



**Republic v National Land Commission; Five Star Agencies Limited (Exparte Applicant)
(Environment & Land Case 445 of 2014) [2025] KEELC 4313 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4313 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 445 OF 2014**

OA ANGOTE, J

JUNE 9, 2025

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL LAND COMMISSION RESPONDENT

AND

FIVE STAR AGENCIES LIMITED EXPARTE APPLICANT

RULING

1. Before this court is a Notice of Motion application filed by the Ex Parte Applicant dated 3rd March 2025 pursuant to the *Law Reform Act* and Order 53 of the Civil Procedure Rules, in which the Applicant has sought for the following orders:
 - a. That this Honourable Court do issue an order of Mandamus directed to the Chairman, National Land Commission and the Chief Executive Officer, National Land Commission to pay to the Applicant/Judgement Creditor within such time as the court will specify the sum of Kshs. 909,023,500/= together with further interest from 3rd December 2024 until payment in full being the sum due and owing as compensation for the parcel of land comprised in title number L.R. 209/9727 (IR 37790) in Nairobi which the Respondent compulsorily acquired from the Applicant.
 - b. That in default of payment within the specified period, the Chairman, National Land Commission and the Chief Executive Officer, National Land Commission be summoned to attend Court for failure to comply with the orders issued herein and be cited for contempt of court and penalized appropriately.
 - c. That the costs of suit incidental to this application be provided for.



2. The application was supported by the affidavit sworn by Abdulsalam Shariffabduhahi, the Ex Parte Applicant's Managing Director. According to the deponent, the Ex Parte Applicant filed this suit seeking compensation from the Respondent for the compulsory acquisition of the Applicant's property L.R 209/9727 (I.R. 37790) situate in Nairobi.
3. The Ex parte Applicant's Director deposed that the suit was heard and judgment was entered in favour of the Applicant on 24th November 2014 for an amount of Kshs. 413,192,500/-, and that in a subsequent ruling, this court clarified that the decretal sum shall accrue interest from the date of judgment until payment in full.
4. The Applicant's Managing Director deposed that it prepared a draft of the Certificate of Order against the Government and forwarded the draft to the Respondent's Counsel as well as KENHA by a letter dated 9th December 2024; that they were requested to indicate approval of the draft with or without amendments and that the Respondent however declined to respond and the Applicant applied to the Court for approval and sealing of the order. The order was approved and sealed by the Court on 18th December 2024.
5. It was deposed that the Respondent's Chairman and the Chief Executive Officer were then served with the Certificate of Order against the Government by personal service and electronically on 10th January 2025; that service was acknowledged as evidence on the stamp impression upon the order and that a formal demand for payment was made by the Applicant's Counsel by a letter dated 13th January 2025, which letter was served upon the Chairman and Chief Executive Officer of the Respondent.
6. However, it was deposed, despite such service, the Respondent has not paid the compensation due and owing to the Applicant, even though the Applicant's land was compulsorily acquired by the Respondent in 2013.
7. The Respondent opposed the application through Grounds of Opposition dated 25th March 2025. These grounds are that:
 - i. The Applicant's application for judicial review is fatally defective and incompetent, the same having been improperly filed in the trial court.
 - ii. The application offends the provisions of Section 20(4) of the National Land Commission Act hence the orders cannot be issued against the Chairperson of the Respondent.
 - iii. The orders sought against the Chairperson the Respondent are also fatally defective.
 - iv. This application constitutes an abuse of court process and it is in the interest of justice that the application be dismissed with costs.
8. The Respondent also filed a Replying affidavit dated 25th March 2025 and sworn by Kabale Tache Arero, the Chief Executive Officer of the National Land Commission. Mrs Kabale Tache Arero deposed that the Respondent's role in compulsory acquisition is that of a conduit, overseeing the acquisition of public land and that the Respondent is only responsible for remitting funds issued to it by the acquiring entity to the persons whose land has been acquired.
9. The Respondent's CEO asserted that Legal Notice 283 of 2017 outlines the factors that the Respondent shall consider when assessing for compensation, including the market value of the land at the time of the acquisition, damage sustained by persons interested at the time of the commission's taking possession of the land by reason of severing the land from his/her other land, and reasonable expenses incidental to the relocation, among others.



