



**Republic v County Executive Committee Member, Finance and Economic Affairs, Nairobi City County & 2 others; Prof Tom Ojienda & Associates (Exparte) (Judicial Review Miscellaneous Application E008 of 2024) [2025] KEHC 1510 (KLR) (Judicial Review) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1510 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E008 OF 2024  
JM CHIGITI, J  
FEBRUARY 5, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE AND ECONOMIC AFFAIRS, NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT  
COUNTY SECRETARY, NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT  
CHIEF OFFICER, FINANCE/COUNTY TREASURER, NAIROBI CITY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**PROF TOM OJIENDA & ASSOCIATES ..... EXPARTE**

**RULING**

**The Applicant’s case;**

1. The application that is before me for determination is the one dated 27<sup>th</sup> June 2023 where the Applicant is seeking the following orders:
  1. That an Order of Mandamus compelling the Respondents, to pay to the Applicant forthwith and without delay, the decretal sum delineated hereunder together with the accrued interest until payment in full, that is to say;

Particulars



Principal Amount Kshs 3, 585,758/=

Interest at 14% p.a from 10<sup>th</sup> February 2020

To 24<sup>th</sup> February 2023 Kshs 1, 526, 660.24

Total Kshs 5,112,445.24/=

2. That in default, Notice to Show Cause do issue against the Respondents to show cause why they should not be cited for being in contempt of Court Orders.
3. That the costs of this Application be borne by the Respondents.
2. The Application is supported by the affidavit of Prof. Tom Ojienda who argues that he filed an Advocate-Client Bill of Costs dated 16<sup>th</sup> January 2019, which Bill arose out of a Court Judgement in the parent file, Petition No. 315 of 2014; Wycliffe Indalu Adieno vs City Council of Nairobi, Attorney General & Nairobi County Assembly in which the Applicant represented the County Council of Nairobi (now County Government of Nairobi).
3. The Deputy Registrar taxed the Bill of Costs at Kshs 3,585,785.00/= in a Ruling delivered on 9<sup>th</sup> October, 2019 and issued a Certificate of Taxation on 10<sup>th</sup> January, 2020 for Kshs. 3,585,785.00/=.
4. It is The Applicant's case that at the time of Taxation, the County Government was represented by the firm of Munyasya and Company Advocates who entered appearance and filed submissions dated 8<sup>th</sup> July 2020 in opposition to the Applicant's Bill of Costs.
5. He further argues that judgment was entered in favour of the Applicant for the payment Kshs. 3,585,785.00/= and an Order issued on 7<sup>th</sup> June, 2021 for the same.
6. A Certificate of Order against Government was issued on 24<sup>th</sup> February, 2023.
7. It is his case that despite several reminders to the Respondents dated 27<sup>th</sup> March 2023, 2<sup>nd</sup> May, 2023 and 3<sup>rd</sup> July, 2023 the decretal sum of Kshs. 5,112,445.24/= remains unsettled to date.
8. The Exparte Applicant moved to court to seek leave for an Order of Mandamus and leave was granted on 25<sup>th</sup> January 2024.
9. The Applicant submits 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.
10. Reliance is placed in the case of Apotex Inc. vs. Canada (Attorney General) and Republic v Principal Secretary Ministry of Internal Security & another Exparte Schon Noorani & another (2018) eKLR as cited in Republic v Principal Secretary Ministry of Interior and Coordination of National Government Exparte Regina Nduku Mutua. The Administrator of the Estate of Mulwa Nzioka (Deceased) [2021] eKLR which sets out the test for granting an order of Mandamus. It is state that the eight factors that must be present for mandamus to issue are: -
  - a. There must be a public legal duty to act;
  - b. The duty must be owed to the Applicants;
  - c. There must be a clear right to the performance of that duty, meaning that:
    1. The Applicants have satisfied all conditions precedent; and
    2. There must have been:



- i. A prior demand for performance;
    - ii. A reasonable time to comply with the demand, unless there was outright refusal; and
    - iii. An express refusal (or an implied refusal through unreasonable delay;
  3. No other adequate remedy is available to the Applicants;
  4. The Order sought must be of some practical value or effect;
  5. There is no equitable bar to the relief sought;
  6. On a balance of convenience, mandamus should lie
11. He also submits that Respondents have a legal duty to the Applicant, which is to ensure that the sums owed to the Applicant are paid as was held in the case of in Republic v County Secretary, Nairobi City County & 3 others; Koceyo & Co. Advocates (Ex Parte) (2020) eKLR held that:
- “Execution proceedings against a government or public authority under the Government Proceedings Act can only be as against the accounting officer or chief officer of the said government or authority who is under a statutory duty to satisfy a judgment made by the Court against that body.”
12. It is submitted that the Respondents are under a duty to settle the outstanding decretal sums by virtue of their roles and functions.
13. He invokes Section 44 of the County Governments Act which establishes the office of the County Secretary who is the secretary to the County Executive Committee and is in turn answerable for the operations of the County Executive, who is head of the county public service.
14. Section 103 of the Public Finance Management Act No 18 of 2012 also establishes the County Treasury comprising of the County Executive Member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under section 103(3) of the Act, the County Executive Committee Member for Finance is the head of the County Treasury, and is thus the responsible for finance matters within the County.
15. The Exparte Applicant submits that Section 21(3) of the Government Proceedings Act imposes a statutory duty on the Respondents to satisfy the decretal sums due to the Applicant upon compliance with the procedure set out therein.
16. Reliance is also placed in Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex- parte Fredrick Manoah Egunza [2012] eKLR stated thus;
17. The Exparte Applicant also places reliance in the case of High Court Judicial Review Miscellaneous Application number 44 of 2012; Republic vs The Attorney General and another Ex parte James Alfred Koroso the court expressed itself as hereunder;

“In the present case the Exparte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the government apart from mandamus he has no option of ensuring that the judgment that he has been awarded his realized unless something is done he will forever be left maybe 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 a constitution which enjoins the state to ensure access to Justice for all persons ...”

### **Analysis and Determination**

18. Upon perusing the application, the Supporting Affidavit and the applicant’s submissions, the court finds the issue for determination is whether this Court can grant the orders as sought.

19. It is settled law that before an order of mandamus is issued, an Applicant must comply with the procedure as set out in Section 21 of the *Government Proceedings Act* which provides:

“(1)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.” (Emphasis added).

20. Section 21 (3) of the said Act 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.

21. In *Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996*, where the Court of Appeal cited with approval, *Halsbury’s Law of England*, 4th Edition. Vol. 7 p. 111 para 89 thus:

“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.”



22. This court finds that the applicant has demonstrated by way of evidence compliance with the provisions of Section 21 of the Government Proceedings Act in that he furnished the court with the Certificate of order, certificate of Costs.
23. The Respondents have not given any reason(s) as to why the decree has not been fulfilled to date.

**Disposition;**

24. I am satisfied that the Exparte Applicant has made a case for the grant of an order of mandamus and I hereby grant the same.

Order;

An Order of Mandamus is hereby issued compelling the Respondents, to pay to the Applicant forthwith and without delay, the decretal sum of Kshs 3, 585,758/= plus Interest at 14% p.a from 10<sup>th</sup> February 2020 until payment in full.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2025.**

.....

**J. M. CHIGITI (SC)**

**JUDGE**

