



**Republic v County Secretary, County Government of Nyandarua & another;  
Framu Constructors Limited (Exparte) (Miscellaneous Civil Application  
E008 of 2022) [2022] KEHC 15521 (KLR) (18 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
MISCELLANEOUS CIVIL APPLICATION E008 OF 2022**

**CM KARIUKI, J**

**NOVEMBER 18, 2022**

**IN THE MATTER OF: AN APPLICATION BY FRAMU  
CONSTRUCTORS LIMITED FOR ORDERS MANDAMUS**

**AND**

**IN THE MATTER OF: ARTICLE 23 (3) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: SECTION 8 AND 9 OF THE LAW REFORM ACT**

**AND**

**IN THE MATTER OF: NYAHURURU CHIEF  
MAGISTRATES COURT CIVIL CASE NUMBER 106 OF 2020**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF NYANDARUA .... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, MINISTRY OF  
FINANCE & ECONOMIC DEVELOPMENT, COUNTY GOVERNMENT OF  
NYANDARUA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**FRAMU CONSTRUCTORS LIMITED ..... EXPARTE**



## RULING

1. The matter before court is an application by applicant herein brought through the notice of motion dated June 13, 2022, seeking the following orders: -
  - i. That an order of mandamus be issued compelling the County Secretary, County Government of Nyandarua, County Executive Committee Member Ministry of Finance & Economic Development, County Government of Nyandarua to pay the Applicant the judgement debt in Nyahururu CMCC No. 106 of 2020 for sum kshs. 5,164,287.12/- together with all accrued interest at the rate of 14% per annum from 13<sup>th</sup> January 2021 till payment in full
  - ii. That any other consequential orders and directions that this honourable court may deem fit to grant.
  - iii. That the costs of the application or leave and the substantive motion be borne by the Applicant herein.
2. The application is premised on the grounds set forth in the face of the application as follows: -
3. The applicant instituted Nyahururu CMCC No. 106 of 2020 against the County Government of Nyandarua for payment of kshs. 5,090,859.75 being the cost of construction of 50m<sup>3</sup> masonry tank at Kianugu Water Project in Geta Ward, cost of construction of drilling of production borehole at Heini in Githabia Ward and balance of cost of construction of bridge works at Gatimu Ward Equator-Suera Project bridge project.
4. On 8.9.2020 judgement was entered against the County Government of Nyandarua and on 13. 1.2021, a decree and certificate of costs was issued for kshs. 5,695,177. 52
5. The applicant filed an application for execution of the decree on 20.1.2021 and notice to show cause why execution should not issue was given on 21.1.2021.
6. The County Government of Nyandarua was served with a copy of the notice to show cause on 5.2.2021.
7. There is no justified cause for withholding the said amount from ex-parte applicant.
8. Consequently, the 1<sup>st</sup> and 2<sup>nd</sup> respondent opposed the application vide the replying affidavit sworn by Lawrence Gitau dated July 26, 2022.

### 9. Applicant's Submissions

10. The applicant submitted that under section 21 (4) of The *Government Proceedings Act*, he cannot execute the decree against the government hence the application for mandamus and further submits that the application has met the tests for granting the order sought as set out in the case of *Republic v Principal Secretary, Ministry of Internal Security & another ex-parte Schon Noorani & another* [2018] eKLR where the judge cited with approval the case of *Apotex Inc. vs Canada (Attorney General) and Drogan vs. Canada (Minister of Citizenship and Immigration)*
11. It was asserted that there is no other adequate remedy available to the applicant and that the order sought is of practical effect and there is no equitable bar to the relief sought.



12. Reliance was placed on *Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* [2012] eKLR.
13. In conclusion, the applicant stated that it has taken unreasonably too long for the applicant to enjoy the fruits of his judgement. Reliance was placed on *Republic v Town Clerk of Webuye County Council & another* [2014] eKLR.