10. Mrs. Kabale Tache Arero deponed that the Respondent complied with [Legal Notice No. 283 of 2017](#) and upon conducting its assessment, arrived at a sum of Kshs. 87,804,225 which would adequately compensate the Applicant and that it requisitioned for the said sum from the Kenya National Highways Authority (KENHA).
11. According to the Respondent's CEO, the Applicant thereafter instituted an appeal to challenge the award, and this Honourable Court then issued the Applicant an award of Kshs. 413,192,500 citing that the previous award was a gross undervalue of the suit property.
12. The deponent stated that after this court revised the award upwards, the Respondent made requests to KENHA to remit the decretal sum for payment to no avail and that it has never received funds from KENHA, hence it would be unfair to compel it to pay a colossal sum of Kshs. 909,023,500/- together with interest thereon from 3rd December 2024 until payment in full.
13. The Respondent's CEO averred that it will be unfair to jail and/or fine the Chairman and the Chief Executive Officer of the Respondent for non-payment of Kshs. 909,023,500, which money has never been received from KENHA and that Section 21 of the [Government Proceedings Act](#) provides that no person shall be individually held liable for payments owned by the Government, or any of its departments or its officers.
14. The Respondent's CEO deposed that under Section 20(4) of the [National Land Commission Act](#), under which the Chief Executive Officer is appointed as the Accounting Officer of the Respondent, any orders directed towards the CEO and the Chairperson are misplaced and misdirected as they are not in any way financially responsible and that the Respondent holds a special compensation account pursuant to Section 115(2) of the [Land Act](#) 2012 for purposes of holding monies in trust for other government entities.

Submissions

15. Counsel for the Applicant submitted that the Respondent is obligated by [the Constitution](#) and the [Land Act](#) to make prompt payment in full of the compensation. Counsel relied on Article 40(3) of [the Constitution](#) of Kenya.
16. The Applicant's counsel submitted that the Respondent's assertion that it has not received funds from the acquiring entity is legally untenable and is in contravention of Section 111 of the [Land Act](#), which prescribes that an acquiring authority shall deposit with the National Lands Commission the compensation funds in addition to survey fees, registration fees and any other costs before the acquisition is undertaken.
17. It was contended that the Respondent should not have compulsorily acquired the Applicant's parcel or land prior to funds of compensation being deposited with the Respondent.
18. Counsel relied on Section 115 of the [Land Act](#) on prompt payment of compensation and the case of *In the Matter of an Application by Salt Manufacturers for Orders of Mandamus* [2013] KEHC 6775 (KLR), where the court cited with approval the case of *Muciimi Mbaka & Co. Advocates vs Town Clerk, City Council of Nairobi* [2012] eKLR.
19. Counsel submitted that the Respondent is the constitutional agency charged with compulsory acquisition and compensation of private land and that as the amount was not paid, the Respondent had a statutory obligation to open a special account into which the Respondent was to pay interest on the amount awarded to the Applicant.



