the directions issued on 13th May, 2024.
 5. I have read through the application dated 11th May, 2024 and the issues to consider is whether the orders sought can be granted on the grounds upon which it is premised.
 6. It is trite law that any execution against the government should be done through judicial review proceedings, which is the procedure that has correctly been followed by the Ex-parte Applicant as provided for under Order 53 of the Civil Procedure Rules.
 7. It is also trite law that the application should be made after a certificate of Order against the government has been served upon the government in compliance with Section 21 of the [Government Proceedings Act](#), for it to be tenable. This position was set out in the case Republic vs. County Government of Vihiga Ex parte Global Exhibitions Incorporated Ltd [2021] eKLR (Musyoka J), where the court stated as follows:

“A party wishing to realize the fruits of a judgment or decree against the government must obtain a certificate of order against the government. The government pays against the certificate of order against it. It is a critical accounting instrument for the purpose of government finances and accounts. The centrality of the certificate of order against government, with respect to enforcement of money decrees against the government, whether at the national or at the county level, has been the subject of pronouncement by the courts.”



8. Section 21 of *Government Proceedings Act* provides as follows:

“ 21. Satisfaction of orders against the Government

- (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, no 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.



(5) 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.”

9. From the wordings of Section 21 of the [Government Proceedings Act](#), it is clear that a Certificate of Order must be issued for execution against the Government to proceed and the said provision is set out in mandatory terms. In the case of Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR, the court stated this:

“The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the [Government Proceedings Act](#) (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.”

10. This was also the position in the case of Republic vs. County Secretary Migori County Government & another [2019] eKLR, where the court said:

“ 11. I need not re-emphasize the need for strict compliance with Section 21 of the Act being the law of the land. In this matter I can gather from the record that a Decree and a Certificate of Costs in the suit was drawn and issued. I did not set my eyes on any Certificate of Order. There is a specific procedure on how the Certificate of Order required under the Act is obtained. The procedure is contained in Order 29 of the Civil Procedure Rules. Under Rule 3 thereof the application is made to the Deputy Registrar in the High Court or to the court in the subordinate court. The format of the Certificate of Order is provided in Appendix A Form No. 22 of the Civil Procedure Rules. Form No. 23 provides the format for a Certificate of Costs in the event it is separately issued.

12. Once a party obtains the Certificate of Order and the Certificate of Costs, in the event the Certificate of Costs is obtained separately, together with the Decree, then such a party must satisfy the Court of service of those documents upon the party named in the Certificates. In this case there is neither evidence of issuance of the Certificates nor service thereof on the Respondents or their Advocates.”

11. In this case, I have read through the affidavit in support of the application and perused the record. I find that there is clearly no evidence of Certificate of Order having issued against the Government. Therefore, this court cannot proceed with the application as the execution process against the government is irregular and hence cannot stand.

12. In the circumstances, the court finds that the orders sought herein cannot issue and consequently the Notice of Motion Application dated 11th May, 2024 be and is hereby struck out.



It is so ordered.

RULING DELIVERED DATED AND SIGNED AT KIAMBU THIS 16TH DAY OF AUGUST, 2024

D.O CHEPKWONY

JUDGE

In the Presence of

Martin – Court Assistant

No appearance for and by either party

