



REPUBLIC OF KENYA



Republic v Kenya Airports Authority & another; Shabune (Ex parte Applicant) (Miscellaneous Application E008 of 2025) [2025] KEELC 5583 (KLR) (14 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
MISCELLANEOUS APPLICATION E008 OF 2025**

JO MBOYA, J

JULY 14, 2025

BETWEEN

REPUBLIC APPLICANT

AND

KENYA AIRPORTS AUTHORITY 1ST RESPONDENT

THE GENERAL MANAGER, FINANCE, KENYA AIRPORTS

AUTHORITY 2ND RESPONDENT

AND

ALINOOR HAJI SHABUNE EX PARTE APPLICANT

JUDGMENT

1. What is before me is the Substantive Notice of Motion application [Judicial Review Application] dated 9th April 2025; and wherein the Ex-parte Applicant has sought the following reliefs:
 - i. That this Application be certified as urgent.
 - ii. That Honourable court may be pleased to grant the Ex-parte Applicant the following orders:
 - a. An order of Judicial review in the nature of mandamus to compel the respondents to pay the applicant the sum of Kenya Shillings nine million one hundred and fifty-three thousand, one hundred and twenty-four shillings (Kshs.9,153,123/=) being the decretal amount together with the interest at the court rate of 12% per annum from the date of award until payment in full.
 - b. An order of Mandamus to enforce the decree by Hon. L.K Mutai – Chief Magistrate [CM] against the 1st respondent in CM ELC Number 12 of 2018, Alinoor haji Shabune vs K.A.A and Isiolo County Government.



- c. In default notice to show cause do issue against the respondents and its principal officers, particularly the 2nd respondent, to show cause why they should not be cited for contempt of court and jailed until the decretal sum is paid.
 - d. That costs of this Judicial review application be paid by the 1st respondent.
2. The subject application is premised on the various grounds which have been highlighted in the body thereof. Furthermore, the application is supported by the statement of facts dated 29th March 2025; the affidavit in verification of the statement of facts sworn on even date and the various annexures which have been attached thereto including a copy of the judgment that was issued vide Isiolo CMCC ELC No. 12 of 2018; as well as the certificate of costs arising therefrom.
3. The respondents herein filed grounds of opposition dated 4th June 2025 and a replying affidavit sworn by Fridah Mbugua on 9th July 2025 and wherein the respondents have contended inter alia that the application for mandamus is prohibited by the provisions of sections 21 of the Government Proceedings Act Chapter 40 Laws of Kenya; and that the applicant has neither established nor met the requisite threshold for the grant of the orders sought. Furthermore, it has been averred that the judgment sought to be enforced vide mandamus was arrived at without the participation of National Land Commission, which is the constitutional body mandated to undertake valuation for purposes of compulsory acquisition.
4. The application came up for hearing on 5th June, 2025 whereupon the advocate for the parties covenanted to canvass and dispose of the application by way of written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
5. The Ex-parte Applicant filed written submissions dated 30th June 2025; and wherein same has raised and canvassed one singular issue, namely; that the Ex-parte Applicant has established sufficient cause to warrant the issuance of the orders of mandamus. In particular, it has been submitted that the Ex-parte applicant commenced civil proceedings vide Isiolo CMCC ELC No. 12 of 2018 and wherein the Ex-parte applicant sought compensation on account of unlawful compulsory acquisition of his plot.
6. Moreover, learned counsel for the Ex-parte applicant has submitted that the suit before the subordinate court was heard and disposed of vide Judgment delivered on 24th May 2022 wherein the learned trial magistrate gave an award to and in favour of Ex-parte Applicant. To this end, learned counsel for the Ex-parte applicant has referenced the Judgment and the decree arising therefrom.
7. It was the further submission by learned counsel for the Ex-parte Applicant that subsequent to the issuance of the judgment, same extracted the decree, the certificate of costs and all the requisite documents which were thereafter served upon the respondents. Nevertheless, it has been posited that despite having been duly served with the decree, the certificate of costs and the certificate of order arising from the Judgment of the subordinate court, the respondents have failed and neglected to liquidate the decretal sum.
8. On the other hand, it has been submitted that the 1st respondent herein is a statutory body [parastatal] created under an act of parliament and thus no execution by way of attachment can be commenced against same. However, it has been submitted that the 1st respondent is nevertheless obligated to heed and or comply with the provisions of the law by processing and remitting the compensation without unreasonable delay.
9. Furthermore, it has been submitted that despite knowledge of the Judgment and the decree of the court, the respondents have declined to comply with the terms thereof. In this regard, it has been



posited that the only way available for the realization of the fruits of the Judgment is by way of mandamus. In any event, it has been posited that unless the court issues the orders of mandamus, the Ex-parte applicant herein may not actualize and or benefit from the fruits of the Judgment.