20. Counsel relied on Section 117 of the *Land Act* as well as the case of Republic vs Principal Secretary; Ministry of Agriculture, Livestock and Fisheries & Another; Nkari (Exparte Applicant) [2025] KEHC 3960 (KLR), in which the court cited with approval the case of Republic vs Attorney General ex parte James Alfred Koroso JR 44/2012.
21. Counsel submitted that as provided under Section 20(3) of the *National Land Commission Act*, the Respondent's Chief Executive Officer is the Secretary to the National Land Commission and under Section 20(4), she is also the Commission's accounting officer.
22. It was submitted that under Section 21(3) of the *Government Proceedings Act*, the accounting officer for the government department is mandated to pay to a claimant the amount due in satisfaction of a court order, pursuant to a certificate being issued to the government entity in the prescribed form.
23. Counsel referenced the following cases: Five Star Agencies Limited vs National Land Commission & 2 Others [2024] KECA 439 (KLR), Republic vs The National Land Commission; M'inoti (Exparte Applicant) [2024] KEELC 6355 (KLR) and Republic vs National Land Commission Ex Parte Sceneries Limited [2022] KEELC 928 (KLR).
24. Counsel for the Respondent submitted that this application is fatally defective and incompetent, as it was instituted in the trial court where the court already delivered its judgment. He contends that this application ought to have been filed in a miscellaneous application.
25. It was Counsel's submission that judicial review proceedings are special in nature, hence the reason they are instituted vide a miscellaneous application, and that the writ of mandamus can only be issued in a proper judicial review application.
26. Counsel relied on the case of R vs The Chairman Amagoro Land Disputes Tribunal & Jacinta Papa (Interested Party) ex parte Paul Mafwabi Wanyama, Chabari vs District Land and Adjudication Officer Meru South Maara District & 3 Others; Karimi (Interested Party) [2024] KEELC 1128 (KLR) and the case of Republic vs Cabinet Secretary, Ministry of Land & Physical Planning & 3 Others; Mugo (exparte Applicant); Kamumo & Another (Interested Parties) (Judicial Review Miscellaneous Application E008 of 2023) [2023] KEELC 19067 (KLR) (26 July 2023).
27. The Respondent, through its Counsel, submitted that the failure to adhere to the correct procedure in instituting a judicial review application is not merely a procedural technicality, as it is a mandatory requirement that must be followed for the application to be valid. Counsel relied on the Court of Appeal case of Ransa Company Ltd vs Manca Francesco & 2 Others [2015] KECA 139 (KLR).
28. In the alternative, Counsel submitted that the process of execution by government entities commences with a decree holder seeking a certificate of order and of costs, where necessary, within 21 days after the issuance of a judgment; that thereafter, the decree holder serves the certificates to the accounting officer of the designated entity for payment or execution of the decree and that if the order is not satisfied, then an applicant has the liberty to institute judicial review proceedings against the Respondent in order to compel the Respondent to pay.
29. The Respondent's advocate quoted the Court of Appeal decision in Five Star Agencies Limited & another vs National Land Commission & 2 Others [2024] KECA 439 (KLR), where it laid out the procedure set out in Section 21 of the *Government Proceedings Act*.
30. As to who is the relevant person to be compelled to pay the decretal sum, Counsel submitted that under Section 21 of the *Government Proceedings Act*, the Accounting Officer is the person to be served with the Certificate of Costs and orders as its office is in charge of finances for both the government and its entities.



