



Republic v Kenya Urban Roads Authority & 3 others; Muchene (The Sole Executrix of the Estate of George Muchene Kirumba and Petitioning through Nancy Wanjiru Kirumba) (Exparte Applicant) (Environment and Land Judicial Review Case E017 of 2024) [2025] KEELC 4928 (KLR) (3 July 2025) (Judgment)

Neutral citation: [2025] KEELC 4928 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E017 OF 2024
CG MBOGO, J
JULY 3, 2025
IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW ORDER OF MANDAMUS
AND
IN THE MATTER OF THE LAND ACT, CAP 280
AND
IN THE MATTER THE FAIR ADMINISTRATIVE ACTION ACT CAP 7L
AND
IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES
AND
IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

KENYA URBAN ROADS AUTHORITY 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT 3RD RESPONDENT



AND

GOAMATTIE BARBARA MUCHENE (THE SOLE EXECUTRIX OF THE ESTATE OF GEORGE MUCHENE KIRUMBA AND PETITIONING THROUGH NANCY WANJIRU KIRUMBA) EXPARTE APPLICANT

JUDGMENT

1. Pursuant to leave granted on 12th day of August, 2024 the exparte applicant filed the substantive notice of motion dated 19th August 2024, expressed to be brought under Sections 8 and 9 of the Law Reform Act, Sections 1A,1B and 3A of the Civil Procedure Act and Order 53 Rule 3 of the Civil Procedure Rules seeking the following orders:-
 - i. That this honourable court be pleased to grant an order of mandamus compelling the respondents' accounting officers to pay the exparte applicant the sums outlined below within 14 days of the order of mandamus being issued by the court.
 - a. Principal amount of KShs. 3,000,000; and
 - b. Interest on the principal amount at the rate of 14% from 28th July 2022 until payment in full.
 - ii. That the costs of the application be borne by the respondents.
2. The application is premised on the facts relied on in the statutory statement dated 30th July, 2024. The ex parte applicant stated that judgment was entered in ELC Petition No. 14 of 2017 in her favour where she was awarded Kshs. 3,000,000 as compensation for her land having been unlawfully taken away by the respondents. The ex parte applicant stated that following the delivery of the judgment, she extracted a decree and certificate of order, and served the same upon the respondents. That two years after judgment was delivered, the respondents have refused, neglected and declined to settle the decretal amount due. She found the respondents actions to be in bad faith, unreasonable, in breach of her legitimate expectations, prejudicial, and unfair.
3. The statement of facts was reiterated in the ex parte applicant's verifying affidavit sworn on 30th July, 2024, and there would be no need to rehash the same.
4. The 4th respondent filed the grounds of opposition dated 27th January, 2025 in opposition to the substantive motion on the following grounds:-
 1. That the Attorney General has no statutory mandate/responsibility to settle sums issued against him on behalf of other Government Ministries/Department.
 2. That the Attorney General is not the accounting officer for the National Treasury or the Office of the Attorney General.
 3. That the 3rd respondent is not the Accounting Officer of the ministry and is thus wrongly enjoined into the proceedings.
 4. That the suit ought to have been filed as against the accounting officer of the 1st, 2nd and 3rd respondents and not the ministry/ state department in whole.



5. That the application for an order of interest in the principal amount from the date of judgment is unfounded since there no such prayer sought or granted in the original suit.
 6. That the application is defective and should be dismissed forthwith with costs to the respondents.
 7. That there is an elaborate constitutional and statutory legal regime concerning the appropriation and utilization of funds from the exchequer and that the National Treasury had neither projected nor provided for sufficient financial allocation in the current financial year for the settlement of the decree. The delay in settling the decretal sum was occasioned by budgetary constraints.
5. The substantive motion was canvassed by way of written submissions. The ex parte applicant filed her written submissions dated 12th March, 2025 where she raised two issues for determination:-
 - i. Whether the respondents are under a public duty and obligation to satisfy the orders issued in favour of the ex parte applicant.
 - ii. Whether the respondents' grounds of opposition dated 27th January, 2025 has merit.
 6. On the first issue, the ex parte applicant submitted that mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty, and it is a remedy that controls procedural delays. While relying on the cases of Republic v Principal Secretary, Ministry of Internal Security & Another ex parte Schon Noorani & Another [2018] eKLR, and Republic v Town Clerk of Webuye County Council & Another HCCC 488 of 2006, the ex parte applicant submitted that the respondents have not given any reason why the decretal sum has not been satisfied more than two years since judgment was delivered. She submitted that if the court were to decline to grant mandamus, she would be left without an effective remedy despite holding a decree.
 7. On the second issue, the ex parte applicant submitted that a plain reading of Section 21 (3) of the *Government Proceedings Act* reveals that the Accounting Officer's mandate is only limited to payment of the outstanding amount, and it does not provide that the suit should be filed against the officer. While relying on the case of Alcoholic Beverages Association of Kenya v Kenya Film and Classification Board & 2 others [2017] eKLR, the exparte applicant submitted that had the legislature intended that Judicial Review applications should be filed against the Accounting Officers, nothing would have been easier than for the legislature to indicate so. To buttress further on this submission, the ex parte applicant relied on the cases of Republic v County Secretary, County Government of Mombasa & 2 others exparte Samuel Mutemi t/a Tudor Paradise [2021] eKLR, Republic Ex parte the *Minister for Finance & Commissioner of Insurance As Licensing and Regulating Officers v Charles Lutta Kasamani T/A Kasamani & Co. Advocates & Another Civil Appeal (Application) No. 281 of 2005*, Republic v Attorney General Ex Parte Zeitun Juma Hassan [2017] eKLR, and Microsoft Corporation v Mitsumi Garage Ltd & Another Nairobi HCCC No. 810 of 2001; [20021] 2EA 460.
 8. While relying on the case of Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eKLR, the ex parte applicant further submitted that the respondents cannot rely on the ground that the National Treasury has not provided sufficient allocation to decline payment of the outstanding amount owed. Further, that failure by the respondents to comply with the same will undermine the rule of law as it was held in the case of Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others [2017] eKLR.



