



**Republic v Nairobi City County Government & 5 others; KTK
Advocates (Exparte Applicant) (Application E140 of 2024)
[2025] KEHC 4320 (KLR) (Judicial Review) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4320 (KLR)

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

APPLICATION E140 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

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 28th June, 2024. 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 4.03.24 and decree dated 12.04.24 in Nairobi High



Court Constitutional Miscellaneous Cause No. Eoo5 of 2021 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. On or about the 10th November 2015, the Respondents instructed the Applicant to act for them in Nbi HC Petition No.418 of 2015.
3. The case was subsequently struck out after which 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 in Nairobi High Court Constitutional Miscellaneous Cause No. E095 of 2021.
4. On 29th March, 2023 the said Bill of Costs was taxed at Kshs.753,100.20 after which a judgment was entered on 14th March, 2024 in favour of the Applicant for the said sum of Kshs, 753.100.20 plus interest at 14% from 1st April,2022 until payment in full and costs of the application.
5. The amount remains due and outstanding precipitating the filing of the instant suit.
6. The Applicant relies on the Decree and the Certificate of order against the Government which have been served upon the Respondents.

Analysis and determination;

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

“...in the present case the Exparte 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.”

8. The Applicant has demonstrated that it served to the Respondents the Certificate of Order Against the Government and the Respondents are aware of the suit.
9. When the Applicant moved to court, it had a legitimate expectation that it would ultimately enjoy the fruits of the judgment immediately it secured and served the certificate of order upon the Respondent.
10. A delay in settling such a claim even for a day thereafter amounts to denying the Decree holder their right to enjoy their hard-earned justice. The legitimate expectation call becomes louder in cases where the judgment debtors are outfits or organs like the ones in this case.
11. By the time the process reaches the level where it is today, no doubt the Respondents have had ample time to comply with the judgment. This resonates with a fair administrative action dictates as set out in the Bill of Rights under Article 47 of the Constitution.
12. This court has duty under Article 165 and Article 23 of the Constitution to issue the Judicial Review order of mandamus in compelling cases like the one before this honorable court.
13. The rule of law cannot be upheld under Article 10 of the Constitution if court Decrees are going to remain unsettled indefinitely. Our democratic values remain a dead letter when a judgment debtor fails delays and or to refuses to settle Decrees. If this conduct is allowed, then ultimately it will erode the authority and the dignity of the court that issued the Decree.

Disposition:

14. The Respondents have not given any reason why the decree has not been satisfied. The Applicant has been left without an effective remedy despite holding a decree. The Applicant has made out a case for the grant of the orders sought.

Order:

1. An Order of Mandamus is hereby issue directed at the Respondents compelling them jointly and/or severally to within sixty days (60) to the Applicant, KTK Advocates, the sum owing on account of judgment dated 4.03.24 and decree dated 12.04.24 in Nairobi High Court Constitutional



Miscellaneous Cause No. Eoo5 of 2021 together with taxed costs with interest and further interest now accruing on the judgment debt.

2. 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

