



Republic v County Government of Kiambu & another; Paul (Exparte Applicant) (Judicial Review Application E007 of 2024) [2025] KEHC 2977 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2977 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

JUDICIAL REVIEW APPLICATION E007 OF 2024

FN MUCHEMI, J

MARCH 13, 2025

**IN THE MATTER OF AN APPLICATION FOR
THE JUDICIAL REVIEW ORDER OF MANDAMUS**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE
LAW REFORMS ACT CAP 26 LAWS OF KENYA**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT

**THE CHIEF FINANCE OFFICER, COUNTY GOVERNMENT OF
KIAMBU 2ND RESPONDENT**

AND

JONATHAN KIHARA PAUL EXPARTE APPLICANT

RULING

Brief Facts

1. By a Notice of Motion dated 31st May 2024, the ex parte applicant seeks the following orders:-



- a. An order of mandamus be issued to compel the Chief Finance Officer in the County Government of Kiambu to pay the ex parte applicant the sum of Kshs. 1,784,341/- being the decretal amount owed to it in Thika Civil Suit CMCC No. 323 of 20027 together with interest accrued thereon at court rates from 6/5/2024 until payment in full.
2. The respondents opposed the application and filed a Replying Affidavit dated 24th September 2024.

The Ex parte Applicant's Case

3. The ex parte applicant states that he instituted a suit in Thika Chief Magistrates Court being CMCC No. 323 of 2007 against the 1st respondent which suit was heard and determined and a judgment rendered on 10th December 2018 in his favour. In the said judgment, the trial court awarded the ex parte applicant an aggregate sum of Kshs. 1,784,341/- against the respondents which they have since refused to pay and the same remains overdue.
4. The ex parte applicant states that the 1st respondent has failed, ignored, refused and/or neglected to perform its statutory and public duty by failing to comply with the certificate order and the said sum continues to accrue interest at court rates from 17th January 2019 until payment in full.
5. The ex parte applicant states that he has made several demands to the respondents through their authorized officers who have failed to perform their statutory and public obligations towards him by failing, refusing or openly neglecting to pay the decree.

The Respondents' Case

6. The respondents aver that the delay in remitting the decretal amount to the tune of Kshs. 1,784,341/- has been occasioned by lack of sufficient funds to adequately cater for the same. The respondents further state that the same is a pending bill by dint of having been generated in the year 2023, and that as a county they are currently grappling with an issue of pending bills to the tune of Kshs. 3,700,000,000/- with quite a number of accrued payments due and owing from the financial year 2019/2020 and earlier years whereupon priority is given in order of the year when the pending bill was generated.
7. The respondents aver that the payment of any pending bills has to undergo a rigorous procedure that begins with the verification exercise to ensure that it conforms to the financial prudence measures as outlined by the underlying legal provisions right through examination, authorization and requisition of funds by the controller of budget.
8. Parties agreed to dispose of the application by way of written submissions.

The Ex parte Applicant's Submissions.

9. The ex parte applicant submits that its decree is not a bill generated in the year 2023 as alleged by the respondents since the decree against the 1st respondent was issued on 17/01/2019 and the 1st respondent was served with copies on 9/4/2019. The ex parte applicant submits that the respondents deliberately, out of malice and ill will failed to settle the bill.
10. The ex parte applicant further submits that he has been seeking justice in the court corridors for 17 years from 2007 when he filed the suit against the 1st respondent.
11. The ex parte applicant relies on the case of *Republic vs County Government of Kiambu ex parte Laba, J. Macharia Muiruri* (2021) eKLR and submits that a lawful judgment was entered against the respondents jointly and severally in his favour and the respondents have failed to perform their duty by paying the decretal sum. The *ex parte* applicant states that the decretal sum is not disputed by



the respondents. Further, the ex parte applicant submits that he has fulfilled all the requirements for issuance of mandamus.

The Respondents' Submissions.