10. To buttress the foregoing submissions, learned counsel for the Ex-parte Applicant has cited various decisions, namely; Republic vs County Secretary, County Government of Meru & 5 others; Kaburu t/a Mwirigi Kaburu & Co. Advocates (2024) KEELC; Republic vs Attorney General & another exparte Stephen Wanyee Roky (2016) eKLR; Republic vs County Secretary Nairobi City County Government exparte Wachira Nderitu & Co. Advocates (2014) eKLR; Republic vs County Secretary Nairobi City County & 3 others; Koceyo & Co. Advocates (2020) KEHC; Republic vs Attorney General & Principal Secretary Ministry of Public Works – Junja; republic vs the P.S Environment and Forestry & another; Beya Ltd; Exparte Applicant (2022) KEHC and Republic vs Wajir County Government & 3 others; Alhidik Hardware & Construction Co. Ltd (2023) KEHC, respectively.
11. Premised on the foregoing, learned counsel for the Ex-parte Applicants has implored the court to find and hold that the application beforehand is meritorious. To this end, the court has been invited to proceed and issue the orders of mandamus.
12. The respondents filed written submissions dated 9th July 2025 and wherein same [respondents] have raised and canvassed three [3] pertinent issues for consideration and determination by the court. The issues raised by the respondent[s] are namely; the valuation being relied upon to underpin the judgment of the subordinate court was undertaken by the Ex-parte Applicant without the involvement of National Land Commission; the Ex-parte Applicant has not met or satisfied the requisite threshold for the grant of the orders of mandamus; and that the Ex-parte Applicant has not impleaded the Accounting Officer of the 1st respondent in accordance with the provision[s] section 5 of [Kenya Airports Authority Act](#) Chapter 395, Laws of Kenya.
13. Regarding the first issue, learned counsel for the respondents has submitted that the learned trial magistrate did not assess and award a specific sum of money to the Ex-parte applicant. However, it has been submitted that the learned trial magistrate ordered and directed that the suit property be valued and that thereafter the valuation report be filed with the court within 21 days from the date of Judgment.
14. It has been submitted that, arising from the directions of the trial court, the Ex-parte applicant proceeded to and procured the services of a valuer, who thereafter valued the suit property and submitted a valuation report. It is the said valuation report which is contended to have been relied upon in arriving at the impugned compensation.
15. Be that as it may, learned counsel for the respondents has submitted that the impugned valuation was undertaken without the involvement of National Land Commission which is the only body mandated to undertake valuation for purposes of compulsory acquisition. Instructively, learned counsel for the respondents has thereafter referenced the provisions of sections 111 (2) of the [Land Act](#), and the land [assessment of just compensation] Rules 2017.
16. As pertains to the second issue, it has been submitted that an order of mandamus is a discretionary relief. To this end, it has been posited that an order of mandamus does not issue as a matter of right. Furthermore, it has been submitted that even where a party has demonstrated entitlement to an order of mandamus, a court of law can still decline to grant such an order if the conduct of the applicant does not meet the threshold of Equity.



17. Additionally, Learned counsel for the respondents has submitted that in respect of the instant matter, the Ex-parte Applicant has not demonstrated that same duly extracted and served the decree and the certificate of order upon the designated accounting officer of the 1st respondent.
18. To the extent that the Ex-parte Applicant has not demonstrated compliance, it has been posited that the orders sought, namely, the Order of Mandamus, ought not to issue.
19. In support of the foregoing submissions, learned counsel for the respondents has cited and relied on inter alia *Republic vs the County Secretary Nairobi City County & another exparte Prof. Tom Ojienda & Associates*; *Republic vs the Commissioner of Lands & another exparte Kithinji Murugu M'Agere and Five Star Agencies Ltd & another vs National Land Commission and 2 others* (2024) KECA 439.
20. Regarding the third issue, learned counsel for the respondents has submitted that the Ex-parte Applicant has failed to implead and or sue the accounting officer of the 1st respondent. In particular, it has been contended that it is the Managing Director of the 1st respondent who is constituted as the accounting officer by virtue of Section 5 of the *Kenya Airports Authority Act*. To this end, it has been posited that without suing the said accounting officer, no order of mandamus can issue. Further and in any event, it has been contended that an order of mandamus can only issue against the person or body chargeable with the public duty and not otherwise.
21. In support of the foregoing submissions, learned counsel for the respondents has cited and referenced the holding in the case[s] of *Republic vs the Principal Secretary, Ministry of Defence & another exparte David Gitau Njau & 9 others* and *Republic vs the Chief Executive Officer IEBC & another exparte M'Anyiri Hannington Gitari*, respectively.
22. In view of the foregoing, learned counsel for the respondents has invited the court to find and hold that the Ex-parte Applicant has neither met nor established the requisite basis to warrant the issuance of the orders of mandamus. In short, the court has been invited to dismiss the application beforehand.
23. Having reviewed the substantive notice of motion [Judicial Review Application] and the response thereto and upon taking into account the written submissions filed by and on behalf of the parties, I come to the conclusion that the determination of the subject matter turns on two [2] key issues, namely; whether the respondents have failed to perform the statutory duty as pertains to payment of the decretal sum or otherwise; and whether the Ex-parte Applicant has established sufficient cause to warrant the grant of the orders of mandamus.
24. Regarding the first issue, it is imperative to recall and reiterate that the Ex-parte applicant herein filed civil proceedings before Isiolo Chief Magistrates Court, namely; Isiolo CMC ELC No. 12 of 2018. For good measure, the said suit involved the Ex-parte Applicant and inter alia the 1st respondent herein.
25. Additionally, it is worth stating that the suit under reference was duly heard and disposed of vide Judgment rendered on 24th May 2022 wherein the learned trial magistrate decreed compensation in favour of the Ex-parte Applicant. Furthermore, the court also awarded costs to the Ex-parte Applicant.
26. Flowing from the Judgment of the trial court, the Ex-parte Applicant proceeded to and extracted the decree; the certificate of costs and the certificate of order and thereafter proceeded to serve same upon the 1st respondent. To this end, the Ex-parte Applicant has referenced exhibits AHS 2 to the affidavit in verification of the statement of facts.
27. Other than the foregoing, the Ex-parte Applicant has averred that the documents [details in terms of paragraph 25 herein] were duly served and thus the respondents have been aware of the import and tenor of the Judgment of the court. Moreover, it has been posited that the respondents herein



