



**Abdulraman v Chief Land Registrar, Mombasa Land Registry (Miscellaneous Application 67 of 2020) [2023] KEELC 22617 (KLR) (3 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 22617 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
MISCELLANEOUS APPLICATION 67 OF 2020**

**LL NAIKUNI, J**

**MAY 3, 2023**

**IN THE MATTER OF: AN APPLICATION BY ABUBAKAR AHMED ABDULRAMAN  
FOR LEAVE TO APPEAL FOR A JUDICIAL REVIEW ORDER OF MANADAMUS**

**AND**

**IN THE MATTERS OF: THE L.R NO 750/MSA-KIZINGO, LR NO. MOMBASA  
MAINLAND SOUTH/ BLOCK 11/ 51 LIKONI SOUTH COAST, CR NO.  
15101/1-NYALI BEACH, LR 2499-MALINDI KILIFI TITLE NO C.R NO  
9674, LR NO.7657- MALINDI KILIFI, LR NO. 26212, MALINDI KILIFI.**

**BETWEEN**

**ABUBAKAR AHMED ABDULRAMAN ..... APPLICANT**

**AND**

**THE CHIEF LAND REGISTRAR, MOMBASA LAND  
REGISTRY ..... RESPONDENT**

**JUDGMENT**

**I. Introduction**

1. This is a Judgment that pertains to the Judicial Review suit instituted by the Applicant herein, Abubakar Ahmed Abdulraman seeking certain prerogative writs. Initially, the Applicant moved this Honorable Court through filing a Chamber Summons dated 13<sup>th</sup> February, 2020, against the Respondents herein.

**II. The Applicant's Case**

2. The Applicant herein sought for the following orders:



- a. That Leave be granted to the Applicant herein to apply for an order of *Mandamus* directed to the Chief Land Registrar, Mombasa Land Registry compelling him to issue to the Applicant with an official search in respect of the properties known as L.R No 750/mbsa-kizingo, L.R No. Mombasa Mainland South/block 11/51, Cr No.15101/1-nyali, L.R 2499-malindi Kilifi Title No C.r No 9674, L.R No. 7657- Malindi Kilifi, L.R No. 26212, Malindi Kilifi. & Title No C.r No 9674 indicating the particulars of the current registered owner and any encumbrances thereon;
- b. That the cost of this Application be paid by the respondent in any event.

### III. The Applicant's Case

3. According to 7<sup>th</sup> paragraphed statutory statement by the Applicant he averred that he sought for an Order of *Mandamus* compelling the Respondent herein to issue to the applicant an official search in respect of the properties known as L.R No 750/mbsa-kizingo, Lr No. Mombasa Mainland South/block 11/51, Cr No. 15101/1-nyali Lr 2499-malindi Kilifi Title No C.r No 9674,LR No. 7657- Malindi Kilifi, Lr No. 26212, Malindi Kilifi and Title No C.r No 9674 indicating the particulars of the current registered owner and any encumbrances thereon.
4. The Order being sought was on the following grounds:
  - a. The Respondent by virtue of being the chief Land Registrar was the custodian of all the record and information for every land registered in the said registry.
  - b. The Respondent was obligated and mandated under Sections 7(2), 10 and 14 of the Land Acts to supply, on application, any information that may be requested by a citizen relating to any land under its jurisdiction.
  - c. The Ex - Parte Applicant was entitled to unhindered access to information sought under Article 35 of the Constitution of Kenya and Sections 7(2), 10 and 14 of the Land Act, No. 6 of 2012.
  - d. By the letters dated 11<sup>th</sup> January 2019 and 17<sup>th</sup> October 2019 and served upon the Respondent on 23<sup>rd</sup> January 2019 and 13<sup>th</sup> November 2019 respectively, the respondent was requested to avail, for the purpose of conducting an official search, the original record relating to the land parcels known as L.R No 750/mbsa-kizingo, LR No.mombasa Mainland South/block 11/51, Cr No. 15101/1-nyali LR 2499-malindi Kilifi Title No C.r No 9674, LR No. 7657- Malindi Kilifi, LR No. 26212, Malindi Kilifi & Title No C.r No 9674 all registered in the Mombasa land registry whose custodian is the respondent.
  - e. The said letter was written after several fruitless attempt to request for the files at the registry.
  - f. Despite being served with the said letter for more than 10 month ago, the Respondent have failed, refused and / or neglected to produce the said record or at least acknowledge receipt of the said letter.
5. The Respondent act of refusing, failing and/or neglecting to provide the requested information:
  - a. Is illegal and in breach of the mandatory provisions of section 7(2),10 and 14 of the Land Act.
  - b. Is an infringement of the Ex parte applicant rights to information as guaranteed under Article 35 of the Constitution of Kenya and section 7(2), 10 and 14 of the Land Act.
  - c. Is an abuse of the office and abdication of public duty.