31. Counsel relied on Sections 20(3) and (4) of the *National Land Commission Act* and the cases of *R vs The Principal Secretary, Ministry of Defence & Another ex parte David Gitau Njau & 9 Others* and *R vs Chief Executive Officer, the Independent Electoral and Boundaries Commission & Another, Ex parte M'Anyiri Hannington Gitaari*.
32. Counsel submitted that before a court issues any orders of mandamus, it has to be the last available remedy for the Applicant and that the Applicant needs to prove that there has been deliberate refusal by the Respondent to comply with the judgment. Counsel quoted the cases of *Republic vs The County Secretary, Nairobi City County & Another Ex parte Prof. Tom Ojienda & Associates, Mwau vs Principal Immigration Officer Misc. Civil Case No. 299 of 1983* and *Republic vs The Commissioner of Lands & Another Ex parte Kithinji Murugu M'agere*.
33. The Respondent maintained that in the process of compulsory acquisition, the Respondent acquires the land on behalf of another government entity; that the financial responsibility is usually on the acquiring entity and that under Section 111(1A) of the *Land Act*, the acquiring authority has an obligation to deposit with the commission the compensation funds in addition to survey fees, registration fees and any other costs before the acquisition is undertaken.
34. It is the Respondent's submission that the only monies deposited with the Respondent is Kshs. 87,804,225 and that they do not have the money to promptly compensate the applicant since the acquiring entity has not dispensed its duty.
35. According to counsel, there were ongoing talks between the Respondent and the acquiring entity, which were solely focused on ensuring that the Applicant is paid at the earliest opportunity and that Article 159(2) of *the Constitution* of Kenya provides that the judicial system shall promote alternative dispute resolution mechanisms.
36. The Ex Parte Applicant's counsel in a rejoinder dated 26th April 2025 submitted that under Article 159(2)(d) of *the Constitution* of Kenya, courts and tribunals shall be guided by the principle that justice shall be administered without undue regard to procedural technicalities.
37. It was submitted that while the Fair Administrative Actions Act provides for the procedure for seeking prerogative orders, the Act does not provide that a party seeking prerogative orders ought to file a miscellaneous application; that mandamus orders are an enforcement mechanism similar to an application for warrants of attachment and that enforcement proceedings cannot be filed separate from the main suit.
38. Counsel relied on Sections 7 and 8 of the Fair Administrative Actions Act and Rule 11 of the Fair Administrative Action Rules 2024 and on the cases of *Shabbir Ali Jusab vs Anaar Osman Gamrai & Attorney General [2013] KESC 9 (KLR)* and *Kenya Power & Lighting Company & Chonge [2023] KEELC 17950 (KLR)*.
39. Counsel asserted that the Respondent has not furnished this court with proof that the Judgment Debtor has sought for budgetary allocation for settlement of the decretal sum herein and that in the absence of such proof, it is in the interest of justice that the Respondent settles the decretal sum herein on or before 20th July 2025.
40. It was submitted that although the Respondent has conceded that the acquiring entity deposited Kshs. 87,804,225, no reasons have been advanced why the said sum was not placed in a special account into which the Respondent is required to pay interest on the amount awarded, in compliance with the provisions of Section 117 of the *Land Act*.



41. It was contended that non-allocation of funds by Parliament is not an acceptable defence or justifiable excuse for non-payment of decretal sums ordered to be paid by government officials, particularly in the absence of any evidence of attempts by such officials to commence the process of such allocation.
42. Counsel relied on the case of *Wachira Nderitu & Co. Advocates vs The Town Clerk, City Council of Nairobi Miscellaneous Application No. 354 of 2012* and *Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza* [2012] KEHC 1643 (KLR).

Analysis and Determination

43. Having considered the Ex parte Applicant's application and the Respondent's responses, the issues for the determination by this court are as follows:
 - a. Whether this application is fatally defective
 - b. Whether this court should issue mandamus orders against the Chairman and Chief Executive Officer of the Respondent.
44. The Ex Parte Applicant, the proprietor of LR No.209/9727 (IR 37790), filed this suit as an appeal against the compensation payable for a portion of land measuring 0.4281 of a hectare of its property which was compulsorily acquired by the Respondent, being Kshs. 87,804,225.00.
45. The Honourable Justice P. Nyamweya (as she then was) issued judgment in this matter on 24th November 2014 and substituted the award with one of Kshs. 413, 192,500/= instead, with interest at court rates from the date of the judgment until date of possession by the Respondent.
46. Vide a ruling dated 20th November 2022, the judgment was amended pursuant to Section 99 of the *Civil Procedure Act* to provide that the said compensation and award shall be paid with interest at court rates from the date of judgment until payment in full.
47. In a subsequent ruling dated 28th March 2023, this court dismissed an application by the Ex Parte Applicant seeking garnishee orders against the Respondent's accounts and also dismissed an application for joinder by KENHA. Both the Ex Parte Applicant and KENHA preferred appeals to the Court of Appeal. The Court of Appeal in *Five Star Agencies Limited & another vs National Land Commission & 2 Others* [2024] KECA 439 (KLR), found the consolidated appeals to be unmerited and dismissed the same.
48. The Court of Appeal upheld this court's finding that execution against the National Land Commission, a government entity was barred and that the procedure for execution of decrees against the Government is stipulated under Section 21 of the *Government Proceedings Act*.
49. The Appellate Court stated that the only remedy available to the Ex Parte Applicant is to institute judicial review proceedings and to seek an order of mandamus to compel the Government to settle the decree in question.
50. KENHA, being dissatisfied with the Court of Appeal's determination preferred an appeal to the Supreme Court. Vide a ruling in *Kenya National Highways Authority vs Five Star Agencies Limited & Another* [2024] KESC 62 (KLR), the Supreme Court dismissed KENHA's suit for want of jurisdiction, as it found that no cogent questions of constitutional interpretation or application arose for determination by the superior courts below to warrant the exercise of the court's jurisdiction under Article 163(4)(a) of *the Constitution*.



