



**Republic v County Secretary County Government of Meru & 3 others; Kiunga
 (Suing as the Administratrix of the Estate of Stephen Michuki Kiunga –
 Deceased) (Exparte Applicant) (Environment and Land Judicial Review Case
 E008 of 2024) [2024] KEELC 6764 (KLR) (9 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6764 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT MERU
 ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E008 OF 2024**

CK NZILI, J

OCTOBER 9, 2024

JUDGMENT

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP
 26 LAWS OF KENYA, ORDER 53 RULE 1 OF THE CIVIL PROCEDURE
 RULES 2010 AND THE FAIR ADMINISTRATIVE ACTION ACT 2015**

AND

**IN THE MATTER OF THE JUDGMENT AWARDED IN MERU
 ENVIRONMENT AND LAND COURT CASE NO. 68 OF 2014**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF
 MERU 1ST RESPONDENT**

**CHIEF OFFICER, FINANCE, ECONOMIC PLANNING AND ICT COUNTY
 GOVERNMENT OF MERU 2ND RESPONDENT**

**CHIEF OFFICER DEPARTMENT OF PUBLIC SERVICE COUNTY
 GOVERNMENT OF MERU 3RD RESPONDENT**

COUNTY GOVERNMENT OF MERU 4TH RESPONDENT

AND

**THERESA STEPHEN KIUNGA (SUING AS THE ADMINISTRATRIX
 OF THE ESTATE OF STEPHEN MICHUKI KIUNGA –
 DECEASED) EXPARTE APPLICANT**



JUDGMENT

1. Before the court is a notice of motion dated 1.7.2024 in which the exparte applicant seeks an order of mandamus compelling the respondents to implement the judgment award and a decree of this court for payment of Kshs.541,746/= being taxed costs pursuant to a certificate of order for costs against the judgment debtor dated 8.5.2024.
2. The application is based on the statement of facts and a verifying affidavit dated 20.6.2024. The facts are that the exparte applicant's late husband had sued the 4th respondent in Meru ELC No. 68 of 2014, which matter was concluded and costs taxed against the judgment debtor for Kshs.541,746/=, as per certificate of order for costs dated 8.5.2024.
3. The exparte applicant avers that despite service with the certificate of slated costs, the judgment debtor, who has a statutory duty to settle the costs as assessed by the court, has declined to do so. Further the exparte applicant avers that the continued delay was unjust, unfair and an abuse of the due process of law and violates her legitimate expectation.
4. In the affidavit verifying the facts, Theresa Stephen Kiunga deposes that she purchased Meru Municipality Block II/287 only for the 4th respondent to interfere with her quiet and peaceful enjoyment, forcing her to seek redress in court that issued a permanent order of injunction against the 4th respondent plus costs. The exparte applicant deposes that after the costs were assessed, the respondents were served with the decree and a certificate of stated costs as per an affidavit attached as SKM "9".
5. Though served with the notice of motion on 3.7.2024 and a return of service filed sworn on 24.7.2024, the respondents have not opposed the notice of motion through a response or written submissions.
6. The exparte applicant relies on written submissions dated 29.7.2021. It is submitted that a certificate of order for costs dated 8.5.2024, following the judgment issued on 29.9.2017, has not been appealed against or set aside.
7. Further that the 1st respondent under section 44 of the *County Governments Act* is the secretary to the county executive committee and is answerable for the operations of the county executive, head of the county public service. In contrast, the 2nd and 3rd respondents were the accounting officers of the respective departments.
8. Similarly, the exparte applicant submitted that under Section 103 of the Public Finance and Management Act, the 2nd respondent is the accounting officer of the Treasury Department, responsible for payments going by the case law of Republic vs County Secretary Nairobi City County & others; exparte Koceyo & Co. Advocates (2020) eKLR.
9. Regarding Order 29 Rule 2 (2) (B) Civil Procedure Rules the exparte applicant submitted that it exempts execution of decrees against the government in the usual manner, the only recourse being Section 21 of the *Government Proceedings Act*, which provides inter alia issuance of a certificate of order for costs against the government service of the same and issuance of a formal demand notice giving the government time to pay and therefore the government becomes obligated to pay in default execution to issue. Reliance was placed on Republic vs County Secretary Migori County & another exparte; Linet Magambo (2020) eKLR.



10. Mandamus is a form of a command issued by the court to compel the performance of a public duty which is imposed on a person or body of persons by a statute and where there has been a failure to perform that duty to the detriment of a party who has a legal right to expect the duty to be performed. See Republic vs Kenya National Examinations Council *ex parte* Gathunji & others (1997) eKLR.
11. In Republic vs National Land Commission *ex parte* Sceneries Ltd (2022) eKLR, the court said that under Section 21 of the [Government Proceedings Act](#) as read together with Section 20 (4) of the [National Land Commission Act](#), the National Land Commission is mandated to and had a duty to pay all claims against the government as ordered by the court.
12. The scope and efficacy of an order of mandamus is to remedy the defects of justice and is issued for the end of justice to be met even if there is an alternative remedy, yet the mode of redress is not convenient, beneficial, and effective. see Commission on Administrative Justice vs Kenya Vision 2030 Delivery Board and others (2019) eKLR.
13. In the instant case, an order of mandamus cannot be issued without proof of compliance with section 21 of the [Government Proceedings Act](#). See Republic vs Permanent Secretary Office of the President; *ex parte* Nassir Mwandime (2014) eKLR.
14. From the material presented by the *ex parte* applicant, I am satisfied that a decree and a certificate of stated costs were duly served upon the respondents. The same has not been stayed, appealed against, or reviewed by a court of competent jurisdiction. Both give a specific right to the applicant and a corresponding duty upon the respondent, some of whom are the accounting officers, to pay the decretal amount as specified in the certificate of order. See *Firvt Star Agencies Ltd & another vs National Land Commission* (2024) KECA 439 (KLR) 12th April (2024) (Judgment).
15. The respondents have not given before this court any reasons why the certificate of order or decree were yet to be satisfied. The application is merited. It is allowed. An order shall be issued compelling the respondents jointly and severally to pay the *ex parte* applicant an amount of Kshs.541,746/= as per the stated costs, plus interest of 14% per annum with effect from 12.5.2014 till payment in full. Costs of this application to the *ex parte* applicant.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 9TH DAY OF OCTOBER, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu

Kaburu for the applicant

