



Republic v Director of Public Prosecutions & another; Omondi & another (Exparte Applicants) (Judicial Review Application E161 of 2024) [2025] KEHC 4553 (KLR) (Judicial Review) (7 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E161 OF 2024

RE ABURILI, J

APRIL 7, 2025

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

JANET ATIENO OMONDI EXPARTE APPLICANT

SOUTHADOWNS DEVELOPERS LIMITED EXPARTE APPLICANT

JUDGMENT

1. The Exparte Applicants herein vide their notice of motion dated 14th January, 2025 as filed pursuant to leave of court to apply granted on 19th December, 2024 seek judicial review orders of mandamus to compel the respondents herein to settle decree for party and party costs granted in Nairobi Judicial Review Application No. E076 of 2022 wherein the applicants herein were the exparte applicants challenging their prosecution.
2. The applicants were awarded costs of the application after being successful parties vide judgment delivered on 24th February, 2023, upon which they filed their bill of costs dated 31st October, 2023 for taxation and on 10th June 2024, the costs were awarded at Kshs 587, 583 and a certificate of order against the Government issued on 12th June, 2024 for the same costs.



3. The application which is supported by the grounds and affidavit sworn by the 1st applicant Janet Atieno Omondi annexes the decree in the said Judicial Review proceedings, certificate of costs, judgment and certificate of order against the =government. The applicant also annexes a demand letter dated 24th September, 2024 seeking payment of the taxed costs as well as a response letter dated 27th September 2024 from the 1st respondent to the effect that they had forwarded the documents to the Office of Attorney General. There are other correspondences between the two offices and from the applicant's counsel to the Attorney General forwarding the said documents seeking settlement.
4. Although the applicants have deposed so much in the affidavit in support, the above is the gist of the application herein.
5. The respondents did not file any response to the application which came up for oral hearing on 18/2/2025 and the applicants' counsel reiterated the grounds and depositions on record while the respondents' counsel submitted that the was a payment matter which had been forwarded to the Attorney General who had advised the DPP to settle and that the Solicitor General's advise was awaited. That once the funds are remitted to the Attorney General's Accounts, they shall pay promptly. Counsel asked that the matter be settled out of court.
6. I have considered the application for mandamus and the oral submissions. The issue is whether the orders sought are available to the Exparte Applicants. There is no denial that the costs as awarded and taxed and shown by the certificate of order against the government were served upon the respondents for settlement and that they have not been settled and neither is there any appeal or reference filed challenging the said costs. The certificate of costs has not been stayed or set aside.
7. The applicants served a demand for settlement and the respondents in response stated that they were organizing to settle, as confirmed from the submissions in court.
8. Mandamus is the only legal avenue for compelling settlement of decrees against the Government and if that does not issue, the judgment and decree and certificate of order against the government on costs as issued in favour of f the Exparte Applicants shall be a mere paper judgment and the Exparte Applicants shall be rendered a pious explorer in the judicial process.
9. Section 21(4) of the *Government Proceedings Act* prohibits execution against the Government and therefore the only avenue available is vide mandamus to compel payment by the 1st respondent, in his performance of a public duty to satisfy decree issued by the court in favour of the Exparte Applicants.
10. Therefore, as there is no other alternative remedy for the Exparte Applicants to realise the fruits of their lawfully obtained judgment and costs arising therefrom, I am satisfied that the Exparte Applicants deserve the orders sought but only against the 1st respondent DPP since the Attorney General was only enjoined to these proceedings as the principal legal advisor to the Government.
11. Accordingly, I allow the prayer for mandamus as sought against the 1st respondent.
12. I however order that each party bear their own costs of these proceedings to allow the respondents process the assessed costs and to avoid a situation where costs escalate.
13. Mention on June 10, 2025 to confirm settlement.
14. I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF APRIL, 2025

R.E. ABURILI



JUDGE