12. The respondents rely on the cases of *Republic vs The Commissioner of Lands & Another ex parte Kitbinji Murugu M'agere* Nairobi High Court Misc. Application No. 395 of 2012; *Republic vs Kenya National Examinations Council ex parte Gathenji & Others* (1997) eKLR and *Republic vs Town Clerk, Kisumu Municipality ex parte East African Engineering Consultants* [2007] 2 EA 441 and submit that an order of mandamus compels a public officer to act in accordance with the law. The respondents submit that the instant case is not one where an order of mandamus can issue for the reason that it is necessary to point out at the onset that the orders sought will require this court to undertake a merit review beyond the remit of this court as a judicial review court.
13. The respondents rely on Section 7(2) of the *Fair Administrative Action Act* and the case of *Suchan Investment Limited vs Ministry of National Heritage & Culture & 3 Others* (2016) eKLR and submit that a reviewing court has no mandate to substitute its own decision for that of the administrator. Thus, in granting an order of mandamus in the manner sought, the court will also be usurping the roles of other public bodies that regulate payment of pending bills but not limited to the controller of budget which is strictly forbidden in matters judicial review.

The Law

14. The Court of Appeal discussed the nature of the remedy of mandamus in *Republic vs Kenya National Examinations Council ex parte Githinji & 8 Others* [1997] eKLR citing with approval *Halsbury's Laws of England* 4th Vol. 7 p. 111 para 89:-

The order of mandamus is the 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 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 had 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 the instant case, the ex parte applicant has moved this honourable court to compel the respondents satisfy a judgment already decreed in its favour by a competent court of law. It is not disputed that judgment was entered in favour of the ex parte applicant in Thika CMCC No. 323 of 2007 on 10th December 2018 for the sum of Kshs. 992,538/- plus interest at court rates from the date of judgment until payment in full. The issues therefore that require to be determined are whether the respondents are under a public duty and obligation to satisfy the decree and orders in favour of the ex parte applicant in the said judgment and if so, whether the ex parte applicant is entitled to the relief it seeks.
16. The procedure required to be followed for payment of damages or costs due from the government in civil proceedings are elaborated in Section 21 of the *Government Proceedings Act*. It 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;

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.

17. Evidently, Section 21(3) above provides that the person responsible for the payment of any damages or costs awarded against the government is the accounting officer of the Ministry or public body concerned, who is the one under a statutory duty to satisfy a judgment made by the court against that ministry or body. This position was explained in [*Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security* \(2012\) eKLR](#) 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 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 Honourable 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 Honourable 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.

18. The ex parte applicant herein has annexed various demand letters dated 2/4/2019, 30/11/2022 and 24/1/2023 addressed to the 1st respondent enclosing the decree and certificate of costs and demanding payment of the decretal amount. The ex parte applicant has further annexed the certificate of order against the government dated 6th May 2024. The respondents have not denied service of the relevant documents. The respondents are aware of the debt and state that the said decree is a pending bill awaiting payment. On perusal of the record, the ex parte applicant has shown that the respondents were aware of the claim as they were served with demand letters dated 2nd April 2019, 24th January 2023 and 30th November 2022 enclosing a copy of the decree and certificate of costs, certificate of order against the government and copy of the judgment. Thus, it is evident that the ex parte applicant followed the procedure as outlined in Section 21 of the Government Proceedings Act.
19. Having found that the respondents are aware of the judgment of the trial court and that they were duly served, and have indeed admitted the claim, it is my considered view that the ex parte applicant has established the requirements for legal grant of an order of mandamus in these proceedings.

Conclusion

20. I therefore find that the Motion dated May 31, 2024, merited and allow it in terms of prayer 1 and 3. As such, the orders for mandamus are hereby issued as prayed plus costs of the application.
21. The respondent has thirty (30) days to settle the claim.
22. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF MARH 2025.

F. MUCHEMI

JUDGE

