



Kinyanjui & 4 others v County Secretary, The County Government of Nairobi & another (Judicial Review Miscellaneous Application E001 of 2024) [2025] KEELC 5272 (KLR) (7 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5272 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

JUDICIAL REVIEW MISCELLANEOUS APPLICATION E001 OF 2024

JA MOGENI, J

JULY 7, 2025

**IN THE MATTER OF THE ENFORCEMENT OF A DECREE OF COURT
IN HC ELC NO. 372 OF 2017 AND A CERTIFICATE OF ORDER**

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS TO WIT

BETWEEN

AK KINYANJUI 1ST APPLICANT
DANSON NJOROGE 2ND APPLICANT
SUSAN MUCHIRU 3RD APPLICANT
JOSEPH NGURE 4TH APPLICANT
ESTHER WAMBUI 5TH APPLICANT

AND

**THE COUNTY SECRETARY, THE COUNTY GOVERNMENT OF
NAIROBI 1ST RESPONDENT**
**THE CHIEF FINANCE OFFICER, THE COUNTY GOVERNMENT OF
NAIROBI 2ND RESPONDENT**

JUDGMENT

1. Before this Court is the Ex parte Applicant's Motion dated 6th May, 2024 filed under Order 53 the Civil Procedure Rules, and any other enabling provisions of the law. The Motion seeks the following orders:
 - i. That an order of mandamus do and is hereby granted to compel the Respondents to settle the decretal amount of money in respect of High Court ELC No. 372 of 2017 Thika which stood



at Kenya Shillings forty nine million, nine hundred and thirty five thousand, six hundred and ninety four twenty five cents (read Kenya Shillings 49,935,694.25) as at the date of issue of a Certificate of Order issued on 21st June 2023 and interest of the said money at the Court rate from the date of issue of the said Certificate of Order to the date of full settlement.

- ii. That upon taxation of the bill of cost for this suit the Respondents do settle both the decretal sum in High Court ELC NO. 372 of 2017 Thika and the cost of this judicial review proceedings within 30 days of service of the order in 1 above and the bill of cost for this suit.
 - iii. Cost of this suit be awarded to the ex parte Applicants.
2. The Motion is supported by a Verifying Affidavit dated 22nd April, 2022 sworn by A. K. Kinyanjui on behalf of the other Applicants. According to Mr. Kinyanjui, the Applicants litigated in five cases which were consolidated in Nairobi High Court and upon consolidation the case was given the number ELC No. 816 of 2014 and then the number was changed to ELC 372 OF 2017 when it was transferred to Thika.
 3. That the Applicants obtained a Decree against the Respondents, namely The County Secretary, The Chief Finance and The County Government of Nairobi for the principal sum of Kshs. 49,935,694.25 and interest at Court rate from the date of issue of the said Certificate of Order to the date of full settlement as well as costs of the suit.
 4. It is Mr. Kinyanjui's case that there is already an order of Court that has been satisfied by the Respondent despite demand and notice to sue in defendant. That a Certificate of Order has also been serve on the Respondents and that the Respondents are in contempt of a Court order. It is his case that this is the only mode of enforcement of execution of a Decree of Court against the Respondent provided for by the law.
 5. A brief history of the case is that the Applicants filed a suit against the Respondents and a company by the name Stra Bag Bau for nuisance caused by the company which was contracted to build Ndakaini dam. Damages for each of the Applicants was calculated at Kesh 2,100,000 plus costs tax at Kesh 335,694.52 and this was to attract interest from the date the suits were filed to the date the damages were settled in full.
 6. A Certificate of Order was issued on 21st June 2023 and the decretal sum stood at Kesh 49,935,694.52. Since the Respondents were vicariously liable as a principal, when the company ceased to exist the Applicants sought settlement from the Respondents who have neglected to do so despite being issued with notice.
 7. The Applicants are demanding for an order of mandamus to compel the Respondents to settle the decretal amount within a period of time to be set by this Court.
 8. The Respondents opposed the Application and filed a Replying Affidavit sworn by Boniface Waweru dated 11th June 2024. It is not clear who the Boniface Waweru is though he claims to have authority from the Respondent which authority was not attached. I perused the documents filed and did not pick out any authority from the Respondents. In the Affidavit he deposes that the Application before this Court is premature and that the Certificate of Order against the government has never been served upon the Respondents.
 9. It was deponed that failure to serve the Certificate of Order against the Government renders these proceedings premature and both fatally and incurably defective.



