



Republic v Cabinet Secretary, Ministry of Interior and Coordination of National Government & another; Muchai & another (Exparte Applicants) (Suing as the Legal Representative of the Late Andrew Ngigi Muchai) (Judicial Review 10 of 2018) [2023] KEHC 20497 (KLR) (30 June 2023) (Judgment)

Neutral citation: [2023] KEHC 20497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
JUDICIAL REVIEW 10 OF 2018**

GL NZIOKA, J

JUNE 30, 2023

IN THE MATTER OF AN APPLICATION BY LUCY WANJA MUCHAI AND JAMES KAMAU MUCHAI SUING AS THE LEGAL REPRESENTATIVE OF THE LATE ANDREW NGIGI MUCHAI) FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS SEEKING AN ORDER OF MANDAMUS

AND

IN THE MATTER OF ARTICLE 23 (F) AND 47 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

REPUBLIC APPLICANT

AND

THE CABINET SECRETARY, MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

THE HONOURABLE THE ATTORNEY GENERAL 2ND RESPONDENT

AND

LUCY WANJA MUCHAI EXPARTE APPLICANT

JAMES KAMAU MUCHAI EXPARTE APPLICANT

SUING AS THE LEGAL REPRESENTATIVE OF THE LATE ANDREW NGIGI MUCHAI



JUDGMENT

1. By a notice of motion application dated May 5, 2023, brought under the provisions of Order 53 Rule 3 (1) and (3) of the [Civil Procedure Rules, 2010](#) the ex-parte applicant, is seeking for an order of Mandamus compelling the respondents to pay the sum owing of Kshs 2,844,629.22 as per Certificate of Order against the Government dated July 15, 2021 together with further interest from June 15, 2021 and costs herein.
2. The application is based on the grounds as stated in the statutory statement and verifying affidavit both dated; September 12, 2018. The ex-parte applicants avers that, they filed a civil suit namely; Naivasha Chief Magistrate's Civil Suit Case No 274 of 2011 against the 2nd respondent. That, on October 26, 2015 the trial court entered judgment in his favour, and the 2nd respondent was ordered compensate them for the loss and damage suffered in the sum of; Kshs 10,000 as pain and suffering; Kshs 100,000 as loss of expectancy of life; Kshs 1,303,070.40 as loss of dependency and Kshs 25,000 as special damages.
3. That, the 2nd respondent was served with judgment dated October 26, 2015 demanding for payment vide a letter dated October 30, 2015. However, despite the demand for payment and several reminders, the respondent(s) have declined and/or refused to settle the decretal amount.
4. That, the respondents' refusal to pay is without merit, unreasonable, an abuse of power, and violation of his right to fair administrative action under Article 47 of the [Constitution](#) of Kenya which states that every person has a right administrative action that is expeditious, efficient lawful and reasonable and procedurally fair.
5. Be that as it were, despite the respondent(s) being served with the application, they did not enter appearance nor file a response thereto. Therefore, the application is basically unopposed.
6. Having considered the materials and arguments advanced by ex parte applicant and I find that, the main issue to determine is whether the applicant has met the threshold for grant of the orders sought. In that regard, section 21(4) of the [Government Proceedings Act](#) provides as follows:

' 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'.
7. Pursuant to the aforesaid, it follows that a decree holder can only enforce a judgment in its favour against the Government, by seeking for an order of mandamus to compel the Government to pay make payment.
8. The order of Mandamus is derived from the Latin word 'Mandare' meaning to command. It is a judicial remedy in the form of an order from a court to any Government, Subordinate court, Corporation, or Public authority, to do some specific act which that body is obliged under law to do, and which is in the nature of public duty, and in certain cases one of a statutory duty, where a public body or official has unlawfully refused, declined or otherwise failed to undertake the duty.



9. In that regard, the Court of Appeal in the case of; *Kenya National Examination Council v Republic, Ex-Parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR* stated as follows:

' 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.'

10. To revert back to the matter herein, the ex parte applicant has produced a copy of the decree dated; February 5, 2021, the demand notice dated; October 30, 2015, and the Certificate of Order dated; July 15, 2021 in support of the application for orders sought. It suffices to note that, judgment herein was entered in the year 2015. The notice thereof was issued as far back as 2021. The question is; for how long can the ex parte applicant wait to enjoy the fruit of justice.
11. It is noteworthy that, the respondents are litigants like any other litigant under the law. The fact that section 21(4) of the *Government Proceedings Act* shields them as aforesaid does not mean it exonerates them from liability. Indeed the old adage states that 'justice delayed is justice denied'. Further Article 159 of the *Constitution* of Kenya, 2010 implores the courts to dispense justice expeditiously. Finally, Article 48 of the *Constitution* gives the ex parte applicant the right to access justice.
12. In the circumstances and taking into account the aforesaid, the only remedy available to the ex parte applicant is an order of mandamus. Consequently, the notice of motion application dated May 5, 2023, is allowed as prayed.
13. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 30TH DAY OF JUNE 2023.

GRACE L NZIOKA

JUDGE

In the presence of: -

Ms. Kiberenge for the applicant

N/A for the respondents

Ms. Ogutu court assistant