6. The Applicant in his 12 paragraphed verifying affidavit averred that:-

- a. On the 18<sup>th</sup> day of July 2018, I obtained a Judgement against one Muzahim Salim Bajaber for a sum of Kenya Shillings Twenty Eight Million Six Hundred Thousand (Kshs. 28, 600,000.00) in the High Court Civil Case No 1246 of 2004. Annexed hereto and marked as “AAA – 1” was a copy of the decree.
- b. Since the said judgement remained unsatisfied; he decided to carry out investigation as to the way and means in which the judgment debtor can satisfy the said decree.
- c. In the cause of my investigation, he came across the above referred properties which were allegedly owned by the said Muzahim Salim Bajaber. Annexed hereto and marked as “AAA – 2” was a copy of notice extracted from the nation newspaper.
- d. In order to establish the truth, he on several occasions visited Mombasa land registry requesting for the official search for the said properties but all in vain as the original files could not be traced.
- e. After several attempts and failure, he decided to instruct his advocate on record to pursue the matter on his behalf.
- f. On the 11<sup>th</sup> day of January 2019 and 17<sup>th</sup> October 2019, my Advocate wrote to the Respondent herein requesting the said files to be made available for the purpose of obtaining the official search. Annexed hereto and marked as “AAA – 3” & “AAA – 4” were the copies of the said letters.
- g. The said letter was duly served upon the Respondent on the 23<sup>rd</sup> day of January 2019 and 13<sup>th</sup> November 2019 respectively.
- h. Despite being served the respondent has made no effort to avail the requested information nor did it acknowledge receipt of the said letter.
- i. The Respondents act of refusing, failing and/or neglecting to provide the requested information:
  - a. An abuse of the office and abdication of public duty as the Chief Land Registrar and the custodian of original record at Mombasa Land Registry.
  - b. Is unlawful and in breach of the mandatory provision of Sections 7(2), 10 and 14 of the Land Act No. 6 of 2012.
  - c. An infringement of the-applicant right of access to public information as guaranteed under Article 35 of the Constitution of Kenya, 2010.
- j. By the reasons of the Respondent continuous refusal to provide the requested information which he/she was legally obliged to provide, it was meted and just for this Honourable Court to grant leave to the Applicant to apply for the judicial review orders of *Mandamus* to compel the Respondent to provide the information requested.

### III. Analysis and Determination

7. The application was not opposed by the Respondents and the Applicant relied on their pleadings and never filed written submissions.
8. In order to reach an informed, reasonable and fair decision, I have considered the issues raised in this application and framed two (2) issues for the determination by the Honorable Court. These are:-



- a. Whether the Notice of Motion application dated.....by the Applicant meets the threshold of being granted the prerogative writs of Mandamus sought as required by the provisions of the law.
  - b. Who will bear the costs of the application.
9. Section 21(1) of the [Government Proceedings Act](#) provides:

“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.

10. Section 21 (3) of the said [Act](#) on the other hand 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.

11. Dealing with the said provisions Githua, J in “[Republic – versus - Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex - Parte Fredrick Manoah Egunza](#) [2012] eKLR expressed herself as follows:

“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](#). 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. [Emphasis mine].

12. The effect of grant of an order of *Mandamus* was considered in extenso in in “*Shah – versus - Attorney General* (No. 3) Kampala HCMC No. 31 of 1969 [1970] EA 543 where Goudie, J expressed himself, inter alia, as follows:

“*Mandamus* is essentially English in its origin and development and it is therefore logical that the court should look for an English definition. *Mandamus* is a prerogative order issued in certain cases to compel the performance of a duty. It issues from the Queen’s Bench Division of the English High Court where the injured party has a right to have anything done, and has no other specific means of compelling its performance, especially when the obligation arises out of the official status of the respondent. Thus it is used to compel public officers to perform duties imposed upon them by common law or by statute and is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual. *Mandamus* is neither a writ of course nor of right, but it will be granted if the duty is in the nature of a public duty and especially affects the rights of an individual, provided there is no more appropriate remedy. The person or authority to whom it is issued must be either under a statutory or legal duty to do or not to do something; the duty itself being of an imperative nature... In cases where there is a duty of a public or quasi-public nature, or a duty imposed by statute, in the fulfilment of which some other person has an interest the court has jurisdiction to grant *Mandamus* to compel the fulfilment...The foregoing may also be thought to be much in point in relation to the applicant’s unsatisfied judgement which has been rendered valueless by the refusal of the Treasury Officer of Accounts to perform his statutory duty under section 20(3) of the *Government Proceedings Act*. It is perhaps hardly necessary to add that the applicant has very much of an interest in the fulfilment of that duty...Since *Mandamus* originated and was developed under English law it seems reasonable to assume that when the legislature in Uganda applied it to Uganda they intended it to be governed by English law in so far as this was not inconsistent with Uganda law. Uganda, being a sovereign State, the Court is not bound by English law but the court considers the English decisions must be of strong persuasive weight and afford guidance in matters not covered by Uganda law...English authorities are overwhelmingly to the effect that no order can be made against the State as such or against a servant of the State when he is acting “simply in his capacity of servant”. There are no doubt cases where servants of the Crown have been constituted by Statute agents to do particular acts, and in these cases a *Mandamus* would lie against them as individuals designated to do those acts. Therefore, where government officials have been constituted agents for carrying out particular duties in relation to subjects, whether by royal charter, statute, or common law, so that they are under a legal obligation towards those subjects, an order of *Mandamus* will lie for the enforcement



of the duties...With regard to the question whether *Mandamus* will lie, that case falls within the class of cases when officials have a public duty to perform, and having refused to perform it, *Mandamus* will lie on the application of a person interested to compel them to do so. It is no doubt difficult to draw the line, and some of the cases are not easy to reconcile... It seems to be an illogical argument that the Government Accounting Officer cannot be compelled to carry out a statutory duty specifically imposed by Parliament out of funds which Parliament itself has said in Section 29 (1) of the *Government Proceedings Act* shall be provided for the purpose. There is nothing in the said Act itself to suggest that this duty is owed solely to the Government...Whereas *Mandamus* may be refused where there is another appropriate remedy, there is no discretion to withhold *Mandamus* if no other remedy remains. When there is no specific remedy, the court will grant a *Mandamus* that justice may be done. The construction of that sentence is this: where there is no specific remedy and by reason of the want of specific remedy justice cannot be done unless a *Mandamus* is to go, then *Mandamus* will go... In the present case it is conceded that if *Mandamus* was refused, there was no other legal remedy open to the applicant. It was also admitted that there were no alternative instructions as to the manner in which, if at all, the Government proposed to satisfy the applicant's decree. It is sufficient for the duty to be owed to the public at large. The prosecutor of the writ of *Mandamus* must be clothed with a clear legal right to something which is properly the subject of the writ, or a legal right by virtue of an Act of Parliament... In the court's view the granting of *Mandamus* against the Government would not be to give any relief against the Government which could not have been obtained in proceedings against the Government contrary to section 15(2) of the *Government Proceedings Act*. What the applicant is seeking is not relief against the Government but to compel a Government official to do what the Government, through Parliament, has directed him to do. Likewise there is nothing in Section 20 (4) of the Act to prevent the making of such order. The subsection commences with the proviso "save as is provided in this section". The relief sought arises out of subsection (3), and 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 Treasury Officer of Accounts 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 recognised that when statutory duty is cast upon a Crown servant in his official capacity and the duty is owed not to the Crown 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. Where a duty has been directly imposed by Statute for the benefit of the subject upon a Crown servant as *persona designata*, and the duty is to be wholly discharged by him in his official capacity, as distinct from his capacity as an adviser to or an instrument of the Crown, the Courts have shown readiness to grant applications for *Mandamus* by persons who have a direct and substantial interest in securing the performance of the duty. It would be going too far to say that whenever a statutory duty is directly cast upon a Crown servant that duty is potentially enforceable by *Mandamus* on the application of a member of the public for the context may indicate that the servant is to act purely as an adviser to or agent of the Crown, but the situations in which *Mandamus* will not lie for this reason alone are comparatively few... *Mandamus* does not lie against a public officer as a matter of course. The courts are



