



**Republic v County Secretary, Kiambu County & 2 others; Muchiri (Ex parte Applicant) (Judicial Review Application E006 of 2024) [2025] KEHC 11356 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 11356 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
JUDICIAL REVIEW APPLICATION E006 OF 2024  
DO CHEPKWONY, J  
APRIL 10, 2025**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE  
PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY, KIAMBU COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE KIAMBU COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE  
AND ECONOMIC PLANNING ..... 2<sup>ND</sup> RESPONDENT**

**THE KIAMBU COUNTY CHIEF OFFICER FOR FINANCE . 3<sup>RD</sup> RESPONDENT**

**AND**

**JOHN KIMANI MUCHIRI ..... EX PARTE APPLICANT**

**RULING**

1. This is a ruling to determine the Notice of Motion application dated 24<sup>th</sup> April, 2024, wherein the Applicant is seeking for:-
  - a. An Order for *Mandamus* directed at the Respondents compelling them to pay to the *Exparte* applicant the sum of Kshs. 7,896,044/= and interest thereon until payment in full.
  - b. An Order for *Mandamus* directed at the Respondents compelling them to pay to the applicant further interest on the Decretal sum as have accrued from the date of the Certificate of order against the Government to the date in payment in full.
  - c. Any other order that the Honourable court may deem mete and just to make.



- d. Costs of this application be provided for.
2. The Application is premised on the grounds as set out on its face and the Supporting Affidavit of the *Ex parte* Applicant, John Kimani Muchiri sworn on the instant date. The *Ex parte* Applicant has averred that he filed a civil action against the Respondents following the illegal demolition of his property which was heard and determined in a Judgment delivered on 6<sup>th</sup> March, 2023 in Thika CMCC No. 183 of 2016 for special damages of Kshs. 1,131,300/=, mesne profits of Kshs. 5,832,000/= and costs and interest of the suit. He holds that Certificate of Costs was also issued on 13<sup>th</sup> March, 2023 for the sum of Kshs. 347,852/=.
  3. According to the Applicant, he applied for Certificate of Order against Government which was served upon the County Government of Kiambu on 21<sup>st</sup> November, 2023. He further wrote a letter dated 21<sup>st</sup> November, 2023 seeking payment of the sum and contends that the Decree, Certificate of Costs, Certificate of Order against Government and letter dated 21<sup>st</sup> November, 2023 were all served upon the Attorney General on 1<sup>st</sup> December, 2023.
  4. It is the Applicant's contention that the Respondents have never responded to the letter nor paid the sum due and yet they have a public duty to obey court orders by paying the sum. The Applicant thus seeks for the court to grant an order of *Mandamus* to compel the Respondents to pay him the sum of Kshs.7,896,044.00.
  5. The Respondents filed Grounds of opposition dated 8<sup>th</sup> May, 2024 in response to the said application in which they have attributed the delay in paying the sums due to lack of sufficient funds claiming that its Finance Department is waiting for the supplementary budget to be passed by County Assembly so they can get to pay the sum. According to the Respondents, they have not refused or neglected to pay the decretal sum but explain that any liability or expenditure incurred by County Government can only be paid from monies provided to it by the National Government so that they can settle outstanding decrees which includes the Applicants claim but this has not happened. The Respondents thus seeks for more time to comply and urges that the application be dismissed with costs.
  6. On 24<sup>th</sup> June, 2024, the Court directed parties to canvass the application by way of written submissions and they complied.
  7. From the Applicant's submissions dated 28<sup>th</sup> August, 2024, the Applicant has stated the factors which a court needs to consider when determining an application seeking orders of *Mandamus* and relied on the case of Nairobi JR Misc. Appl No. 615 of 2017 *R -vs- Principal Secretary, Ministry of Interior Security & Another Ex parte Schon Noorani & Jack and Jill Supermarket Limited*. The Applicant also submitted that he has complied with Section 21 of the *Government Proceedings Act*. The Applicant has also pointed out that the reasons given by the Respondents do not hold water as the lack of budgetary allocation cannot absolve them from the duty and obligation to pay the decretal sum. On this, the Applicant has relied on the case of *Republic -vs- Principal Secretary, Ministry of Defence & Another, Ex parte David Gitau Njau & 9 others*. In nutshell, it's the Applicant's contention that the application has met the threshold for granting the orders of *Mandamus* sought.
  8. In the Respondent's submissions dated 15<sup>th</sup> October, 2024, they have submitted that the County Accounting Officers should not be personally held liable for failures of the County Government. According to them, the orders sought violate the provisions of Articles 27, 28, 29 and 48 of the *Constitution* and have placed reliance on the case of Supreme Court of India in *Radha Krishah Industries Ltd -vs- State of H.P* (Civil Appeal No. 1155 of 2021) and JR Appl No. E001 of 2020 *R -vs- JKUAT Ex parte: Elijah Kamau Mwangi* [2021] to state that an order of *Mandamus* is an alternate legal remedy.



