



**Republic v County Secretary Kiambu County & another; Joseph Gathoga Wairegi t/
a Gathoga Wairegi & Co. Advocates (Exparte Applicant) (Judicial Review Application
E010 of 2023) [2023] KEHC 22728 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW APPLICATION E010 OF 2023**

PM MULWA, J

SEPTEMBER 28, 2023

**IN THE MATTER OF AN APPLICATION BY JOSEPH GATHOGA
WAIREGI T/A GATHOGA WAIREGI & CO. ADVOCATES FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW (MANDAMUS)**

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT SECTION 2(4)

AND

**IN THE MATTER OF ORDERS 22, 29 AND 53(1)
OF THE CIVIL PROCEDURE RULES CAP 21**

AND

**IN THE MATTER OF EXECUTION OF A DECREE OF KSH. 303,160/
=ANDIN THE MATTER OF THE PENAL CODE, CAP 63, LAWS OF KENYA**

AND

**IN THE MATTER OF ARTICLES 1(1), (2), 2(1), 10(1) B, 20(1),
27(1), 28, 73, 156 AND 165 OF THE CONSTITUTION OF KENYA**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY SECRETARY KIAMBU COUNTY 1ST RESPONDENT

THE CHIEF FINANCE OFFICER KIAMBU COUNTY 2ND RESPONDENT

AND

**JOSEPH GATHOGA WAIREGI T/A GATHOGA WAIREGI & CO.
ADVOCATES EXPARTE APPLICANT**



JUDGMENT

1. The ex-parte applicant filed the Chamber Summons dated 8th March 2023 seeking the following orders:
 - a. An order of mandamus to issue against the Respondents herein namely the County Secretary and the Chief Officer Kiambu County Government to compel them to proceed and pay out the decretal sum of Kshs 219,000/= with interest w.e.f. 15th December 2021 together with costs at Kshs 53,500/= being legal fees in Thika CM's Court Case No 589 of 2021 whose decree was issued on 16th February 2021 and it continues to attract interest at court rates.
 - b. That the court be pleased to set a timeline and/or duration within which the Respondents herein will settle the said decretal sum, costs and interest accruing until the date of payment in full.
 - c. That the Applicant be at liberty to apply to this court the necessary reliefs and/or orders that the Honourable Court may deem fit and just to grant in the circumstances.
 - d. Costs of this application be granted.
2. The application is anchored on the grounds as set on its face, the statutory statement and the verifying affidavit sworn by Joseph Gathoga Wairegi on 8th March 2023. The ex-parte applicant contends that he was instructed to represent Kiambu County Government in Thika CMCC No 216 of 2014. That the legal fee was agreed at Kshs 519,000/= out of which some Kshs 300,000/= was paid and the balance of Kshs 219,000/= was to be paid upon conclusion of the case.
3. The ex-parte applicant further contends that after the case was concluded and even upon demand the balance was never paid prompting the filing of a claim in Thika CMCC No 589 of 2021 where an interlocutory judgment was entered. Even then, and despite the decree being served and reminders issued, the Respondents have failed to honour the decree, hence the commencement of the instant proceedings.
4. The Chamber Summons was served upon the Respondents who did not file any response and when the same came up for hearing, and despite being served with notice the Respondents failed to appear.
5. Ms. Waithira Mwangi, counsel for the applicant urged the court to grant the orders sought as the amount claimed remained unpaid to date. That the Respondents had offered no reason why they had failed to pay. Counsel further urged the court to set a timeline within which the decretal amount should be paid.

Analysis and determination

6. Having taken into consideration the application and the submissions by the applicant, the issue for determination is whether this court ought to issue the Judicial Review remedy for *mandamus* and compel the Respondents to pay the decretal amount.



7. Mandamus was defined in the case of Republic v Principal Secretary, Ministry of Internal Security & another - ex parte Schon Noorani & another [2018] eKLR thus:

“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.”

8. The *ex parte* applicant has demonstrated to this court that it obtained a judgment in Thika CMCC No 589 of 2021 against the Respondents, and proceeded to obtain a decree which was served upon the Respondents who have failed to honour the same.

9. A remedy of mandamus is issued where an applicant has no other available remedy. In the instant case the *ex parte* applicant obtained a decree against the respondent, a government body and thus the only remedy available in execution of the decree is to file a judicial review remedy for mandamus. The *ex parte* applicant has no other remedy to pursue in the execution of the decree.

10. This court has a duty to protect a successful litigant and ensure that their rights to enjoy the fruits of the judgment are not thwarted. This is a case where an order of mandamus can issue.

11. In the instant case, the *ex parte* applicant has moved this court to compel the satisfaction of a decree in its favour by a competent court of law. Further, the Respondents have not given any satisfactory reason as to why the decree has not been fulfilled over two years after it was granted.

12. In the premises, the court finds that the *ex parte* applicant’s Chamber Summons dated 29th April 2021 is merited. I accordingly grant the following orders:

- i. An order of *mandamus* to compel the County Secretary and the Chief Finance Officer, County Government of Kiambu to pay the *ex parte* applicant a sum of Kshs 219,000/= with interest w.e.f. 15th December 2021 together with cost at Kshs 53,500/= being legal fees in Thika CMCC No 1589 of 2021 awarded to the *ex parte* applicant together with interest thereon at court rates from 16th February 2022 until payment in full.
- ii. The *ex parte* applicant shall have the costs of the application.

Orders accordingly.

JUDGMENT delivered virtually, dated and signed at Kiambu This 28th day of September 2023.

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P.M. MULWA

JUDGE

In the presence of:

Duale – court assistant

N/A - for Ex-parte applicant – counsel had notice

N/A - for Respondents