51. The Ex Parte Applicant, on its part, approached this court through a Chamber Summons Application dated 13th February 2025, in which it sought the following orders:
- i. That this application, being an application seeking leave to commence judicial review proceedings seeking the order of mandamus be heard ex parte in accordance with the practice rules.
 - ii. That this Honourable Court be pleased to grant leave to the Applicant to apply for an order of mandamus directing the Respondent's Chief Officers namely, the Chairman and Chief Executive Officer to pay to the Applicant Kshs. 909,023,500/- together with further interest thereon from 3rd December 2024 until payment in full being the sum due and owing as compensation for the parcel of land comprised in the number L.R. 209/9727 (IR 37790) in Nairobi which the Respondent compulsorily acquired from the Applicant.
 - iii. That in default of the payment within the period prescribed by the Court, the Chairman and Chief Executive Officer be jailed and/or fined as the court should deem fit.
 - iv. That costs of the application be provided for.
52. This court considered this application in the absence of the parties and gave directions on 26th March 2025 allowing prayers 1,2 and 3 and further directed that the Notice of Motion be filed within 21 days, which is the subject of this Ruling.
53. The Respondent has opposed the application on the grounds that it is fatally defective as it ought to have been filed as a miscellaneous application and should not have been filed within the main suit. The Respondent has relied on the case of *Chabari vs District Land and Adjudication Officer Meru South Maara District & 3 Others; Karimi (Interested Party)* [2024] KEELC 1128 (KLR), where Justice CK Yano stated as follows:
- “Judicial review jurisdiction is a special jurisdiction which is neither Civil nor Criminal and it is governed by Section 8 and 9 of the *Law Reform Act* which is the substantive law while Order 53 of the Civil Procedure Rules sets out the procedural law. By those provisions the court is mandated to issue orders of mandamus, certiorari or prohibition in appropriate judicial review proceedings.”
54. This position was restated in *Republic vs Cabinet Secretary, Ministry of Land & Physical Planning & 3 Others; Mugo (Exparte Applicant); Kamumo & Another (Interested Parties)* [2023] KEELC 19067 (KLR).
55. The Respondent has also relied on the findings of the Court of Appeal in *Ransa Company Ltd vs Manca Francesco & 2 Others* [2015] KECA 139 (KLR), where it was held as follows:
- “Jurisdiction in Judicial Review matters is like a straight jacket. It has very limited scope and application. It is not amenable to expansion. It is a sui generis jurisdiction, which, unlike civil or even criminal jurisdiction, does not accord a Judge discretion to invoke inherent jurisdiction.”
56. The Applicant has argued that under Article 159(2)(d) of *the Constitution*, this court is enjoined to administer justice without undue regard to procedural requirements.



