



**Republic v Nairobi City County Government & 5 others; KTK
Advocates (Exparte Applicant) (Application E139 of 2024)
[2025] KEHC 4234 (KLR) (Judicial Review) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4234 (KLR)

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

**JUDICIAL REVIEW
APPLICATION E139 OF 2024**

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

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT
CECM, FINANCE & ECONOMIC AFFAIRS 2ND RESPONDENT
CHIEF OFFICER, REVENUE ADMINISTRATION 3RD RESPONDENT
THE COUNTY SECRETARY, NAIROBI CITY COUNTY 4TH RESPONDENT
COUNTY ATTORNEY 5TH RESPONDENT
CHIEF OFFICER, FINANCE/COUNTY TREASURER NAIROBI CITY
COUNTY 6TH RESPONDENT

AND

KTK ADVOCATES EXPARTE APPLICANT

JUDGMENT

1. The application before this Court is the Notice of Motion 1st July, 2024 wherein the Applicant 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 14.03.24 and Decree dated 12.04.24 in Nairobi High



Court Constitutional Miscellaneous Cause No. E018 of 2020 together with taxed costs with interest and further interest now accruing on the judgment date.

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 03.04.15, the Respondents instructed them to act for them in NBI HC Petition No. 474 of 2015.
 3. After the judgment was given on 28.06.17 the Applicant submitted its fee note to the Respondents who neglected and/or refused to settle prompting the Applicant to file a Bill of Costs Nairobi High Court Constitutional Miscellaneous Cause No. E 018 of 2020.
 4. The Bill of Costs was taxed at Kshs. 697,876.30 on 29.03.22 after which the Applicant filed an application seeking for judgment which was entered on 14.03.24 in favour of the Applicant for the said sum of KShs. 697,876.30 plus interest at 14% from 01.04.22 until payment in full and costs of the application.
 5. The Applicant served the, the Respondents with the Certificate of Order Against the Government vide their letter dated 17.5.24.
 6. 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.
 7. 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.
 8. It is argued that the 2nd, 3rd, 4th, and 6th 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.
 9. 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.
 10. It is the Applicant's 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.
 11. Reliance is placed in Republic v PS, Ministry of State for Provisional Administration & Internal Security, ex parte Fredrick Manoah Egunza and Shah v 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..”

12. 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.
13. Reliance is also placed in Nairobi HC JR Case No. 276 of 2015, Republic v PS, Ministry of Defence, Ex Parte George Kariuki Waitthaka, (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”
14. The application is undefended.



Analysis and determination:

15. It is undisputed that on or about 03.04.15, the Respondents instructed the Applicant to act for them in NBI HC Petition No. 474 of 2015 after which judgment was given on 28.06.17.
16. The failure to settle the Applicants fee note precipitated the filing of a Bill of Costs Nairobi High Court Constitutional Miscellaneous Cause No. E 018 of 2020 that was taxed at KShs. 697,876.30 on 29.03.22.
17. The Applicant then filed an application seeking for judgment for the sum of KShs. 697,876.30 plus interest at 14% from 01.04.22 in accordance with the decision of the taxing master.
18. Judgment was entered on 14.03.24 in favour of the Applicant for the said sum of KShs. 697,876.30 plus interest at 14% from 01.04.22 until payment in full and costs of the application.
19. Section 21(1) of the *Government Proceedings Act* provides:

“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.”

20. Section 21 (3) of the said Act on the other hand provides:

“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.”

21. In *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012]* it 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.”

22. In the instant suit, the Applicant has demonstrated that it sent to The Respondent the Certificate of Order Against the Government vide their letter dated 17.5.24.

23. In Republic vs. Town Clerk of Webuye County Council & Another HCCC 448 of 2006 that:

“...a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of *the Constitution* particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of *the Constitution*.”

24. In High Court Judicial Review Miscellaneous Application No. 44 of 2012 between the Republic vs. The Attorney General & Another ex parte James Alfred Koroso, this Court expressed itself as hereunder:

“...in the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby-sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of *the Constitution* which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of *the Constitution* executive authority derives from the people of Kenya and is to be exercised in accordance with *the Constitution* in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit...The institution of judicial review proceedings in the



nature of mandamus cannot be equated with execution proceedings. In seeking an order for mandamus the applicant is seeking, not relief against the Government, but to compel a Government official to do what the Government, through Parliament, has directed him to do. The relief sought is not “execution or attachment or process in the nature thereof”. It is not sought to make any person “individually liable for any order for any payment” but merely to oblige a Government officer to pay, out of the funds provided by Parliament, a debt held to be due by the High Court, in accordance with a duty cast upon him by Parliament. The fact that the Accounting Officer is not distinct from the State of which he is a servant does not necessarily mean that he cannot owe a duty to a subject as well as to the Government which he serves. Whereas it is true that he represents the Government, it does not follow that his duty is therefore confined to his Government employer. In mandamus cases it is recognised that when statutory duty is cast upon a Public Officer in his official capacity and the duty is owed not to the State but to the public any person having a sufficient legal interest in the performance of the duty may apply to the Courts for an order of mandamus to enforce it. In other words, mandamus is a remedy through which a public officer is compelled to do a duty imposed upon him by the law. It is in fact the State, the Republic, on whose behalf he undertakes his duties, that is compelling him, a servant, to do what he is under a duty, obliged to perform. Where therefore a public officer declines to perform the duty after the issuance of an order of mandamus, his/her action amounts to insubordination and contempt of Court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but are meant to show the Court’s displeasure at the failure by a servant of the state to comply with the directive of the Court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court.”

Disposition:

- 25. The Respondent has not given any reason why the decree has not been satisfied. If the Court were to decline to grant mandamus, The Applicant who is entitled to payment shall be left without an effective remedy despite holding a decree. This court is satisfied that the Applicant has made out a case for the grant of the orders sought.

Order:

- 26. An Order of Mandamus is hereby issued directed at the Respondents compelling them jointly and/or severally to within sixty days (60) days’ pay to the Applicant, KTK Advocates, the sum owing on account of judgment dated 14.03.24 and Decree dated 12.04.24 in Nairobi High Court Constitutional Miscellaneous Cause No. E018 of 2020 together with taxed costs with interest and further interest accruing on the judgment date.
- 27. Costs to the Applicant.

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

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J. CHIGITI (SC)
JUDGE

