



**Republic v Nairobi City County Government & 4 others; KTK
Advocates (Exparte Applicant) (Application E173 of 2024)
[2025] KEHC 4235 (KLR) (Judicial Review) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E173 OF 2024**

**JM CHIGITI, J
APRIL 3, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT

**CECM, FINANCE & ECONOMIC AFFAIRS NAIROBI CITY
COUNTY 2ND RESPONDENT**

CHIEF OFFICER, FINANCE NAIROBI CITY COUNTY 3RD RESPONDENT

COUNTY ATTORNEY NAIROBI CITY COUNTY 4TH RESPONDENT

COUNTY TREASURER NAIROBI CITY COUNTY 5TH RESPONDENT

AND

KTK ADVOCATES EXPARTE APPLICANT

JUDGMENT

1. The application before this Court is the Notice of Motion 16th October, 2024. The application is brought Under Section 8 of the Law Reform Act, Section 21 of the Government Proceedings Act (Cap 40), and order 53 Rule 3 of the Civil Procedure Rules. It seeks the following orders:

1. That an Order of Mandamus do issue directed at the Respondents and compelling them jointly and/or severally to within Twenty-One days (21) days to the Applicant, KTK Advocates, the sum owing on account of judgment dated 21.09.23 and decree dated 3.11.23 in Nairobi ELC



Miscellaneous Cause No. E 056 of 2020 together with taxed costs with interest and further interest now accruing on the judgment debt.

2. That, any other orders that the Honorable court may deem fit and just to grant.
3. That, cost of this application be provided for.
2. It is the Applicant's case that on or about 3rd April, 2012, the 1st Respondent instructed the Applicant to act for them in Nairobi ELC Case No. 282 of 2012.
3. It is contended that the Applicant proceeded to act for the 1st Respondent from the said date until when the Advocate/Client relationship broke down.
4. They subsequently submitted their fee note to the Respondents who neglected and/or refused to settle prompting the Applicant to file a Bill of Costs Nairobi ELC Misc Cause No. E 056 of 2020.
5. The Bill of Costs was taxed at Kshs. 1,338,011,582.76 on 10th May, 2022.
6. It is posited that application was heard and judgment was entered on 21st September, 2023 in favour of the Applicant for the said sum plus interest at 14% from 10th May, 2022 until payment in full and costs of the application.
7. It is contended that they served the, the Respondents with the Certificate of Order Against the Government vide their letter dated 17th May, 2024.
8. It is the Applicant's case that despite being served with the decree and demand, the Respondents have refused, failed and/or neglected to settle the amount in entirety and since the Respondents are protected by law against execution, the Applicant has no other way to secure compliance of the decree apart from the orders sought herein.
9. The Applicant canvassed his application with written submissions dated 7th February, 2025.
10. It is submitted that the Public Management [Act No. 18 of 2012](#) The Act, part IV empowers County Governments to establish offices with respect to and the management of public finance.
11. It is argued that the 2nd, 3rd, 4th and 5th Respondents are offices created under the said Act and they are the officers responsible and liable for the County's finances including both revenue, expenditure and payments.
12. The Applicant posited that the Office of the County Attorney [Act no 14 of 2020](#) creates the office of the County Attorney that is akin to the Attorney General. The functions of the of the County Attorney which includes legal representation is provided for under Section 7 of the Act.
13. It is their case that the [Government Proceedings Act](#) Cap 40 exempts the Government from attachment thus only available avenue in enforcing a Decree against the Government, both Central and Count Government is by way of mandamus
14. Reliance is placed in Republic v PS, Ministry of State for Provisional Administration & Internal Security, Ex parte Fredrick Manoah Egunza and Shahv Attorney General, Nairobi HC Misc Appl. No. 31 of 2012, Republic v Ministry of State for Provisional Administration and Internal Security & Ano, Ex parte Fredrick Manoah Egunza (unreported) where the trial Judge held that: -

“In my view, the service of the certificate of order against the Government on the Attorney General on 1st December 2011 constituted a demand for payment and the fact that no response or payment was received by the Applicant from the Respondent for two months



was sufficient reason for the Applicant to construe that the Respondent had neglected to perform his statutory duty to pay under Section 21(3) of the *Government Proceedings Act*. The Applicant was therefore entitled to move to court to seek an appropriate remedy. The Applicant cannot be faulted for being vigilant.

