



**Karobia & another v County Secretary, Kiambu County Government
(Sued as Successor of Town Council of Kikuyu) (Miscellaneous Civil
Application E236 of 2024) [2025] KEHC 9633 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 9633 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E236 OF 2024
DO CHEPKWONY, J
MAY 23, 2025**

BETWEEN

NELLIE GACHIKU KAROBIA 1ST APPLICANT

GODFREY KINUTHIA KAROBIA 2ND APPLICANT

AND

**COUNTY SECRETARY, KIAMBU COUNTY GOVERNMENT (SUED AS
SUCCESSOR OF TOWN COUNCIL OF KIKUYU) RESPONDENT**

RULING

1. Before the court for determination is the Notice of Motion application dated 29th January, 2025 which seeks the following orders:
 - a. An Order of Mandamus do issue against the Respondent compelling the Respondent to satisfy the decree issued on 15th December, 2022 in Nairobi ELRC No 698 of 2011, Nellie Gachiku Karobia and Godfrey Kinuthia Karobia -vs- Town Council of Kikuyu.
 - b. An Order of Mandamus do issue against the Respondent compelling the Respondent to pay the Applicants the sum of Kshs. 357,750/= as per Certificate of Taxation dated 10th June, 2021.
 - c. In default of compliance with the orders of mandamus and failure to pay the sum of Kshs. 357,750/= be deemed as sufficient notice under Section 30 (1) of the *Contempt of Court Act*, 2016 to the persons holding the office or title of the County Secretary of Kiambu County Government requiring them to show cause why contempt of court proceedings should not be commenced against them thirty(30) days after the date of service of the orders of mandamus.
 - d. In default of compliance with the orders of mandamus and failure to pay the sum of Kshs. 357,750/= and failing to show sufficient cause for non-compliance with the orders of



mandamus the Applicant be at liberty to commence contempt of court proceedings against the person holding the office or title of the County Secretary of Kiambu County Government for them to be personally summoned to court and committed to civil jail for contempt of court.

- e. Any further relief that the court deems fit in the interest of justice.
 - f. That the costs of this application be provided for.
2. It is the argument of the Applicant that a certificate of costs was issued against the Town Council of Kikuyu for payment of Kshs. 357,750/= and a Decree was issued on 15th December, 2022 when the defunct Kikuyu Town Council was still operational. That the liabilities are now to be paid by the County Government of Kiambu and being its Accounting Officer, the Respondent should be ordered to pay the same.
 3. The Respondent opposed the application through an undated Grounds of Opposition. The Respondent denies it was a party in the main suit and is thus opposed to the orders sought in toto thus it is not the right party to the suit but is a misjoinder. That according to Section 44 (1) of the County Government Act, the County Secretary is the Secretary to the County Executive Committee but not an Accounting Officer. And under Section 148 of the *Public Finance Management Act*, the County Executive Committee for finance designates Accounting Officers responsible for managing finances which is also in accordance with Article 226 of *the Constitution*. The Respondent contends that the Applicant is therefore engaged on a fishing expedition by seeking to claim from an irrelevant party who is not part of the finance process in the county. For this reason, it holds that the Respondent has been wrongly joined in the application as he is not an Accounting Officer and hence seeks the application should be struck off with costs to the Respondents.
 4. The court directed the parties to canvass the application by filing written submissions. In the Applicants submissions dated 26th March, 2025, they have submitted that the Respondent has not refuted the claim of Kshs. 357,750/= and the only contention is whether there has been misjoinder of parties. According to the Applicants, the Respondent being an officer of the County Government should be accountable. They have relied on the case of Patrick Atenya Asitiba & Another –vs- City Council of Nairobi [2019] KEHC 325 (KLR) where the court held:-

