



Republic v County Secretary, Nairobi City County & another (Environment and Land Judicial Review Case E026 of 2022) [2023] KEELC 20391 (KLR) (5 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20391 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E026 OF 2022**

**AA OMOLLO, J
OCTOBER 5, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY, NAIROBI CITY COUNTY 1ST RESPONDENT
CHIEF OFFICER, FINANCE/COUNTY TREASURER 2ND RESPONDENT**

JUDGMENT

1. For determination is the Motion dated 7th December, 2022 by the ex parte applicant seeking that;
 1. That the Order of mandamus do issue directing and compelling the Respondents to pay to the Ex-parte Applicant the sum of Kshs 1,483,880/= together with interest thereon from 28th September, 2018 until the date of payment in full and costs of the suit amounting to Kshs 371,675/=.
 2. That the costs of the application be provided for.
2. The motion was supported by the statement of facts verifying affidavit and the grounds listed on its face. The grounds included;
 - i. That on 28th September, 2018 the Honourable Court entered judgment in favour of the Ex-parte Applicant against the Respondents for the sum of Kshs 1,483,880/= together with interest there on from 28th September, 2018 until the date of payment in full and costs of the suit.
 - ii. That the decree was issued on 21st December, 2020 and a Certificate of Order against the County Government issued on 15th September, 2022 both of which were served upon the Respondents on 21st January, 2021 and 5th October, 2022 respectively.



- iii. That the Respondent have now refused, failed and/or ignored to satisfy the decree to detriment and prejudice of the Ex-parte Applicant.
 - iv. That it is trite law under the *Government Proceedings Act* that an order of Mandamus is necessary and mandatory in execution of a Decree against the Government.
 - v. That in view of the foregoing, it is mete and just that an order of mandamus do issue compelling the Respondents to satisfy the decree of the Court made on 28th September, 2018 and issued on 21st December, 2020.
3. The Respondents did not file any pleading in opposition to the application except the written submissions. In their submissions dated 24th April, 2023, the Respondent argued that the application is premature and offends the provisions of section 21 of the *Government Proceedings Act* Cap 40.
 4. They submitted that courts should take into account the array of circumstances including the exigency and pressure to make payments of debts and decrees by government institutions which calls for exercise restraint by courts to grant a writ of mandamus against public officers in government unless there has been such gross omission in performance of their said duty.
 5. The court can take cognizance that the Respondents who are public officers of a county government have been battling budgetary constraints that have delayed payments to various department of settlement of pending payments owed by the county governments across the country.
 6. Essentially, the Respondents are not disputing the fact that the exparte Applicant is entitled to enjoy the fruits of the judgment. The only issue they have is that being a public institution, they should be granted sufficient time to process the payment. The Respondents however do not make any proposal on how much time they require to process the payment.
 7. From the time of filing of the application to its determination and the date of issue of the decree (28th September, 2022), one year has already lapsed. It is one year in my opinion is sufficient to satisfy a decree which has been in the knowledge of the Respondents since 10th August, 2021.
 8. Consequently, I enter judgment in favour of the Ex parte Applicant as prayed in the motion dated 9th December, 2022 with costs.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2023

A. OMOLLO

JUDGE

