



**Republic v County Government of Uasin Gishu & 2 others;
Abbey Resort (Exparte Applicant) (Judicial Review Application
17 of 2021) [2023] KEHC 22716 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW APPLICATION 17 OF 2021
HM NYAGA, J
SEPTEMBER 27, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF UASIN GISHU 1ST RESPONDENT

COUNTY SECRETARY OF UASIN GISHU 2ND RESPONDENT

**COUNTY EXECUTIVE COUNCIL MEMBER FOR FINANCE AND
ECONOMIC PLANNING COUNTY GOVERNMENT OF UASIN
GISHU 3RD RESPONDENT**

AND

ABBEY RESORT EXPARTE APPLICANT

RULING

1. Abbey Resort, the ex parte Applicant herein, has moved this Court in an application brought by way of an Amended Notice of Motion application dated 5th May, 2022, wherein it is seeking the following orders: -
 1. Spent
 2. An Order of Mandamus compelling the Respondents to pay the Applicant the decretal sum of Ksh. 483,040/= and costs of the suit amounting to Ksh. 83,230/= in satisfaction of the Judgement of the Chief Magistrate at Nakuru in Civil Suit No.737 of 2011.
 3. That the costs of the leave stage application and substantive motion be provided for.



2. The Application is predicated on grounds on its face and supported by an affidavit of Boniface O. On'galo, the Manager of the Applicant, sworn on 5th May, 2022.
3. It is the ex parte Applicant's case that it is the Decree Holder as against the 1st -3rd Respondents in relation to Judgement of the Chief Magistrate at Nakuru in Civil Suit No.737 of 2011(hereinafter referred as the former suit) that was delivered by Hon. P.M.B. Morara, Principal Magistrate on the 24th April,2014.
4. It was averred that in the above judgement the 1st to 3rd respondents were ordered to pay it Ksh.483,040/= being the decretal amount and Ksh.83,230/= being the costs of the suit and interest at court rates to run from the date of judgement until payment in full.
5. The ex parte Applicant deposed that it requested for a certificate of order against the 1st to 3rd respondents pursuant to Order 29(3) of the Civil Procedure Rules, 2010 and Section 21 of the Government Proceedings Act and the decree in relation to the former suit was issued by the court on 16th February, 2016 and subsequently the certificate of costs was issued on the 1st March, 2016.
6. It was the ex parte Applicant averment that vide a letter dated 7th May, 2021, the decree and the certificate of costs were forwarded to the Respondents' offices for compliance but the same has not been fulfilled and that on 6th May, 2021 the Honourable Court issued the Applicant's company with the order to issue Certificate of order against the Government under Section 21 of the Government Proceedings Act.
7. It was averred that despite the decree having been served upon the respondents, they have to date failed to pay the decretal sum of Kshs. 483,040/= and the costs amounting to Kshs. 83,230/= as awarded by the court.
8. It was the ex parte Applicant's deposition that the former suit is an old case and the respondents look adamant in delaying this matter hence it is of essence that this Honourable Court comes to its aid and compel the Respondents to pay the decretal sum and costs awarded.
9. The Application is unopposed.
10. The Applicant's filed his submissions on 10th of May, 2023. On whether the Applicant is entitled to an order of Mandamus compelling the Respondents to pay it the decretal sum and costs of the suit, the ex parte applicant submitted that a successful litigant is entitled to fruits of their judgement and they ought not to pursue long and tedious routes in a bid to get what is rightfully theirs.
11. In support of this position reliance was placed on the case of Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eKLR where the court held inter alia that in ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day.
12. The ex parte applicant also referred to the case of Shah vs. Attorney General (No. 3) Kampala HCMC No. 31 of 1969 [1970] EA 543 cited with approval in Republic vs Attorney General & another Ex parte Jackson Musyoka Munyalo [2015] eKLR, it was held that:

“Mandamus is essentially English in its origin and development and it is therefore logical that the court should look for an English definition. Mandamus is a prerogative order issued in certain cases to compel the performance of a duty”



13. Also cited was the case of *Republic vs Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another* [2018] eKLR where the court referred to the case of in Apotex Inc. vs. Canada (Attorney General) 1993 CAN LII 3004 (F.C.A), that discussed the factors to be considered before the writ of mandamus is issued.
14. The applicant submitted that it has satisfied all the condition precedent and that there is no other way to execute against the government other than compelling them to perform their public duty. To buttress this fact, reliance was placed on the case of *Republic vs Attorney General & another Exparte James Alfred Koroso* [2013] eKLR.
15. On costs, the ex parte applicant prayed that Respondents should be condemned to pay costs to it. To bolster its submissions, it referred to Judicial Hints on Civil Procedure, 2nd Edition (Nairobi) Law Africa 2011 at page 101 where Justice Kuloba stated that the law of costs as it is understood by courts in Kenya, is that where a plaintiff comes to enforce a legal right and there has been no misconduct on his part no omission or neglect and no vexatious or oppressive conduct is attributed to him, which would induce the court to deprive him of his costs –the court has no discretion and cannot take away the plaintiff's right to costs.

Analysis & Determination

16. The only issue that arises for determination is whether the ex parte Applicant is entitled to the reliefs sought.
17. The Court of Appeal in *Republic vs Kenya National Examinations Council ex parte Gathenji and 9 Others*, [1997] eKLR on the nature of the remedy of mandamus held 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.”

At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

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....”



18. The requirements for an order of mandamus to issue were explained by Mativo J. in *Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* (supra) as follows:

“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)*, [23] and, was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*. [24] 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:
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand, unless there was outright refusal; and
 - iii. An express refusal, or an implied refusal through unreasonable delay;
 - iv. No other adequate remedy is available to the Applicants;
 - v. The Order sought must be of some practical value or effect;
 - vi. There is no equitable bar to the relief sought;
 - vii. On a balance of convenience, mandamus should lie.”

19. Section 21 of the *Government Proceedings Act* in this regard provides as follows as regards the requirements to be met in the enforcement of orders as against Government organs in civil proceedings:

“

“(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.”

20. Execution proceedings against a government or public authority under the [Government Proceedings Act](#) can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body. An order of mandamus is normally issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed

21. This was also the holding in [Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security](#) (2012) where Githua J. held as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the [Government Proceedings Act](#). 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.”

22. in the instant case the judgement was entered in favour of the exparte applicant in Nakuru Civil Suit No.737 of 2011: Abbey Resort Limited vs County Government of Uasin Gishu on 23rd May,2018 as follows: -Principal Amount Ksh. 176,100/=Interest at 14% per annum from 23rd May to 12th June,2018 Ksh. 152,033/=*Decretal Amount – Ksh. 328,133/=**
23. The accessed costs as per the attached certificate of costs dated 12th June, 2018 is Ksh. 83,230/=.
24. The Ex Parte Applicant also annexed letter dated 7th May,2021 addressed to the Respondent (County Government of Eldoret) demanding for total payment of Ksh. 483,040/=. On 18th September,2023, the ex parte Applicant told this court that part of the decretal sum was paid leaving a balance of Ksh. 155,805/=.
25. The Ex parte Applicant seeks orders for that sum. In the premises I find the ex parte plea for payment of the above outstanding balance merited and I hereby issue;
 - a. An order of mandamus to compel the Respondents to pay the exparte Applicants the sum of Kshs 155,805=, being the outstanding balance of decretal sum,
 - b. Costs and interest awarded to the ex parte Applicant in Nakuru Civil Suit No. 737 of 2011.
 - c. Costs of this application.
26. Orders Accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS DAY OF 27TH DAY OF SEPTEMBER, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Mr. Mwangi for Applicant

N/A for respondent