“It is clear from the provisions of Section 44 (3) of the *County Governments Act* that the officer holding the office of the County Secretary is the accounting officer of the County Government.”
 5. Further, the Applicants have placed reliance on the case of Republic –vs- County Government of Uasin Gishu & 2 Others Exparte Timothy Thuo Mwangi [2021] KEHC 3837 (KLR).
 6. It is the Applicants’ contention that the arguments of the Respondent are only meant to frustrate them from enjoying the fruits of the decree given that the Respondent is a public officer who is capable of complying with the directions on payment of the decretal sum.
 7. In its submissions dated 25th March, 2025, the Respondent has stated that the issues for determination are whether there is misjoinder of parties and if so, is the Applicant entitled to costs? The Respondent submits that under Order 1 of the Civil Procedure Rules, the court has power to order a party who has been improperly enjoined in a suit to be struck out. It emphasizes that under the County Government Act and *Public Finance Management Act*, the County Secretary is not the Accounting Officer in charge of managing finances for the County Government and thus there is a misjoinder of parties in this suit. The Respondent holds that since there is no cause of action against him, the Applicant is not entitled



to any costs of this suit and urges that the notice of motion application be struck out with costs to the Respondent.

DIVISION - Analysis and Determination

8. The court has read and considered the Notice of Motion application, the Grounds of Opposition and submissions filed by the parties herein. It finds that the main issue of consideration is whether the application has merits to warrant the orders sought.
9. Before delving into the merits of the application, the court must establish whether the Respondent is the proper party in the suit given that it is the County Secretary who has been sued. The court notes that in the case of *Republic v County Secretary, County Government of Nairobi; Waas Enterprises Limited (Exparte) (Miscellaneous Application E047 of 2021)* [2023] KEHC 261 (KLR) (Judicial Review) (19 January 2023) (Judgment) the court found itself in the same predicament as this court and this is what it has to say,

“I further note that the applicant has sued the County Secretary, County Government of Nairobi. The Respondent is improperly sued as he by law is not the Accounting officer of the County government. The question of who is the Accounting officer in a County Government was discussed in the case of Council of Governors & Others vs The Senate Petition No 413 of 2014 [2015] eKLR where the Court expressed itself as follows:

“The Petitioners have also sought the interpretation of the term ‘Accounting Officer’. In that regard, Article 226 of *the Constitution* provides;(1)Act of Parliament shall provide for -(a).... (b)The designation of an accounting officer in every public entity at the national and county level of government(2)The accounting officer of a national public entity is accountable to the national assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management. Pursuant to this provision, Parliament enacted the *Public Finance Management Act*. The appointment and designation of a County Government Accounting Officer is provided for under Section 148 of that Act, as follows; A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation. Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity. It therefore follows that “an accounting officer” for a County Government entity is the person so appointed and designated as such by the County Executive Committee Member for Finance under Section 148 of the *Public Finance Management Act*. Indeed, Section 148 (3) of the *Public Finance Management Act* mandates the County Executive Committee Member for Finance to ensure that each County government entity has an accounting officer as provided for under Article 226(2) of *the Constitution*. As regards the accounting officer for the County Assembly, Section 148(4) of the *Public Finance Management Act* provides that; “The Clerk of the County Assembly shall be the accounting officer of the County Assembly”. Having found as we have, it follows that the question posed by the Petitioners as to whether the County Governor is an Accounting Officer, must be answered in the negative. He is not an Accounting Officer and we have said why.”

22. It therefore follows that the person who has the overall financial obligation for the purposes of the affairs of a County Government must be the County Executive in Charge of Finance and unless he shows otherwise, he is the



one under obligation to pay funds, in the capacity as the accounting officer. It must always be remembered that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein. In an application for mandamus where orders are sought to compel the satisfaction of a decree against a County Government, the proper person to be a respondent ought to be the said County Executive in Charge of Finance unless he discloses that he had in fact appointed an accounting officer for that purpose.”

10. Going by the same principle, the court agrees with the Respondent that the County Secretary is not the right party to be sued as he or she is not in charge of the management of finances of the county. The court thus finds that it cannot grant the orders sought and the Notice of motion application is hereby struck out with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF MAY, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Salma Watiri holding brief for M/S Kasingiri counsel for Applicants

Court Assistant - Martin

