



Republic v Director General, Kenya National Highways Authority & 2 others; Maya Enterprises Ltd (Exparte) (Application E008 of 2024) [2025] KEHC 7311 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
APPLICATION E008 OF 2024**

**J NGAAH, J
MAY 23, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**DIRECTOR GENERAL, KENYA NATIONAL HIGHWAYS AUTHORITY 1ST
RESPONDENT**

**CHIEF ACCOUNTANT, KENYA NATIONAL HIGHWAYS AUTHORITY 2ND
RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

AND

MAYA ENTERPRISES LTD EXPARTE

JUDGMENT

1. The applicant’s application is a motion dated 31 July 2024 seeking an order of mandamus whose prayer has been couched as follows:

“That this Honourable Court does grant orders of Mandamus directed at the Attorney General, the Director General, (DG) and the Chief Accountant of The Kenya National Highways Authority (KeNHA) compelling them to perform their duty and cause payment out of the revenue of KeNHA to the Ex-parte Applicant the decretal sum and costs awarded by the subordinate court in Mombasa MCCC 875 of 2020 now standing at Kshs. Two Million, nine hundred fifty-four thousand, two hundred twenty, sixty cents (2,954, 220.60) together with accrued interests accrued from 7th December 2023 until payment in full”.



The applicant has also sought for an order on costs.

2. The application is expressed to be brought under Order 53 rule 3 of the Civil Procedure Rules and section 3A of the [Civil Procedure Act](#), cap. 2. 21. It is based on a statutory statement dated 18 July 2024 and an affidavit verifying the facts relied sworn on even date by Jeje Shiv Vag.
3. According to Vag, he is a manager in the applicant company which is said to have obtained a judgment of Kshs. 2, 954, 220.60 against the Kenya National Highways Authority, in Mombasa Chief Magistrates Court Case No. 875 of 2020 in December 2023. The applicant extracted a decree and a certificate of order against government both of which were served upon the 1st respondent and the 3rd respondent. To date the decretal sum has not been settled and due to this failure, the applicant has been compelled to file the instant application.
4. The 1st respondent filed a replying affidavit opposing the application. He has admitted that he is aware of the judgment delivered on 7 December 2023 in the Magistrates Court Civil Case No. 875 of 2020 and that being dissatisfied with the judgment, he is intent on filing an appeal against it. In this regard, he has prepared a memorandum of appeal and taken steps to obtain certified copies of proceedings and judgment.
5. Even then, the 1st respondent has sworn that he has filed an application for stay of execution pending the hearing and the determination of an appeal. It is his position that it would be “unjust” to compel the satisfaction of the decree before the appeal is determined.
6. That the applicant holds a money decree against Kenya National Highways Authority is not in dispute. Its Director General does not deny that he is aware of the decree. However, he has opposed the motion on the ground that an appeal has been filed against the decree. The particulars of the appeal have not been given and even if there was such an appeal, there is no evidence of any order staying execution of the judgment pending the hearing and determination of the appeal.
7. One of the ways through which decrees or orders are enforced is, of course, execution or attachment. However, the respondent is protected from such process of execution or other similar process in enforcement of decrees or orders by section 68 of the [Kenya Roads Act](#), 2007. This section reads as follows:
 68. Restriction on execution against property of Authority
Notwithstanding anything to the contrary in any law—
 - a. where any judgment or order has been obtained against an Authority, no execution or attachment, or process in the nature thereof, shall be issued against such Authority or against its property, but the Director-General shall, without delay, cause to be paid out of the revenue of the Authority such amounts as may, by the judgment or order, be awarded against the Authority;
 - b. no property of an Authority shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Director-General.
8. With this protection from execution or attachment and, considering that the respondent’s Director General has not given any written consent to seize the respondent’s property in satisfaction of the decree, there should be no dispute that the only available route open to the applicant is to compel the 1st respondent to perform his statutory duty and pay what has been decreed as due and owing to



the applicant. In other words, only the order of mandamus would be the appropriate order under the circumstances.

9. According to Halsbury's Laws of England/Judicial Review (Volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction paragraph 689:

“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”

This is reiterated in paragraph 703 which states:

“A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”

10. And with particular reference to public officers who, like in the instant case, fail to perform their duty, paragraph 706 is clear that a mandamus order may be issued to compel them to carry out the duty. It reads as follows:

“706. Public duties by government officials.

If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA; *R v London Transport Executive, ex p GLC* [1983] QB 484, [1983] 2 All ER 262, DC.)”

11. A demand for payment having been made and the 1st respondent having failed to pay, no other evidence is required to demonstrate that the 1st respondent has failed to perform a public duty with which he is charged under section 68 (a) of the *Kenya Roads Act*. This duty is to pay the applicant the decretal sum. A mandamus order would issue in such circumstances.
12. Accordingly, I hereby allow the applicant's motion dated 31 July 2024 in terms that a mandamus order is hereby granted compelling the 1st respondent to pay the applicant in satisfaction of the decree dated 4 April 2024 issued in Mombasa Chief Magistrates Court Civil Case No. 875 of 2020. The applicant will also have costs of the suit. It is so ordered.

SIGNED, DATED AND DELIVERED ON 23 MAY 2025

NGAAH JAIRUS

JUDGE

