



Republic v Principal Secretary Ministry of Interior and Co-ordination; Oduor (Exparte) (Judicial Review Application 60 of 2012) [2025] KEHC 3021 (KLR) (Judicial Review) (14 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION 60 OF 2012
J NGAAH, J
MARCH 14, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION RESPONDENT

AND

WILSON AYUKE ODUOR EXPARTE

RULING

1. By a motion dated 29 January 2024, the applicant initiated contempt of court proceedings against the respondent. On 6 June 2024, this Honourable Court, (Sewe, J.) rendered its ruling and allowed the application in the following terms:

“(9) In the result, I am satisfied that the applicant has proved to the requisite standard that the 1st respondent is in contempt of the court order issued herein on 13th March 2018. Consequently, the Notice of Motion dated 29th January 2024 is hereby allowed and orders granted as hereunder:

(a) That summons to attend court be and is hereby issued to the principal secretary/accounting officer of the Ministry of Interior and Coordination of National Government to attend court for the purpose of showing cause why he should not be appropriately



punished for refusing, neglecting and/or failing to comply with the order dated 13th March 2018.

(b) That the costs of the contempt proceedings be borne by the respondents.”

2. There is nothing on record to suggest that the summons to attend court were issued and served upon the principal secretary or accounting officer of the Ministry of Interior and Coordination of National Government as ordered by the court. Instead, an application for execution in the name of Mr. Stephen Odiaga, the learned counsel for the applicant was made seeking execution against the respondent. Mr. Odiaga is erroneously named in the application as the decree-holder; his client, Wilson Ayuke Oduor, was. Nonetheless, consequent upon that application, a notice to show cause why warrant of arrest should not issue was issued by the deputy registrar on 9 October 2024. The notice was issued under Order 22 rule 32 of the *Civil Procedure Rules*.
3. Turning back to the ruling rendered on 6 June 2024, the order which the respondent was held to be in contempt of is an order of mandamus made on 13 March 2018 according to which the respondent was compelled to settle a court decree dated 2011 of the sum of Kshs. 830,567/=. The decree arose out of a suit in Voi Principal Magistrates’ Court Civil Case No. 80 of 1998.
4. In seeking to enforce payment of the decree by way of an order of mandamus, there is no doubt that the applicant thereby invoked section 21 of the *Government proceedings Act*, cap. 40 which generally deals with the manner and procedure for enforcement of orders and decrees against government. This provision of the law reads as follows:

21. Satisfaction of orders against the Government

- (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.
- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
- (3) 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.

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.

5. It is clear from section 21(4) that the Government and its officers are protected from the process of execution or attachment that would ordinarily apply in enforcement of decrees and orders under Orders 22 and 23 of the Civil Procedure Rules. No doubt, it is in the face of this protection from execution or attachment that the only available route that was open to the decree-holder to enforce his judgment was to compel the relevant accounting officer, by way of an order of mandamus, to perform his statutory duty under section 21(3) of the Act and pay what has been decreed as due and owing to the applicant.
6. According to Halsbury's Laws of England/Judicial Review (Volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction paragraph 689:

“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”

7. This is reiterated in paragraph 703 which states:

“A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”

8. And with particular reference to public officers who, like in the instant case, fail to perform their duty, paragraph 706 is clear that a mandamus order may be issued to compel them to carry out the duty. It reads as follows:

“706. Public duties by government officials.

If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA; *R v London Transport Executive, ex p GLC* [1983] QB 484, [1983] 2 All ER 262, DC.)”



9. As noted, the applicant obtained an order for mandamus which the accounting officer in the Ministry of Interior and Coordination of National Government has been found to be in contempt of.
10. In these circumstances, the applicant cannot purport to invoke the process of execution of decrees and orders under Order 22 of the Civil Procedure Rules to enforce the satisfaction of the decree. It is trite that the contempt of court proceedings are quasi-criminal in nature and, therefore, having been convicted of contempt of court, the accounting officer was to appear in court for mitigation and sentencing. This is the next step that ought to have followed and, as a matter of fact, it is what the court, essentially ordered, in its ruling of 6 June 2024.
11. Thus, the application for execution made on and the notice to show cause why warrant of arrest should not issue as a result of the application are all nullities. They are hereby struck out. It is so ordered.

SIGNED, DATED AND DELIVERED ON 14 MARCH 2025

NGAAH JAIRUS

JUDGE

