



**Republic v County Government Kiambu County & another; Kim (Exparte Applicant) (Judicial Review Application E018 of 2024) [2025] KEHC 7738 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7738 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
JUDICIAL REVIEW APPLICATION E018 OF 2024**

**A MSHILA, J**

**MAY 23, 2025**

**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS TO COMPEL  
THE RESPONDENTS TO PAY THE DECRETAL AMOUNT OWED TO THE EX-PARTE**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT KIAMBU COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY KIAMBU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MICHAEL MUIGAI KIM ..... EXPARTE APPLICANT**

**RULING**

1. Pursuant to leave granted by this Court on the 30<sup>th</sup> August, 2024 the Applicant filed the substantive Notice of Motion dated the 16<sup>th</sup> September, 2024 seeking for the following orders:
  - i. An Order for Mandamus directed at the Respondents compelling 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay the Ex-parte Applicant the sum of Kshsh.4,433,750/- being the decretal sum in Civil Case No.563 of 2022 together with certified costs amounting to Kshs.266,744/- together with interest thereon at 12% per annum from 23/11/2023 until payment in full.
  - ii. An Order that such payment of the sum of Kshs.4,700,494/- be made within 30 days from the date of such order in default Notice to Show Cause do issue against the Respondents County Secretary to show cause why they should not be committed to civil jail for a period of six (6) months.
  - iii. An Order of Mandamus costs of the application be awarded to the Ex-Parte Applicant.



- iv. Such further or other relief as the Honourable Court may deem just and expedient to grant.
2. The application was premised on the grounds on the face of the application and also supporting the application is the Applicant's supporting affidavit made on the 16/09/2024.
3. The Respondents upon being served with the Notice of Motion filed Grounds of Opposition dated the 11/11/2024 on the following grounds:-
  - i. That the delay in remitting the decretal sum has been occasioned by lack of sufficient funds to adequately cater for the same.
  - ii. That the Finance Department is waiting for the Supplementary Budget to be passed by the County Assembly and it is from the said budget that the aforementioned amounts will be paid.
  - iii. That the Respondents herein have not refused or neglected to satisfy and settle the decretal sums in questions.
  - iv. That any liability or expenditure incurred against the County Government can only be paid from monies provided to it by the National Government in order to settle its outstanding decrees, including the Applicant's claim and others.
  - v. That the Respondents have not disregarded to pay the decretal sum and have every intention of complying with the same, but seeks for more time to do so.
4. Directions were taken on the 25/11/2024 and the parties were directed to canvass the application by filing and exchanging short written submissions within Twenty-one (21) days each; hereunder is a summary of the filed submissions;

### **Applicant's Submissions**

5. The Applicant stated that he had filed a suit for negligence and damages after the 1<sup>st</sup> Respondent's agents damaged the Applicant's property. On 5/09/2023 judgment was entered in favour of the Applicant in the sum of Kshs.4,433,750/-. The Applicant extracted a decree which indicated the decretal sum plus costs of the suit. Pursuant to Section 13A of the *Government Proceedings Act* the Applicant served the Respondent with a Certificate of Satisfaction of Order and a Certificate of Satisfaction of Costs.
6. Despite several demands the Respondents have failed, refused and or neglected to pay the decretal sum and costs prompting this current application.

### **Issues For Determination**

7. After reading the parties' pleadings and written submissions the Court has framed only one issue for determination; which is;
  - i. Whether the application meets the threshold for an order for mandamus;

### **Analysis**

8. An order for mandamus is a discretionary remedy that compels public officers to perform their public duties including statutory duties; this remedy does not lie against a public officer as a matter of course; it is an order granted only where there is no other appropriate or adequate remedy available to the Applicant; in other words if there is a satisfactory alternative remedy available to an Applicant a court



will not grant ‘mandamus’; an adequate remedy is one of the bars or limitations to the availability of the order; this limitation does not exist in this instant case;

9. Pursuant to Section 13A of the *Government Proceedings Act* the Applicant served the Respondent with a Certificate of Satisfaction of Order and a Certificate of Satisfaction of Costs. Despite several demands the Respondents have failed, refused and or neglected to pay the decretal sum and costs prompting this current application.
10. The appointment and designation of a County Government Accounting Officer is provided for under Section 148 of the *Public Finance Management Act*. The Section provides as follows:-
  1. 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.
  2. 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.
11. The County Executive Committee member for finance is responsible for appointing the accounting officer who is under a statutory duty to pay any sums, including costs which are duly certified by a court to be due and payable in a decree; therefore it is this officer who bears the statutory duty to satisfy decrees of the court; it therefore follows that for the purposes of instant application this is the officer against whom an order for mandamus will issue to compel him/her to exercise this statutory duty to satisfy the decree;
12. The argument that the Respondents cannot pay the decretal sum due to financial constraints does not hold water; The ex-parte Applicant is entitled to enjoy the fruits of his judgment and the issue of lack of funds cannot be brought at this juncture and the record also reflects that the Respondents have taken no action to challenge or reverse the decision of the trial court in the requisite manner;
13. This Court is satisfied that the Respondents through the accounting officer are liable to pay the decretal sum and costs and that the Applicant is deserving of the orders sought;

### **Findings And Determination**

14. For the reasons stated above this court makes the following findings and determination;
  - i. This Court finds that the application meets the threshold for an order for mandamus;
  - ii. The application is found to have merit;
  - iii. This Court hereby grants the Applicant an order of mandamus compelling the Respondents to pay to the Applicant the sum of Kshs.4,433,750/= with interest at court rates from 5/09/2023 till payment in full;
  - iv. Further the Respondents to pay to the Applicant the sum of Kshs.266,744/= being the taxed costs; with no interest thereon.
  - v. Mention on 28/07/2025 for compliance.Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 23<sup>RD</sup> DAY OF MAY, 2025.**



**A. MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

Njengo – for the Applicant

Miss Nguru – for the Respondent