## Analysis and Determination

9. Having read through the application and response thereto alongside written submissions filed by the parties herein, I find the issue for determination being whether the Applicant has demonstrated sufficient grounds to warrant the issuance of the order of *Mandamus*.
10. It is the *Exparte* Applicant's case that it instituted a suit against the then County Government of Kiambu vide Thika CMCC No.183 of 2016, *John Kimani Muchiri -vs- County Government of Kiambu* in which Judgment was entered in his favour in the following terms:-
- a. Special damages of Kshs.6,963,300/=
  - b. Mesne Profits and a further Kshs.347,852/= together with costs and interest on the said sum.
11. The *Exparte* Applicant extracted a Decree and a Certificate of Order against Government was issued. They were served upon the Respondents and Attorney General. That the Respondents have never responded nor settled the said decretal sum hence these proceedings.
12. It is trite law that any execution against the government should be done through judicial review proceedings, as the only remedy in law by which an *Exparte* Applicant can realize the fruits of his/its/her Judgment. The procedure is premised under Order 53 of the [Civil Procedure Rules](#) and it states:-
- “ [Order 53, rule 1.] Applications for *Mandamus*, Prohibition and *Certiorari* to be made only with leave.
- (1) No application for an order of *Mandamus*, Prohibition or *Certiorari* shall be made unless leave therefor has been granted in accordance with this rule.
  - (2) An application for such leave as aforesaid shall be made ex parte to a Judge in Chambers, and shall be accompanied by a statement setting out the name and description of the Applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.
  - (3) The Judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.
  - (4) The grant of leave under this rule to apply for an order of Prohibition or an order of *Certiorari* shall, if the Judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the Judge orders otherwise:
- Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.”
13. It is also trite law that the application should be made after a certificate of Order the against government is served upon the government in compliance with Section 21 of the [Government Proceedings Act](#) for it to be tenable. Section 21 provides 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.”



14. In the case of *Republic –vs- County Government of Vihiga, Ex parte Global Exhibitions Incorporated Ltd* [2021] eKLR (Musyoka J), as follows:-

“A party wishing to realize the fruits of a Judgment or decree against the Government must obtain a Certificate of order against the Government. The Government pays against the Certificate of Order against it. It is a critical accounting instrument for the purpose of Government finances and accounts. The centrality of the certificate of order against Government, with respect to enforcement of money decrees against the Government, whether at the national or at the county level, has been the subject of pronouncement by the courts.”

15. From their response, the Court finds that the Respondents have not denied that they are the *Exparte* Applicant and have a public duty to pay the said decretal sum which was obtained against them in the Judgment delivered by the trial Court in Thika CMCC No.183 of 2016.

16. The Applicant has submitted proof of Judgment, Decree and Certificate of Orders which was served upon the Respondents (County Government) for the decretal sum to be paid. The Applicant has also demonstrated that the parties he has sued have that capacity and statutory public duty to settle the said decretal sums owed to the *Exparte* Applicant as Secretary Member of the Finance and Economic Planning Committee and Chief Finance Officer of Kiambu County Government. The Respondents also admit that they are aware of the court orders being in place but argue that the failure to pay is as a result of the National Government failing to provide them funds to settle any claims.

17. Notwithstanding the explanations advanced by the Respondents, it is the view of this Court that the Respondent remain under a legal obligation to comply with the court orders issued. The justification offered for non-compliance in this case appears to be a mere pretext aimed at evading the duty to satisfy lawful debts owed to their creditors. This Court must emphasize that court orders are not issued in vain, and parties, regardless of their status, are bound to obey them as is guided in the persuasive English case of *Hadkinson –vs- Hadkinson* [1952] 2 All ER 567, where the Court stated:-

“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged.”

18. Similarly, the Kenyan Court of Appeal in the case of *Teachers Service Commission –vs- Kenya Union of Teachers & 3 Others* [2015] eKLR reiterated that:-

“A court order is not a mere suggestion or an opinion. It is a binding directive which must be obeyed.”

19. Allowing the Respondents, particularly a public entity such as a County Government, to persistently avoid payment of its financial obligations under the guise of administrative or budgetary constraints, would severely prejudice its creditors. Such a posture would render the enforcement of judicial orders illusory, frustrate the principle of legality, and undermine public confidence in the justice system. As



held in *Republic –vs- County Government of Kiambu, Ex parte Robert Gakuru & Another* [2016] eKLR, the Court warned that:-

“ A County Government cannot be allowed to hide behind budgetary constraints to avoid meeting its legal obligations. To do so would render justice subject to the whims of the Executive and erode the rule of law.”

20. Accordingly, the Respondents must be reminded that adherence to court orders is a constitutional imperative under Article 10 and Article 159 of the *Constitution* of Kenya, 2010, and failure to comply not only violates the rights of creditors but also invites sanctions for contempt and administrative accountability.
21. Having taken into consideration all relevant factors herein, the Court finds that the application has merits and the same is hereby allowed in the following terms:-
  - a. An Order for *Mandamus* is hereby issued to the Respondents compelling them to pay to the *Ex parte* Applicant the sum of Kshs. 7,896,044/= and interest thereon until payment in full.
  - b. An Order for *Mandamus* is hereby issued to the Respondents compelling them to pay to the applicant further interest on the Decretal sum as have accrued from the date of the Certificate of Order against the Government to the date in payment in full.
  - c. Costs of this application to be paid by the Respondents.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10<sup>TH</sup> DAY OF APRIL, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

Mr. Kimani counsel for *Ex parte* Applicant

No appearance for Respondent

Court Assistant - Martin

