



**Republic v Attorney General & another; Githua (Exparte) (Judicial Review Application E151 of 2021) [2022] KEHC 15507 (KLR) (Judicial Review) (21 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15507 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E151 OF 2021  
AK NDUNG’U, J  
NOVEMBER 21, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND COORDINATION  
OF NATIONAL GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GODFREY NGANGA GITHUA ..... EXPARTE**

**JUDGMENT**

1. By way of a Notice of Motion dated 7<sup>th</sup> November 2021, Godfrey Nganga Githua (the applicant) sought orders:
  1. Mandamus directed to the Respondents, namely the Hon. The Attorney General and the Principal Secretary to the Ministry of Interior and Coordination of National Government, to pay to the ex parte applicant the decretal sum in Nairobi CMCC no. 6783 of 2014 (Godfrey Nganga Githua v. The Hon. Attorney General) of Kshs. 700,000.00 together with certified costs of Kshs. 150,110.00 plus interest thereon at 12% per annum from 1<sup>st</sup> March, 2017 until payment is full.
  2. Costs to be borne by the Respondents.
2. The application is premised on grounds listed on the face thereof, namely:



1. On or about the 30<sup>th</sup> of October 2010 or thereabouts, the ex-parte Applicant was arrested on the basis of a complaint(s) lodged at the Kabete Police Station.
2. Consequently, and as a direct result of the malicious complaint(s) and without conducting any investigations, the ex-parte Applicant was falsely imprisoned for about two (2) days and subsequently maliciously prosecuted (through Kibera Criminal Case Ng. 478 of 2010: Republic v. Ephraim Irungu 7 others) for the alleged offences of:
  - a. Robbery with violence contrary to the provisions of section 296(2) of the Penal Code;
  - b. Arson contrary to the provisions of section 332 of the Penal Code; and
  - c. Malicious damage to property contrary to the provisions of section 339(1) of the Penal Code (Two counts).
3. The Respondents failed to present any reasonable and satisfactory evidence linking the ex-parte Applicant to the offences alleged against him and as a result, the ex-parte Applicant was by a judgment delivered on the 13<sup>th</sup> of June 2014 in Kibera Criminal Case No. 4782 of 2010 (Republic vs Ephraim Irungu & 7 others) by the Hon. Mrs. Kwena (SRMJ, acquitted of all charges that he faced and ordered to be set free unless otherwise lawfully held.
4. As a result of the wrongful arrest, detention and malicious prosecution, the ex-parte Applicant suffered loss and damage, for which he held the Respondents directly or vicariously liable for the actions of the omissions and commissions of the Police and Prisons Departments which bore direct responsibility for the wrongful arrest, false imprisonment and malicious prosecution of the ex-parte Applicant.
5. The ex-parte Applicant retained legal counsel to represent him in the Criminal Proceedings aforesaid.
6. The actions of the Respondents either directly or through its servants and/or officers in the arrest, confinement, arraignment and trial of the ex-parte Applicant occasioned embarrassment to the ex-parte Applicant and his family, mental anguish, loss of reputation and credibility amongst his friends, family and other right-thinking. members of society and dented the ex-parte Applicants' chances of finding another job due to the criminal charges.
7. From the period 30<sup>th</sup> October 2010 to 13<sup>th</sup> June 2014, a period of almost four (4) years, the ex-parte Applicant was held in remand having been unable to raise the bail terms set by the court.
8. The actions of the Respondents resulted in the ex-parte Applicant suffering loss and damage for which the ex-parte Applicant held the Respondents jointly and severally liable for general and special damages.
9. Consequently, the ex-parte Applicant filed suit at the Milimani Commercial Courts, through Nairobi CMCC No. 6783 of 2014 (Godfry Nganga Githua v. The Attorney General). The Attorney General was sued in a representative capacity on behalf of the Kenya Police, and their parent Ministry, the Ministry of Interior and Coordination of National Government.
10. The case was fully heard, and judgment was subsequently entered in favour of the ex-parte Applicant for a sum of Kshs. 700,000.00 plus interest and costs. This judgment was entered by the Hon. E.K. Usui (SPM), on the 1<sup>st</sup> of March 2017.
11. There is no appeal or application to set aside or review the judgment referred to above.