9. In conclusion, the ex parte applicant submitted that the 4th respondent is the principal legal advisor and besides being a party to the proceedings in ELC Petition No. 14 of 2017, it is in a position to offer advice to the 1st to 3rd respondents to pay the decretal amount due.
10. The respondents filed their written submissions dated 27th February 2025, where they raised three issues for determination as listed below: -
 1. Whether the application has met the conditions for an order of mandamus.
 2. Whether an order of mandamus can issue order against the Attorney General.
 3. Whether the applicant is entitled to the order for interest.
11. On the first issue, the respondents submitted that an order of mandamus ought to be issued to the accounting officers of a government ministry or department who have the statutory mandate to honour court decrees. That in this case, the ex parte applicant sought for an order against a party not sued in the matter, and that the state department responsible for the damage suffered was clearly identifiable from the judgment. They submitted that the misjoinder of the relevant party and joinder of irrelevant parties to this suit is fatal to the suit as drawn. They submitted that the application as drawn is defective and should be dismissed. To buttress on this submission, the respondents relied on the cases of Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & Others, Civil Appeal No. 266 of 1996 [1997] eKLR, and Shah v Attorney General (No.3) Kampala HMC No. 31 of 1969 [1970] EA 543.
12. On the second issue, the respondents submitted that the 4th respondent's role in the original suit was in a representative capacity, and that although judgment was made against the respondents in general, the said office is not liable to settle the decree or enforce the order issued against the specific government ministry or state department. Reliance was placed in the case of Republic v Attorney General & 2 others Ex-parte Associated Architects and 3 others [2018] eKLR.
13. On the third issue, the respondents submitted that the petitioner did not seek for a prayer for interest in the original suit, and that the court in the judgment delivered on 28th July, 2022, and the decree issued on 7th September, 2022 did not award her interest on the principal amount. Further, that in judicial review, the court only has the jurisdiction to ensure compliance with the decree and cannot be called upon to compel compliance with what was not contained in the judgment. The respondents relied on the case of Arthur Kinuthia Albert v Permanent Secretary Ministry of Health [2008] eKLR.
14. I have considered the motion, the grounds of opposition, and the written submissions filed by the parties. In my view, the issue for determination is whether the ex parte applicant has established grounds for this court to grant the orders of mandamus.
15. The circumstances under which judicial review order of mandamus are issued were discussed in the case of Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996, where the Court of Appeal pronounced itself as follows:-

“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."

16. Section 21 (3) of the [Government Proceedings Act](#) on provides:

"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."

17. The ex parte applicant extracted a decree dated 7th September, 2022, granting the following orders:-

1. That judgment is hereby entered for the petitioner against the respondents for the sum of Kshs. 3 Million being damages for compensation in respect of the unlawful acquisition of Petitioner's land.
2. That each party to bear their own costs of the suit.

18. Pursuant to the above, the ex parte applicant obtained a certificate of order against the government dated 9th May, 2024 for the sum of KShs. 3,002,000/-. The same was served upon the respondents as can be seen from the letter by the 4th respondent dated 2nd May, 2025. Despite a request for clarification of the amounts, the respondents do not dispute service, and thus demonstrating compliance with Section 21 (3) of the Act.

19. In their grounds of opposition, the 4th respondent argues that it has statutory mandate to settle decretal sums owing to its representative capacity and role in the suit, and further that there was no order for interest on the principal amount. They urged that the motion is defective and ought to be dismissed.

20. In the case of Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR, it was held as follows: -

"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](#). The only requirement which serves as a 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](#) (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the government should be issued by the court after expiration of 21 days after entry of judgment. 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.”

21. While I place reliance on the above cited authority, it is my view, that the ex parte applicant has sought to orders against the accounting officer for the respondents as it is required, and the fact that there is a discrepancy in the decretal sums does not make the application defective. From the evidence tendered, I am of the opinion that an order of mandamus is the most adequate remedy available to the ex parte applicant in the circumstance of this case. Denying her the orders would be grave injustice, which this court frowns upon.
22. On a balance of probabilities, I find merit in the substantive notice of motion dated 19th August, 2024 and I order as follows:-
 1. An order of Mandamus be and is hereby issued compelling the Accounting officers of the 1st, 2nd and 3rd respondents, to pay the ex parte applicant KShs. 3,000,000/- being the decretal amount payable to the ex parte applicant as ordered by the court in ELC Petition No. 14 of 2017.
 2. The 4th respondent is hereby ordered to pursue compliance with order 1 above.
 3. The ex parte applicant is awarded costs of this application.
 4. Mention on 24th September, 2025 to confirm payment.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 3RD DAY OF JULY, 2025.

HON. MBOGO C.G.

JUDGE

03/07/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Oteno for the Ex-parte applicant

No appearance for the Respondents