In the case of R Vs *Kenya National Examination Council Exparte Geoffrey Gathenji & 9 Others, Civil Appeal No.266 of 1996* the Court of Appeal while discussing the remedy of mandamus cited with approval a passage in Halsbury's Laws of England 4th Edition Vol. 1(1) Page 111 paragraph 89 and 90 wherein the authors have stated The order of mandamus is of a 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 legal remedy, yet that mode of redress is less convenient, beneficial and effectualthe order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way".

As stated earlier, in obtaining a decree against the Government and serving the Attorney General with the certificate of order against the Government, the Applicant acquired a specific legal right which gave rise to the Government's statutory obligation through the accounting officer of the ministry concerned to pay the decretal amount as specified in the certificate of order against the Government. The Respondent being the accounting officer in the Ministry of State for Provincial Administration and Internal Security had both a statutory and public duty to satisfy the decree issued by a competent court in favour of the Applicant. It is not disputed that by the time these proceedings were commenced, the Respondent had failed and/or neglected to fulfill his aforesaid duty to the detriment of the Applicant despite the fact that no appeal was lodged by the Government against the judgment entered in his favour in the subordinate court.

In view of the foregoing, I am satisfied that the Applicant has demonstrated that he is deserving of the relief sought in the notice of motion dated 6th February 2012

The application is therefore allowed with the result that an order of mandamus is hereby issued commanding the Respondent to satisfy the order of the court issued..”

15. It is contended that both the High Court and the Court of Appeal have rejected the excuse by Government (Central & County) to delay payment on account of lack of funds or absence of budgetary allocation.
16. Reliance is also placed in Nairobi HC JR Case No. 276 of 2015, Republic v PS, Ministry of Defence, Exparte George Kariuki Waithaka, (Unreported) where the trial Judge held that: -

“Non-allocation of funds by Parliament is not an acceptable defence or justifiable excuse for no payment of decretal sums ordered to be paid by the responsible Government official in



the absence of any evidence of any attempts made by the responsible Government official to commence the process of such allocation”

17. The Applicant thus pray for the reliefs sought in this application and that it applies against all the Respondents, jointly and severally
18. The 1st, 2nd, 3rd, 4th and 5th Respondents’ entered appearance vide the notice of appointment by Okatch and Partners Advocate dated 28th February, 2025 but did not file any responses.

Analysis and Determination:

19. It is not in dispute that on or about 3rd April, 2012, the 1st Respondent instructed the Applicant to act for them in Nairobi ELC Case No. 282 of 2012.
20. After the Advocate/Client relationship broke down The Applicant submitted a fee note to the Respondents who neglected and/or refused to settle prompting the Applicant to file a Bill of Costs Nairobi ELC Misc Cause No. E 056 of 2020.
21. The Bill of Costs was taxed at Kshs. 1,338,011,582.76 on 10th May, 2022 after which a judgment was entered on 21st September, 2023 in favour of the Applicant for the said sum plus interest at 14% from 10th May, 2022 until payment in full with costs of the application.
22. It is not in dispute that the Applicant served the Respondents with the Certificate of Order Against the Government vide their letter dated 17th May, 2024.
23. The Respondents have refused, failed and/or neglected to settle the amount in entirety.
24. In *Econet Wireless Kenya Limited v Minister for Information and communication of Kenya Authority* [2005] eKLR Hon Justice Ibrahim (as he then was) observed as follows: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”
25. In the case of *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* [2012] eKLR it was held 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 a 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 Hon 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 Hon 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. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine].

26. According to De Smith, Woolf & Jowell, “Judicial Review of Administrative Action” 6thEdn. Sweet & Maxwell page 609:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”

27. In the case of Royal Media Services Limited & 2 Others v Attorney General & 8 Others [2014] eKLR it was held that:

“...legitimate expectation, however strong it may be, cannot prevail against express provisions of the Constitution. If a person or a statutory body promises a certain relief or benefit to a claimant or undertakes to do something in favour of a claimant but in a way that offends the Constitution, the claimant cannot purport to rely on the doctrine of legitimate expectation to pursue the claim or the promise.”

Disposition:

28. This court is satisfied that the Applicant had a legitimate expectation that the Respondents would settle the claim as set out in the Certificate of Order against the Government which the Respondents have failed to do without any explanation or justification.

Order:

29. An Order of Mandamus is hereby issued directed at the Respondents and compelling them jointly and/or severally to within sixty days (60) days to the Applicant, KTK Advocates, the sum owing on account of judgment dated 21st September, 2023 and decree dated 3rd November, 2023 in Nairobi ELC Miscellaneous Cause No. E056 of 2020 together with taxed costs with interest and further interest now accruing on the judgment debt.
30. Cost of this application to the Applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF APRIL 2025



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J. CHIGITI (SC)

JUDGE