attempted to appeal against the Judgment of the subordinate court. However, learned counsel for the Ex-parte Applicant has submitted that the attempt to appeal against the said judgment was declined vide ruling rendered on the 12th February 2025, wherein the application for leave to appeal out of time was dismissed.

28. Arising from the foregoing, learned counsel for the Ex-parte Applicant has therefore contended that the respondents and in particular, the 1st respondent, has been knowledgeable of the terms of the decree. In any event, it has been posited that the decree beforehand has neither been impugned, impeached nor set aside.
29. It is instructive to note that the respondents herein have neither disputed nor controverted the averments at the foot of the affidavit in verification of the statements of facts. In particular, the respondents have not contested the fact that same were duly served with the decree; certificate of costs; certificate of order, and a demand notice by the Ex-parte Applicant.
30. To my mind, the totality of the evidence on record demonstrates that the respondents and in particular, the 1st respondent, has been privy to and knowledgeable of the decree of the court. Nevertheless, the 1st respondent has failed to put in place the requisite mechanism to facilitate the payment and or liquidation of the decretal sum.
31. It is not lost on me that once a court of law has issued a judgment, it behooves the Judgment Debtor to comply with and or adhere to the terms of the judgment, unless there exists a compelling reason to the contrary. Suffice it to state that the only compelling reasons would be that the judgment has been stayed; the judgment has been reviewed and set aside, or the parties are engaged in negotiations towards settlements of [sic] the said Judgment.
32. In respect of the instant matter, it is evident that there is no order of stay or any existing appeal to bar and or prohibit the payment of the decretal sum. Further and in any event, there is no gainsaying that the pendency of [sic] an appeal, by and of itself, does not constitute a stay. [See order 42 Rule 6(1) of the Civil Procedure Rules 2010].
33. My answer to issue number one [1] is to the effect that the 1st respondent, which is a body corporate, has failed, neglected and or otherwise refused to process and pay the decretal sum. Such failure does not bode [augur] well with the provisions of Article 10 of *the Constitution* 2010, which underpins the national values and principles of governance.
34. Instructively, the provisions of article 10 of *the Constitution*, 2010; are binding on all persons, bodies and state organs, the respondents not excepted.
35. Turning to the second issue, namely; whether the Ex-parte Applicant has established a sufficient cause to warrant the issuance of an order of mandamus, it is imperative to underscore that no execution by way of attachment can issue against the 1st respondent. For coherence, the 1st respondent is insulated from the ordinary execution of decrees. Notably, the provisions of Order 22 of the Civil Procedure Rules, 2010; which relate to execution of Decrees do not apply to the Respondents herein.
36. To the extent that the 1st respondent is statutorily insulated from ordinary execution, the only available mechanism to compel the 1st respondent to comply with public duty, including payments of debts, is by way of mandamus. Suffice it to state that unless an order of mandamus does issue, the 1st respondent herein shall bid its time in trying to honour and or comply with lawful decrees and or court orders.
37. Further and in any event, there is no gainsaying that the 1st respondent does not operate outside the four corners of *the constitution* and the law. Moreover, it is not lost on me that all persons, bodies and state organs are bound by the provisions of *the Constitution* and hence obligated to act within reasonable



timelines from the date of service of the certificate of order, certificate of costs and the decree. [See Articles 10, 19, 20, 21 and 259 of *the Constitution* 2010].