#### **14. 1<sup>st</sup> and 2<sup>nd</sup> Respondent's Submissions**

15. The Respondents asserted that one Francis Kiboi Kariuki is yet to ascertain and confirm to his advocate that he has received the amount of kshs. 3,359,973. 75/- despite the same having been disbursed to him and proof of the same being supplied. They argued that it would be a tragedy and would amount to loss of public fund if the court compelled the respondents to yet again settle those amounts being claimed in the application despite the same having been paid except for kshs. 1,199,995.50 and kshs. 249,842/- as legal costs.
16. The court was asked to appreciate the process involved before the county receives funds from the national treasury and to also indulge and accommodate the respondent based on the material on record it ought to be given a chance and time to organize its finances to settle the owed sums.
17. Reliance was placed on the case of *Wachira Nderitu, Ngugi & Co. Advocates vs The Town Clerk, City Council of Nairobi* Miscellaneous Application No. 354 of 2012.

#### **18. Analysis and Determination**

19. I have considered the application and the affidavits in support thereof. I have also considered the grounds of opposition filed to counter the said application. I have equally considered the submissions by each of the parties and the applicable law.
20. The circumstances under which judicial review order of mandamus are issued were discussed in the case *Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 others* Civil Appeal No 234 of 1996, where the Court of Appeal cited with approval, *Halsbury's Law of England*, 4<sup>th</sup> Edition. Vol. 7 p. 111 para 89 thus:

“The order of mandamus is of most extensive remedial nature and is in form, of 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.”...These principles mean that an order of mandamus compels 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.”

21. This position was reiterated in the English case of *R vs Dudsheath, ex parte, Meredith* [1950] 2 ALL E.R. 741 where it was stated as follows:

“It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects



the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it."

22. It is settled law that before an order of mandamus is issued, an applicant must abide by the procedure in section 21 of Government Proceedings Act and order 29 Civil Procedure Rules.
23. In this case, the Ex-parte Applicant has moved this Court to compel the Respondents to satisfy a judgment of this court. On 8.9.2020 judgement was entered against the County Government of Nyandarua and on 13. 1.2021, a decree and certificate of costs was issued for Kshs. 5,695,177. 52. On the other hand, the Respondents do not dispute the same however they contended that they have made part payment which remains unacknowledged by the ex-parte Applicant.
24. In my view, The respondents have not given sufficient reason why the Judgment has not been satisfied almost two years down the line. As has been held in numerous decisions, settlement of decretal sums by the government and its agencies does not necessarily depend on the availability of funds, or budgetary allocations.
25. The Court in the case of Republic v The Attorney General & Another ex parte James Alfred Koroso (2013) eKLR held as follows;

“...in the present case the ex parte Applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done, he will forever be left baby-sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers.”
26. In the instant case the ex-parte applicant has demonstrated that they have a judgment against the County Government of Nyandarua which the respondents have failed to satisfy in full and it is only fair that the respondents be compelled to perform their duty and pay the applicant any outstanding amount. It is my conclusion that the Applicant has established that there has been an unreasonable delay on the respondents’ part in honouring its obligation to make payment in full.
27. In view of my analysis above, I am satisfied that the applicant has made a case for the grant of an order of mandamus and I hereby grant the same in the following terms: -
  - a. That a writ of mandamus be issued compelling the County Secretary, County Government of Nyandarua, County Executive Committee Member Ministry of Finance & Economic Development, County Government of Nyandarua to pay the Applicant the outstanding amount(s) in relation to the judgement debt in Nyahururu CMCC No. 106 of 2020 together with all accrued interest at the rate of 14% per annum from January 13, 2021 till payment in full.
  - b. Any part payment made shall be discounted.
  - c. That the costs of the application/suit are granted to the Ex parte - applicant.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 18<sup>TH</sup> DAY OF NOVEMBER 2022.**



.....  
**CHARLES KARIUKI**  
**JUDGE**

