



**Republic v Wajir County Government & 3 others; Wajir Ark Limited (Exparte Applicant)  
(Judicial Review 6 of 2022) [2023] KEHC 27356 (KLR) (22 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27356 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW 6 OF 2022  
JN ONYIEGO, J  
DECEMBER 22, 2023**

**IN THE MATTER OF ENFORCEMENT OF A JUDGMENT IN CIVIL CASE NO. E003 OF  
2020(GALEYR TRADING COMPANY LIMITED V COUNTY GOVERNMENT OF WAJIR**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE WAJIR COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY SECRETARY WAJIR COUNTY GOVERNMENT .... 2<sup>ND</sup>  
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE 3<sup>RD</sup> RESPONDENT**

**CHIEF OFFICER FINANCE & ECONOMIC PLANNING WAJIR COUNTY  
GOVERNMENT ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**WAJIR ARK LIMITED ..... EXPARTE APPLICANT**

**RULING**

1. The ex parte applicant herein, through the firm of Kinaro Advocates instituted these judicial review proceedings by way of a notice of motion dated 07.06.2022 seeking judicial review orders of mandamus compelling the respondents to implement the judgment awarded in Wajir Magistrate’s Court Civil Suit No. E003 of 2020 where the trial court ordered that the 1<sup>st</sup> respondent pay Kes. 9,992,500/- being the decretal amount awarded in a judgment entered on 06.08.2021. The applicant also sought for the costs and interest of the application to be borne by the respondent.



2. The application is founded on the grounds set out in the statutory statement of facts dated 05.04.2022 and further amplified in the verifying affidavit sworn on 15.04.2022 by Ahmed Mohamed, the managing director of the ex-parte applicant.
3. In a nutshell, the applicant's case is to the effect that he sued the 1<sup>st</sup> respondent in Wajir Ark Limited v County Government of Wajir in Civil Suit No. E003 of 2020 for a liquidated claim which was heard and judgment entered in its favour for a total sum of Kes. 9,992,500/- inclusive of the principal sum, interest and costs as per the certificate of order against the County Government. That the respondents paid the principal amount but defaulted in interest on the principal amount and costs of the suit as awarded by the trial court.
4. That on 17.01.2022, the applicant's advocates on record served the respondents a letter dated 16.11.2021 together with a copy of the judgment, certificate of costs, decree and certificate of order against the County Government of Wajir requesting for payment of the interest on the principal amount and costs of the suit as decreed by the trial court.
5. In response, the respondents represented by the firm of Garane & Somane Advocates filed an affidavit sworn on 10.05.2023 by Naema Somo, the County Attorney of the 1<sup>st</sup> respondent deponing that in the decree issued on 26.08.2021, the interest rate is provided as 12% p.a. from 26.03.2019 to 27.09.2021 and the total amount of costs payable is provided as Kes. 866,550/- while in the certificate of order issued on 25.10.2021, the interest rate is captured as 12% p.a. payable from 26.03.2019 until the date of payment contrary to the judgment and the decree itself. That the certificate order against the 1<sup>st</sup> respondent is therefore condemning it to pay interest for a longer period that is not provided for in the judgment and the decree dated 25.10.2021.
6. Further, it was urged that the applicant did not follow the laid down rules and procedures in obtaining the certificate of costs and certificate of order against the 1<sup>st</sup> respondent. That the 1<sup>st</sup> respondent was not served with any bill of costs or written request, a statement of costs and the supporting documents as required before the applicant's bill could be taxed and certificate of costs issued. It was deponed that the applicant lodged its party to party bill of costs without giving an opportunity to the respondent to respond to the same. That the amount demanded by the applicant is exaggerated and untenable.
7. It was urged that without prejudice, the applicant had equally filed an application of similar nature before the magistrate's court seeking the chief finance officer to be committed to jail for non-payment of Kes. 5,063,405 as the amount owed to the applicant. That there was no doubt that the applicant was forum shopping to get favourable orders by filing applications seeking similar orders. This court was therefore urged that should the orders sought herein be issued, then the same shall highly prejudice the respondents. That the said application was devoid of merit and as such, ought to be dismissed with costs.
8. The court having directed that the application be canvassed by way of written submissions, parties complied by filing the same.
9. The applicant in its submissions dated 14.07.2023 submitted that pursuant to the judgment entered on 06.08.2021, the applicant was awarded Kes. 9,992,500/- being the principal amount and the costs of the suit with interest from 26.03.2019 at the rate of 12 p.a. That the defendant/1<sup>st</sup> respondent paid an amount of Kes. 9,992,500 but failed to pay interest and costs as awarded by the trial court. It was stated that thereafter, the applicant's attempt to persuade the respondent to pay the interest on the principal amount and costs of the suit has been impossible. That the same informs the basis of this application to compel the 1<sup>st</sup> respondent to honour its dues. Reliance was placed on the case of *Republic*



*v County Government of Kiambu & 2 others ex parte Simon Ndung'u Mungai & Another* [2022] eKLR where it was held that:

“whereas the execution proceedings as are known to law are not available against the government, the accounting officer for the government department concerned is nevertheless under a statutory duty to satisfy a judgment made by the court against that department as required by section 21(3) of the *Government Proceedings Act*.”