12. That since the date of judgment, and despite numerous reminders to the office of the Attorney General, the 2<sup>nd</sup> Respondent has failed, refused and or neglected to settle the Decretal amount and the amount due as costs.
  13. The Principal Secretary to the Ministry of Interior and Coordination of National Government, as accounting officer of the Ministry, is under a public and legal duty to make the said payment and he has wrongfully refused to do so.
  14. The failure by the 2<sup>nd</sup> Respondent to satisfy a lawful decree is an illegality and the continued failure and refusal to settle the decree perpetuates an illegality. Further, the Principal Secretary to the Ministry of Interior and Coordination of National Government has wrongfully abdicated or abandoned his duties and powers in withholding the exercise of his aforesaid public duty and in not carrying out his aforesaid public duty and making the said payment to the ex-parte Applicant.
  15. The ex-parte Applicant has a legitimate expectation that upon judgment being delivered in his favour, and the Government of Kenya being law abiding, that the Ministry of Interior and Coordination of National Government would immediately satisfy the decree without undue and unreasonable delay.
  16. The Respondents have a constitutional duty to abide by the provision of Article 10 of *the constitution* and in particular, on national values and principles of governance, which they have failed to do by refusing, neglecting and or avoiding settling the decree issued in the ex-parte Applicant's favour.
  17. Due demand has been made despite which the 2<sup>nd</sup> Respondent has refused and continues to refuse to carry out his aforesaid public duty to make the said payment to the ex-parte Applicant
  18. No other remedy exists at law to compel the Principal Secretary to Ministry of Interior and Coordination of National Government to carry out his aforesaid public duty and mandate and no other remedy is available to compel or obtain payment of the aforesaid decretal sum.
  19. This application is made under the provisions of the Fair Administrative Actions Act, The Law Reform Act and the *Civil Procedure Act* and all other enabling provisions of the law.
  20. Any other or further grounds to be adduced at the hear
3. It is supported by the averment in the statutory statement dated 3<sup>rd</sup> November, 2021 and the affidavit of the applicant sworn on the same day.
  4. The gist of the application is that the applicant obtained judgment against the respondent for Ksh. 700,000 in Nairobi CMCC No.6783 of 2014 Godfrey Nganga Githua vs. the Attorney General.
  5. It is urged that despite demands and numerous reminders to the office of the Attorney General the 2<sup>nd</sup> Respondent has failed, refused and or neglected to settle the decretal amount and costs.
  6. The applicant maintains that no other remedy exists at law to compel the Principal Secretary, Ministry of Interior and Coordination of National Government to carry out the public duty to pay the sums aforesaid.
  7. No response was filed to the application. Mr. Kariuki instructed by the Attorney General appeared in court on behalf of the Respondents on the 25<sup>th</sup> May and on 29<sup>th</sup> September, 2022 wherein he stated that the ministry wished to settle the decretal sum.



8. I have considered the application before court. It is common ground that the applicant holds a valid decree from court.
9. As to oppose to execution against other categories of litigants, execution against the Government cannot be issued by way of attachment and sale of Government Property.
10. The applicant's only known remedy in law in execution against the Government is to seek an order of mandamus compelling the 2<sup>nd</sup> Respondent to perform the public duty bestowed on it, and that is to pay the decretal sum as ordered by court.
11. From the sentiments of counsel representing the Respondents, it is clear that the 2<sup>nd</sup> Respondent is aware of the decretal sum and therefore no issues of service arise.
12. In the premises, the Notice of Motion dated 7<sup>th</sup> November, 2021 is wholly successful. I allow it in terms of prayer 1. In view of the fact that the application was not opposed, I direct that each party bear its own costs.

**DATED, SIGNED AND DELIVERED THIS 21ST DAY OF NOVEMBER, 2022.**

.....

**A.K. NDUNG'U**

**JUDGE**

