



**Republic v Clerk, Office of the Speaker Kajiado County Assembly &
another; Gichuru (Exparte Applicant) (Judicial Review E006 of 2021)
[2023] KEHC 27286 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27286 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
JUDICIAL REVIEW E006 OF 2021
SN MUTUKU, J
DECEMBER 19, 2023

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS
OF MANDAMUS**

AND

**IN THE MATTER OF THE LAW REFORM ACT CHAPTER 26 OF THE LAWS
OF KENYA**

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT

BETWEEN

BETWEEN

REPUBLIC APPLICANT

AND

**CLERK, OFFICE OF THE SPEAKER KAJIADO COUNTY
ASSEMBLY 1ST RESPONDENT**

**DIRECTOR OF ACCOUNTS KAJIADO COUNTY ASSEMBLY 2ND
RESPONDENT**

AND

CHRISTOPHER CHEGE GICHURU EXPARTE APPLICANT



JUDGMENT

1. By an application dated 16th November 2021, the *ex parte* Applicant has approached this court seeking the judicial review order of Mandamus against the Respondents as follows:
 - i. That an order of *mandamus* do issue against the Respondents jointly and severally compelling them to pay the *ex parte* applicant the judgment debt of Kshs 2,626,198 together with interest at the rate of 12% per annum from 13th July 2021 until payment in full which judgment debt arises from Kajiado CMCC No 2 of 2019 Christopher Chege Gichuru T/A Sypruse Engineering Company v The County Government of Kajiado & 2 others.
 - ii. That the Respondents be condemned to bear the costs of these proceedings.
2. The application is supported by grounds found on the face of it and in the supporting affidavit by the *ex parte* application sworn on 16th November 2021. It is the case for the *ex parte* applicant that he was awarded tender No 1348512 by the County Government of Kajiado in May 2018 to provide overhaul, repair and maintenance services of the County Assembly toilets at the sum of Kshs 1,786,922; that he diligently provided the said services to completion upon which he was issued with completion certificates; that the County Government failed/refused and or declined to settle the entire sum due; that the *ex parte* applicant filed Kajiado CMCC No 2 of 2019 aimed at recovering the sum due; that the Respondents entered appearance and filed a defence to that suit.
3. The *ex parte* applicant has stated that the case in the lower court proceeded to conclusion and judgment was entered in favour of the *ex parte* applicant for the sum of Kshs 1,786,922; that a decree was extracted for the sum of Kshs 2,626,198 inclusive of costs and interest and upon demand for payment the Respondents have failed to pay hence this application.
4. The *ex parte* applicant has attached all the relevant documents to support his case. I have seen the Local Service Order in respect of the tender awarded to the *ex parte* applicant; Certificate of Practical Completion, the Plaint filed in the lower court, the Memorandum of Appearance, Statement of Defence, the Judgment and the Decree.
5. The Respondents were served with this application. On 7th July 2022, both parties were represented in court. Mr. Mukeli holding brief for Mr. Sankale for the Respondents sought time to file response to the application and this court granted him 14 days to do so. On 17th April 2023 the Respondents had not filed any response. Mr. Mukeli who appeared on behalf of Mr. Sankale told the court that he had been instructed to seek out of court settlement which proposal was agreeable. This court allowed parties time to pursue out of court settlement.
6. On 25th July 2023 when the matter came for mention, Mr. Mukeli informed the court that they had not concluded settlement and that he required more time to finalize. The court allowed parties more time and fixed the matter for mention to confirm settlement on 27th November 2023. On that day, no one attended court on behalf of the Respondents although that date had been taken in their presence. Mr. Mandela, the *ex parte* applicant told the court that no settlement had been reached. This court allowed him to make brief submissions on the matter and reserved judgment.
7. Mandamus is employed to enforce the performance of a public duty which is imperative, not optional or discretionary, with the authority concerned. Mandamus may be issued to enforce mandatory duty which may not necessarily be a statutory duty, but which has “a public element” which may take



any form (see *Republic v The Commissioner of Lands & another Ex-Parte Kitbinji Murugu M'agere*, Nairobi High Court Misc. Application No 395 of 2012).

8. The Court in *Republic v Kenya National Examinations Council ex parte Gathenji & others*, (1997) eKLR had the following to say on the applicable principles for an order of *mandamus* to issue:

“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....”

9. I have considered this matter, and I am satisfied that this application is merited. The *ex parte* applicant has satisfied this court that the order of Mandamus that he is seeking is the only available order in these circumstances. The documents he has attached speak for themselves and there being no defence to the contrary this court has not option but to agree with the *ex parte* applicant and grant the order he is seeking.
10. Consequently, I allow the Notice of Motion dated 16th November 2021 and issue an order of *mandamus* against the Respondents, jointly and severally, compelling them to pay the *ex parte* applicant Kshs 2,626,198 together with interest at 12% per annum calculated from 13th July 2021 until payment in full. I also award costs of this motion to the *ex parte* applicant as against the Respondents jointly and severally.
11. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 19TH DECEMBER 2023.

S. N. MUTUKU

JUDGE