38. The need by the public body to comply with the legal duty and or obligation timeously and with due promptitude was highlighted in the case of Republic vs the County Secretary, Nairobi City County and another exparte Prof. Tom Ojienda & associates (2019) eKLR where the court stated thus;

13. For Mandamus to issue, there must be a public legal duty to act and the duty must be owed to the Applicant. These two tests are not in dispute. There must be a clear right to the performance of that duty, meaning that the Applicant has satisfied all conditions precedent. There must have been a prior demand for performance; a reasonable time to comply with the demand, unless there was outright refusal; and an express refusal, or an implied refusal through unreasonable delay.

39. I hasten to state that the decree of the court was issued against the 1st respondent herein. To this end, the 1st respondent was and remains enjoined to liquidate the decree. The 1st respondent cannot be heard to state that the decretal sum was arrived at without due compliance with Section 111 of the *Land Act*. If anything, the 1st respondent knows what to do, in the event same is convicted that the decree in question is irregular, illegal and or unlawful.

40. Pertinently, the 1st respondent cannot be heard to say that because the decree is underpinned by a valuation procured without the involvement of the National Land Commission, then same [1st respondent] is at liberty to disregard the said decree. In this regard, it is worth recalling the dictum in the case of *Hadkinson vs Hadkinson* (1952) ALL ER 1159, where the court emphasized that compliance with court orders is mandatory. Furthermore, the court highlighted that it does not lie in the lip[s] of the suitor or legal counsel to judge the validity or otherwise of a court judgment or decree.

41. In respect of the subject matter, I am persuaded that the Ex-parte Applicant has placed before the court sufficient and credible material to demonstrate that the orders of mandamus are merited. Suffice it to underscore that unless the orders sought are granted, then the judgment and decree held by the Ex-parte Applicant shall be rendered cosmetic and redundant.

42. I am afraid that any person who walks through the doors of the court and procures a judgment must be assured that the judgment, [if any] obtained means something. Furthermore, such a judgment will be enforced in accordance with the law. Absent such assurance, then the rule of law shall be brought to disrepute.

43. Before concluding on this issue, it is instructive to cite and reference the decision in the case of *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR, where the Court of Appeal highlighted the circumstances under which the order of mandamus does issue.

44. For coherence, the Court stated as hereunder;

“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.”

45. Most recently, the circumstances under which an order of mandamus does issue as against a public body and or state organ was re-visited in the case of Five Star Agencies Limited & another v National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023 (Consolidated)) [2024] KECA 439 (KLR) (12 April 2024) (Judgment), the court stated as hereunder;

It is clear beyond any peradventure that the procedure to be followed in execution against the government is to seek an order of mandamus to compel the relevant person in the Government to settle the decree in question. This finding, in our view, readily answers the question posited by Five Star whether its right to prompt compensation and equality under the relevant provisions of *the Constitution* and the *Land Act* can exist in the absence of a legal remedy.

46. In my humble albeit view, the Ex-parte Applicant has ably demonstrated that unless the order of mandamus does issue, the decree of the court which has neither been challenged, impugned and or set aside, would remain a paper judgment. Such kind of situation must not be countenanced by a court of law and of Equity.
47. Moreover, it is common ground that Equity does not suffer a wrong without remedy.

Final Disposition:

48. Flowing from the analysis highlighted in the body of the Judgment, I come to the conclusion that the Ex-parte Applicant has demonstrated the requisite basis to warrant the grant of the orders sought. Simply put, the substantive notice of motion application [Judicial Review Application] is meritorious.
49. Consequently, and in the premises, the final orders of the court are as hereunder;
- i. An order of Judicial review in the nature of Mandamus to compel the respondents to pay the Ex-parte Applicant the sum of Kenya Shillings nine million one hundred and fifty-three thousand, one hundred and twenty-four shillings (Kshs.9,153,124/=) being the decretal amount together with the interest at the court rate of 12% per annum from the date of award until payment in full be and is hereby issued against the 1st respondent [Kenya Airport Authority].



- ii. The payment at the foot of clause (I) shall be processed and paid out to the Ex-parte Applicant within 60 days from the date hereof and in default the Ex-parte Applicant shall be at liberty to take appropriate steps including but not limited to citation for contempt.
- iii. Costs of the proceedings herein be and are hereby awarded to the Ex-parte Applicant.
- iv. Such costs shall be agreed upon and in default to be taxed by the Deputy Registrar of the court.

50. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 14TH DAY OF JULY 2025.

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Mukami/ Mutuma, Court Assistant.

Miss Wanjiku holding brief for Mr. Hassan Lakicha for the Ex-parte Applicant

No appearance for the Respondents[same were duly aware of the Date/ time]