10. The applicant submitted that it duly obtained a decree on 07.12.2021 together with a certificate of order and certificate for order for costs against the 1<sup>st</sup> respondent. That the same were further served on 17.01.2022 upon the respondents. It was urged that on 17.01.2022, the applicant’s advocates served the respondents a letter dated 15.01.2021 requesting for payment of the costs of the suit and the interests amount owed but there was no response.
11. On costs, it was submitted that costs follow the event and are at the discretion of the court. This court was therefore urged to award the same.
12. The respondents on the other hand submitted that the applicant was undeserving of the prayers sought as the certificate of costs was obtained in contravention of Order 21 Rule 9A. That the respondents were not served with the statement of costs. It was urged that the certificate of Order condemned the 1<sup>st</sup> respondent to pay interest for a longer period that is not provided for in the judgment and the decree issued on 26.08.2021 which provided for interest rate as 12 p.a. from 26.03.2019 to 27.09.2021 and that the total amount owed being Kes. 866,550/-
13. That the 1<sup>st</sup> respondent was not served with any bill of costs or written request, statement of costs and supporting documents as required before the applicant’s bill of taxed and certificate of costs issued. That the amount demanded by the applicant is exaggerated and way far the acknowledged amount allegedly owed. The respondents argued that the applicant did not follow the procedure set out in Section 21 of the *Government Proceedings Act* and Order 21 Rule 9A of the *Civil Procedure Rules* and therefore, the court cannot enforce the same. This court was therefore urged to dismiss the application herein with costs.
14. I have considered the application before me and the annexures thereto. It is clear that the applicant seeks the orders of mandamus against the respondents herein. It is trite that an order of mandamus is always issued so as to 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. (See *Republic v Kenya National Examinations Council ex parte Gathenji and 9 Others*, [1997] eKLR).
15. It is not in dispute that judgment was entered in favour of the applicant herein against the 1<sup>st</sup> respondent in *Wajir Ark Limited v County Government of Wajir* in Civil Suit No. E003 of 2020 which matter was concluded in his favour and a decree drawn as per the judgment, interest and costs as per the certificate of order against the government. That the respondents paid the principal amount but not the interest on the principal amount and cost of the suit as awarded by the trial court. In reference to the above, the issue which this court ought to determine is whether the respondents are under a public duty and obligation to satisfy the said decree, and if so, whether the applicant is entitled to the reliefs sought.
16. The 1<sup>st</sup> respondent, Wajir County Government, is one of the Counties established by Article 6 of *the Constitution* and the First Schedule to *the Constitution*, and is constitutionally recognized as a distinct



level of government by the said Article. (See [Republic v Attorney General & Another ex parte Stephen Wanyee Roki](#) [2016] eKLR).

17. Section 44 of the [County Government Act of 2012](#) establishes the office of the County Secretary who is; secretary to the County Executive Committee; answerable for the operations of the County Executive and being head of the county public service. Section 103 of the [Public Finance Management Act](#) of 2012 also establishes the County Treasury comprising of the County Executive member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under the said section, the County Executive Committee Member for Finance is the head of Treasury hence responsible for finance matters in the County.
18. It is clear therefore that the respondents have a statutory and public duty to satisfy the decree issued by a competent court in favour of the applicant. Section 21(5) of the [Government Proceedings Act](#) Cap. 40 Laws of Kenya recognises the application of Section 21 to 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.
19. The legal position is that, where decrees for the payment of money or costs has been issued against the Government in favour of a litigant, and the same remains unsatisfied, it follows that the same can only be enforced by way of an order of mandamus compelling the accounting officer to pay the decretal amount. [See [Republic v Attorney General & another Exparte James Alfred Koroso](#) [2013] eKLR].
20. The only requirement which serves as a condition precedent to the satisfaction or enforcement of such decree for money issued against the Government is found in Section 21(1) and (2) of the [Government Proceedings Act](#). Under the said provisions, the applicant ought to obtain a certificate of order from the court which issued the decree. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment or where 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. Once this requirement has been met and/ or complied with and the decree is not satisfied, the decree holder can then proceed to seek orders of mandamus.
21. I have perused the record herein and I note that indeed the applicant obtained a certificate of orders against the government which was issued on 25.10.2021. The applicant further obtained certificate for taxation which was also issued on 25.10.2021. The applicant submitted that on 17.01.2022, his advocate on record served the respondents a letter dated 16.11.2021 together with the certificates requesting for payment of the costs of the suit and the interests amount owed but there was no response. That the applicant's advocate on record served the respondents a letter dated 16.11.2021 which letter had a copy of the decree and certificate of order and costs against the County Government of Wajir requesting for payment of the interest on the principal amount and cost of the suit. The said letter bears the stamps acknowledging receipt by the 1<sup>st</sup> respondent (whose 2<sup>nd</sup> and 3<sup>rd</sup> respondents are its accounting officers).
22. As such, the applicant complied with the procedure under Section 21 of the [Government Proceedings Act](#). However, the respondents have, without any lawful justification and/or excuse failed to fulfill its aforesaid duty to the detriment of the applicant despite the fact that no appeal was lodged by the Government against the judgment entered in its favour in the subordinate court nor was any reference challenging the award of costs.
23. The respondents having paid the principal sum, the amount due and payable should be interest on the principal sum as per the judgment order plus costs together with interest as per the certificate of taxation at the rate of interest directed by the trial court in the judgement.



24. In view of the foregoing, it is my finding that the applicant has demonstrated that it is deserving of the relief sought in the notice of motion dated 07.06.2022 and accordingly the application is allowed in terms of the directions made under par.22 of this ruling. The actual interest to be properly calculated in terms of interest stated in the judgement. Regarding costs, each party shall bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF DECEMBER 2023**

**JN ONYIEGO**

**JUDGE**