reluctant to direct a writ of *Mandamus* against executive officers of a government unless some specific act or thing which the law requires to be done has been omitted. Courts should proceed with extreme caution for the granting of the writ which would result in the interference by the judicial department with the management of the executive department of the government. The Courts will not intervene to compel an action by an executive officer unless his duty to act is clearly established and plainly defined and the obligation to act is peremptory...On any reasonable interpretation of the duty of the Treasury Officer of Accounts under section 20(3) of the Act it cannot be argued that his duty is merely advisory, he is detailed as persona designate to act for the benefit of the subject rather than a mere agent of Government, his duty is clearly established and plainly defined, and the obligation to act is peremptory. It may be that they are answerable to the Crown but they are answerable to the subject...The court should take into account a wide variety of circumstances, including the exigency which calls for the exercise of its discretion, the consequences of granting it, and the nature and extent of the wrong or injury which could follow a refusal and it may be granted or refused depending on whether or not it promotes substantial justice...The issue of discretion depends largely on whether or not one should, or indeed can, look behind the judgement giving rise to the applicant's decree. Therefore an order of *Mandamus* will issue as prayed with costs." [Emphasis added].

13. In High Court Judicial Review Miscellaneous Application No. 44 of 2012 between the "*Republic - versus - The Attorney General & Another ex parte James Alfred Koroso*", this Court expressed itself as hereunder:

"...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. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the *Constitution* executive authority derives from the people of Kenya and is to be exercised in accordance with the *Constitution* in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit...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 recognised 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. Where therefore a public officer declines to perform the duty after the issuance of an order of *Mandamus*, his/her action amounts to insubordination and contempt of Court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but are meant to show the Court's displeasure at the failure by a servant of the state to comply with the directive of the Court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court."

14. The circumstances under which judicial review order of *Mandamus* are issued were set out by the Court of Appeal in "[\*Republic – versus - Kenya National Examinations Council ex parte Gathenji & 8 Others\*](#) Civil Appeal No 234 of 1996, the Court of Appeal cited, with approval, [\*Halsbury's Law of England, 4<sup>th</sup> Edn.\*](#) Vol. 7 p. 111 para 89 thus:

"The order of *Mandamus* is of 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."...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."

15. In this case, the Applicant herein has moved this Court to compel the satisfaction of a judgement already decreed in their favour by a competent Court of law. The Respondent has not given any reason why the decree has not been satisfied more than two years down the line. If the Court were to decline to grant *Mandamus*, Applicant would be left without an effective remedy despite holding a decree.
16. I associate myself with the position adopted by Majanja, J in "[\*Republic – Versus - Town Clerk of Webuye County Council & Another\*](#) HCCC 448 of 2006 that:

".....a decree holder's right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the [\*Constitution\*](#) particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant's right of access to justice protected under Article 48 of the [\*Constitution\*](#)."



**Issue No. b). Who Will Bear the Costs of the Application.**

17. It is now well established that Costs are at the discretion of the Court. Costs mean the award a party is granted at the conclusion of any legal process in any litigation. The proviso of Section 27 (1) of the Civil Procedure Rules, 2010 provides that Costs follow the event. By events, it means the results of the said legal action. (See the decision of the Court of Appeal – “*Rosemary Wambui Munene – Versus – Ibururu Diary Co – operative Societies Limited*”, eKLR, (2014) and [Cecilia Ng'ayo versus Barclays Bank of Kenya Limited](#)” eKLR (2016).
18. In the instant case, the application by the Applicant has been successful and therefore he is entitled to the Costs of the suit.

**IV. Conclusion and Disposition**

19. In the premises, and having conducted an elaborate analysis of the framed issues, I hereby proceed to grant the following orders:
  - a. That the Chamber Summons application dated 13th February, 2020 be and is hereby allowed.
  - b. That an order of *Mandamus* be and is hereby issued directed and compelling the Chief Land Registrar, Mombasa Land Registry to issue to the Applicant with an official search in respect of the properties known as L.R No 750/mbsa-kizingo, L.R No. Mombasa Mainland South/ block 11/51, Cr No.15101/1-nyali, L.R 2499-malindi Kilifi Title No C.r No 9674, L.R No. 7657- Malindi Kilifi, L.R No. 26212, Malindi Kilifi. & Title No C.r No 9674 indicating the particulars of the current registered owner and any encumbrances thereon.
  - c. That the Applicant to be awarded the costs of the application.

It Is So Ordered Accordingly.

**RULING DELIVERED THROUGH MICROSOFT TEAMD VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 3<sup>RD</sup> DAY OF MAY 2023.**

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**HON. JUSTICE L.L NAIKUNI - JUDGE  
ENVIRONMENT AND LAND COURT, AT MOMBASA**

In the presence of:-

- a. M/s. Yumna – the Court Assistant
- b. No appearance for the Applicant.
- c. No appearance for the Respondent