57. The Applicant has also relied on Section 7 of the Fair Administrative Actions Act which provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to a court in accordance with section 8 or a tribunal in exercise of its jurisdiction conferred in that regard under any written law.
58. Section 8 of the Fair Administrative Actions Act prescribes that an application for the review of an administrative action or an appeal under this Act shall be determined within ninety days of filing the application.
59. The Applicant has also relied on Rule 11 of the Fair Administrative Action Rules 2024, which provides that an application for judicial review shall be by way of an originating motion accompanied by a supporting affidavit and such Originating Motion shall substantially be in Form JR 2 as set out in the Schedule.
60. While the Applicant has argued in its submissions that mandamus orders are an enforcement mechanism and that enforcement proceedings cannot be filed separate from the suit, it is prescribed under Section 21(3) of the Government Proceedings Act that no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government or any money or costs.
61. Courts have pronounced that where a judgment has been entered against government and a monetary decree issued against it, such a 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. Githua J in Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR) elucidated 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. 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.”
62. Rule 11 of the Fair Administrative Action Rules prescribes that a judicial review matter should be filed through an Originating Motion. While there is a prescriptive requirement on instituting judicial review suits, under Section 13(5)(b) of the Environment and Land Court Act, this court is equally vested with the requisite power to make any order and grant any relief as the Court deems fit and just, including prerogatory orders.
63. The Applicant moved this court pursuant to Order 53 of the Civil Procedure Rules. the Applicant duly complied with the procedural requirements set out under Order 53 Rule by seeking the leave of this court to commence judicial review proceedings through its Chamber Summons Application dated 13th February 2025, which leave this court granted on 26th March 2025. This application is therefore properly before this court.



64. In the circumstances of this case, this court is persuaded to overlook any procedural defects in this application in the interests of substantive justice, especially considering that that the application is with respect to a judgment that was rendered more than ten years ago, and the Respondent having not indicated what, if any, prejudice or injustice it stands to suffer if this court were to hear and determine the application on its merits.
65. This court is guided by the reasoning of the Supreme Court in its ruling in *Shabbir Ali Jusab vs Anaar Osman Gamrai & Attorney General* [2013] KESC 9 (KLR) where the Apex court quoted its earlier statement in *Raila Odinga vs IEBC and 4 others* Petition (No. 5 of 2013). In the latter case, the Supreme Court opined that courts should not allow the prescriptions of procedure to trump the primary object of dispensing substantive justice to the parties. It stated:
- “However, the Court is alive to the provisions of Article 159 (2) (d) of *the Constitution* which requires the Court to administer justice without undue regard to procedural technicalities. Indeed, the Court in the case of *Raila Odinga vs IEBC and 4 others* Petition (No. 5 of 2013), pronounced itself on the matter thus;
- “The essence of that provision is that a Court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone and which suits all situations of dispute resolution. On the contrary, the Court as an agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case, and conscientiously determine the best course”
66. The next issue I will deal with is whether this court should issue mandamus orders against the Chairman and Chief Executive Officer of the Respondent.
67. There is no dispute that judgment in this matter was issued on 24th November 2014, for the sum of Kshs. 413,192,500 and in a subsequent ruling, this court clarified that interest was to accrue from the date of judgment until payment in full. This determination has not varied, set aside or appealed against.
68. There is also no dispute that the Respondent is yet to satisfy this decree. As the Ex Parte Applicant is barred from executing against the Respondent, a Government entity, under Section 21(4) of the *Government Proceedings Act*, its only remedy lies in seeking orders of mandamus, which it has sought in this application. Section 21(4) of the *Government Proceedings Act* states that:
- “(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.”
69. Odunga J in the case of *Republic vs Attorney General & another* Exparte James Alfred Koroso [2013] eKLR expounded on the relief of mandamus against the government in the following terms:
- “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.

It follows therefore that the institution of judicial review proceedings in the nature of mandamus cannot be equated with execution proceedings. In seeking an order for mandamus the applicant is seeking, not relief against the Government, but to compel a Government official to do what the Government, through Parliament, has directed him to do. The relief sought is not “execution or attachment or process in the nature thereof”. It is not sought to make any person “individually liable for any order for any payment” but merely to oblige a Government officer to pay, out of the funds provided by Parliament, a debt held to be due by the High Court, in accordance with a duty cast upon him by Parliament. The fact that the Accounting Officer is not distinct from the State of which he is a servant does not necessarily mean that he cannot owe a duty to a subject as well as to the Government which he serves. Whereas it is true that he represents the Government, it does not follow that his duty is therefore confined to his Government employer. In mandamus cases it is recognized that when statutory duty is cast upon a Public Officer in his official capacity and the duty is owed not to the State but to the public any person having a sufficient legal interest in the performance of the duty may apply to the Courts for an order of mandamus to enforce it. In other words, mandamus is a remedy through which a public officer is compelled to do a duty imposed upon him by the law. It is in fact the State, the Republic, on whose behalf he undertakes his duties, that is compelling him, a servant, to do what he is under a duty, obliged to perform.”