10. It was further averred that the Applicant has not provided any evidence of service of the said documents.
11. He also contested that the Applicant was awarded interest for a period of 32 years since the Court did not award them this except for costs of the suit and interest at the Court rates from the date of filing of the suit to the date of payment in full. Further that they were awarded Kesh 2,000,000 each as general damages
12. That given the above circumstances, then the orders of Mandamus cannot issue in the circumstances as stated above since the decretal sum is disputed.
13. He also averred that Nairobi City County against whom Judgment was entered in Thika ELC Case No. 372 of 2017 has not been made a party in these proceedings and stands to suffer since they are condemned unheard. At the same time he deposes that the individuals who have been sued in these proceedings are non-suited. That the County Executive Committee of Finance and head of treasury has not been sued yet they are the ones who handle matters Further that there are no resources available to pay the decretal sum since this has to be provided for in a budget yet the County Assembly did not provide for settlement of the said sum of money.
14. He further deposes that whereas the Respondents do not admit liability, the immediate settlement of the Order/Decree would require Constitutional or County Legislation approval which has not been given to the Respondents due to the already closed budget cycle.
15. In response, the Applicant filed a further Affidavit sworn on 9/09/2024. He deposes that the deponent who swore the replying Affidavit has no authority to swear the Affidavit on behalf of the Respondents. That he has also not disclosed the source of the facts he deposes which facts are only in the knowledge of the Respondents.
16. He deposes that it is not true that the Certificate of Order against the Government dated 21/06/2023 was not served upon the Respondents because it was attached to the Notice served upon the Respondents under the Government Proceedings and one can get to verify this vide the letter attached and marked as AKIA. Further that the same notice is annexed as AK7 to the Verifying Affidavit sworn on 22/04/2024 as annexure AKIB.
17. It is the Applicant's contestation that the issue of appeal being raised is neither here nor there since it seems the Respondents never had a need to appeal the Court's decision. That it has been 40 years since this case was filed and litigated and another five years and counting since the Court made the decision in ELC 372 of 2017 and all there is, is a deliberate delay of execution of the Judgment
18. He deposes that these proceedings were preceded by Judicial Review proceedings Number 5 of 2021 Thika High Court which were struck out for lack of production of a Certificate of Order against the government. The same parties were in the said proceedings and no objections were raised as to their suitability of being sued as Respondents.
19. That in any Judicial Review proceedings there must be the administrative authority to be served with the prerogative orders and that is why the suit was brought against the Respondents who are entrusted with the function of settling the County Government of Nairobi's financial debts.
20. The Judgment issued Decreed for the amount as elaborated at paragraph 5 hereinabove and the Respondents are aware that it included an award of interest from the date the suit was filed to the date of full payment.



21. The Certificate of Order was served upon the Respondents on 5/03/2024 and this suit was filed on 21/05/2024 and it was served with the Judgment and Court Decree from the High Court ELC 372 of 2017 being served the third time.
22. It is the Applicant's contention that there is no reason why the Respondents who are the accounting officers of the County Government of Nairobi should not pay the debt.
23. The Application was canvassed by way of written submissions, the Applicant filed written submissions dated 24th September, 2024.
24. The Applicant identified the following as issues to be addressed:
 - i. Whether the ex parte Applicants' said Application meets the factors that determine grant of an Order of Mandamus
 - ii. If there is a public legal duty to act on the part of the Respondents.
 - iii. Whether the ex parte Applicants' are entitled to payments of damages by the Respondents?
 - iv. If the correct procedure been followed before lodging these proceedings?
 - v. Whether the Respondents have been given or served with requisite statutory notices before institution of the proceedings herein
 - vi. If there is any other remedy or better remedy available to the ex parte Applicants? and;
 - vii. Whether there is an equitable ban to the relief sought and on a balance of convenience should an order of mandamus lie?
25. The Learned Counsel in support of the Applicants' case cited the cases of; Republic vs Principal Secretary, Ministry of Internal Security and Another ex parte Schon Noorain & Another (2018) eKLR; and *Republic vs County Government of Kiambu JR MISC APP N0 14 of 2020*. He submitted that there is no other way of enforcing performance of public duty by a public authority besides this. This is the only remedy open to the ex parte Applicants.
26. The averment by the Respondents that they had not been served with the said Certificate of Order and demand letter was denied by the Ex parte Applicant and in response it was submitted that the same were served upon the Respondents and an Affidavit of Service dated 13/06/2024 filed in Court. That the Respondents stamped on the copies of the stamped documents.
27. The Respondents also filed written submissions dated 7/11/2024 in which 2 issues were identified for determination and these are:
 - i. Whether the ex parte Applicants have made out a case for the grant of the Order of Mandamus and;
 - ii. Who should bear the costs of these proceedings?
28. On the first issue Counsel submitted that the ex parte Applicant never filed a Further or Supplementary Affidavit on the issue of service and so the issue remains uncontroverted in the face of the failure for a response. The Respondents cited Section 21 of the *Government Proceedings Act*.
29. In their submissions the Respondents relied on the cases of Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza {2012} eKLR; Republic v Attorney General & 2 Others; Patrick Ochwa, Samuel Ouma & Job Weloba t/a Cootow & Associates (Ex parte) (Judicial Review 222 of 2017) [2021] KEHC 144 (KLR) (21 October