70. This court aligns itself with the words of Odunga J, as he was then. The Respondent’s Chief Executive Officer is under a public duty to settle the decree made in favour of the Ex parte Applicant, whose validity has been admitted by the Respondent.
71. The only 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* which provides that payment will be based on a Certificate of Order obtained by the successful litigant from the court issuing the decree, which should be served on the Honourable Attorney General.
72. Section 21(1) and (2) of the *Government Proceedings Act* prescribes as follows:
 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.”

73. *Githua J in the case of Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR)* aptly stated that:

“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. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

74. Section 21 (3) provides that:

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.”

75. According to Section 20(4) of the *National Land Commission Act*, it is the Chief Executive Officer who is the accounting officer of the Commission. Any orders of mandamus against the Respondent should therefore be sought against the holder of this office and not the Chairman of the Respondent.

76. The remaining question is whether the Ex parte Applicant has met the precedent conditions for this court to issue orders of mandamus in their favour. In addition to the judgment by the Court of Appeal delivered on 12th April 2024, the Ex-Parte Applicant has annexed a letter dated 9th December 2024 sent by its advocates to the advocates of the Respondent and KENHA, forwarding a draft amended Certificate of Order against Government submitted for their approval with or without amendments within seven days of the date of the letter.

77. The Applicant has annexed an Amended Certificate of Order prepared pursuant to Order 29 Rule 3 of the Civil Procedure Rules dated 18th December 2024 and signed by the Deputy Registrar of this court for the sum of Kshs. 909,023,500. The decretal sum was indicated to be Kshs. 413,192,500 and the interest on the decretal sum accrued between 24th November 2024 and 2nd December 2024 was calculated at Kshs. 495,813,000.

78. The Certificate of Order was stamped as received by the Chairman of the Respondent on 10th January 2025. It was further forwarded to the Chairman and Secretary/Chief Executive Officer of the Respondent through a letter dated 13th January 2025, which was stamped as received on the same date.



79. The Ex-Parte Applicant has demonstrated that it extracted a Certificate of Order against the government and the said Certificate was duly served upon the Respondent. The Respondent has not contested the said service. The Respondent admits that it has not discharged its duty and attributes the delay to the failure of KENHA to remit the full sum of 413, 192, 500.
80. It is the Respondent's case that KENHA, the acquiring entity, has only deposited Kshs. 87,804,225, and that there are ongoing talks between the Respondent and the acquiring entity, which are solely focused on ensuring that the Applicant is paid at the earliest opportunity.
81. This cannot however forestall this court from allowing the mandamus orders sought in favour of the Applicant. Justice in this matter leans towards allowing this application so that the Applicant is availed the fruits of its long-awaited Judgment.
82. As to the orders of contempt sought, the same are premature and can only be granted upon the Ex Parte Applicant establishing through evidence that the Respondent has acted in breach of the orders of mandamus. The said prayer cannot be allowed at this stage.
83. In conclusion, the Ex Parte Applicant's application is partially allowed as follows:
- a. **An order of Mandamus be and is hereby issued directed to the Chief Executive Officer, National Land Commission, as the accounting officer, compelling her to pay the Ex Parte Applicant the sum of Kshs. 909,023,500/= in ELC 445 of 2014 together with further interest from 3rd December 2024 until payment in full being the sum due and owing as compensation for the parcel of land comprised in title number L.R. 209/9727 (IR 37790) in Nairobi which the Respondent compulsorily acquired from the Applicant.**
- b. **Costs of the application to be borne by the Respondent.**

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF JUNE, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ngatia for Decree holder

Mr. Odoyo for Judgment debtor

Court Assistant: Tracy



ELC NO. 445 OF 2014

RULING

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