2021) (Ruling); Republic v County Government of Kwale; Charpenel Enterprises Limited (Exparte) (Judicial Review Application 020 of 2021) [2021] KEHC 200 (KLR) (9 November 2021) (Judgment) Neutral citation number: [2021] KEHC 200 (KLR); on the second issue of costs the Respondents cited the cases of Impressa Ing Fortunato Federice vs Nabwire {2001} 2 EA 383; and Re Ebuneiri Waisswa Kafuko Kampala HCMA No. 81 of 1993.

Determination

30. I have considered the arguments advanced by the parties herein. The issue for determination is whether an Order of Mandamus should issue as prayed in the Ex parte Applicant's Application.
31. 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* which provides:

“(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:

1. 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.”

Section 21 (3) of the said Act on the other hand provides:

2. “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:
3. “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.”



32. 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, 4th Edition. Vol. 7 p. 111 para 89 thus:
- “ 4) 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.”
33. In this case, the Applicants have moved this Court to compel the satisfaction of a Judgment already Decreed in their favour by a competent Court of law. The Applicants have demonstrated by way of evidence compliance with the provisions of Section 21 of the *Government Proceedings Act*. The Respondents have not given any satisfactory reason as to why the Decree has not been fulfilled almost 5 years later and what is alleged is that they were not served with the Certificate of Order against Government by the Applicants as is required by law. The issue of service is settled by the fact that there is an Affidavit of service sworn on 13/06/2024 which is not contested where the Applicants aver that they served and the Respondent stamped on their copies.
34. It is also not true that the averments of the Respondents were not controverted since the Applicants filed a Further Affidavit sworn on 9/09/2024 where they controverted the averments in the Replying Affidavit.
35. A plea is also made that Nairobi County Government needs to be given opportunity to be heard since they were not party in the proceedings brought at the High Court but that it was Nairobi City Council. This plea is void since the Respondents are aware that the functions that were being performed by the defunct County Council of the City of Nairobi were taken over both in assets and liabilities by the Nairobi City County.
36. I have to also address the issue of the deponent in the Replying Affidavit of one Boniface Waweru. Indeed I was struggling to understand how I should treat the Affidavit since there was no authority attached from the Nairobi City County to show that indeed this was someone mandated to swear the Affidavit on behalf of the Respondents. There was none and therefore the probative value of the evidence presented through the Replying Affidavit was compromised.
37. A cursory look at the Application and Affidavit filed supports the claim of the Applicants that a copy of the relevant Decree, Certificate of Order against the Government, and the Judgement of the Court of High Court were served upon the Respondents. The Respondents are thus less than candid when they claim that a Certificate of Oder against the Government was not served. On the material before Court, am satisfied the same was served.



38. The Decree herein is due and payable and there is indeed default. The Applicant cannot within the law execute the Decree against the Respondents other than through the procedure in Section 21 of the Government Proceedings Act.

39. 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.”

40. In the premises, I am satisfied that the Applicants have made a case for the grant of an order of mandamus and I hereby grant the following prayers in the Notice of Motion dated 6th May, 2024:-

- i. That an order of mandamus do and is hereby granted for the Respondents to settle the decretal amount of money in respect of High Court ELC No. 372 of 2017 Thika which stood at Kenya Shillings forty nine million, nine hundred and thirty five thousand, six hundred and ninety four twenty five cents (read Kenya Shillings 49,935,694.25) as at the date of issue of a Certificate of Order issued on 21st June 2023 and interest of the said money at the Court rate from the date of issue of the said Certificate of Order to the date of full settlement.
- ii. That upon taxation of the Bill of Cost for this suit the Respondents do settle both the decretal sum in High Court ELC No. 372 of 2017 Thika and the cost of this Judicial Review proceedings within 30 days of service of the order in (i) above and the Bill of Cost for this suit.
- iii. Cost of this suit be awarded to the Ex parte Applicants.

The Court so orders.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7TH DAY OF JULY 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Ms. King'oo Wanjau for the 1st – 5th Exparte Applicants

Mr. Mutie holding brief for Mr. Muiuki for the Respondents

Mr. Melita – Court Assistant

