



**Republic v Chief Officer Finance Nairobi City County Government & 2 others;
Nderitu (Exparte Applicant) (Judicial Review Application E187 of 2024)
[2025] KEHC 6352 (KLR) (Judicial Review) (20 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6352 (KLR)

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

JUDICIAL REVIEW APPLICATION E187 OF 2024

RE ABURILI, J

MAY 20, 2025

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW ORDERS OF MANDAMUS**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF OFFICER FINANCE NAIROBI CITY COUNTY
GOVERNMENT 1ST RESPONDENT**

**COUNTY SECRETARY NAIROBI CITY COUNTY GOVERNMENT 2ND
RESPONDENT**

**CHIEF EXECUTIVE MEMBER FOR FINANCENAIROBI CITY COUNTY
GOVERNMENT 3RD RESPONDENT**

AND

JANE MUTHONI NDERITU EXPARTE APPLICANT

JUDGMENT

1. Pursuant to the leave of court granted on 9/10/2024 to apply, the exparte applicant Jane Muthoni Nderitu filed a Notice of Motion dated 14th October, 2024 seeking judicial review orders of mandamus to compel the respondents who are officials of the Nairobi ity County Government, to settle decree in Milimani Environment and Land Court case No.823 of 2012.



2. In the above case, the *ex parte* applicant had sued The City County Government of Nairobi as the 1st defendant and three others. She secured judgment in her favour for a sum of Kenya Shillings Eight Million (8,000,000) being the value of a demolished and destroyed building/ property, general damages and aggravated damages. The *ex parte* applicant was also awarded costs of the suit and interest on the general damages to accrue from the date of delivery of the judgment on 27th April, 2022 by Mogeni J. subsequently, a Decree was issued on 14th June 2022 by the Deputy Registrar of the Environment and Land Court.
3. The judgment and decree are annexed to the supporting affidavit sworn by Jane Muthoni Nderitu on 14th October, 2024 wherein she deposes that the respondents have not settled the decree to date.
4. Opposing the application, the respondents filed grounds of opposition dated 16th November, 2024 contending among others, that the applicant obtained judgment against other defendants in the trial suit yet she had elected to execute decree against the respondents herein, yet the decree was to be settled equally between all the defendants. That there was no evidence of alleged several demands made for settlement of decree in vain. That monies to be disbursed by the County Government can only be paid out if budgeted for and disbursed from the National Government. That the application is an abuse of court process.
5. Parties counsel filed written submissions to canvass the application, which submissions I have considered in the analysis and determination in the preceding section.

Analysis and determination

6. I have considered the application and the grounds of opposition together with written submissions. the issue for determination is whether the application for mandamus is merited. There are other ancillary questions that I will answer.
7. The procedure for execution of decrees against the government is set out in section 21 of the *Government Proceedings Act*, noting that the law at section 25 of the same Act as read with Order 29 of the Civil procedure Rules bar execution by way of attachment and sale of Government property in execution of decrees.
8. Section 21 of *Government Proceedings Act* provides:

21. Satisfaction of orders against the Government

- (1) 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.



- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
- (3) 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.

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.

9. Subsection (5) which deals with County Governments of which the substantive respondent is one was introduced by [Act No. 5 of 2015](#); this Act was specifically meant to amend the [Government Proceedings Act](#) to the extent of introducing this new provision.
10. The requirements for an order of mandamus to issue were explained by Mativo J. in *Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR as follows:

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. vs. Canada (Attorney General)*, [23] and, was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*. [24] The eight factors that must be present for the writ to issue are:-

- i. There must be a public legal duty to act;
- ii. The duty must be owed to the Applicants;
- iii. There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand, unless there was outright refusal; and



- iii. An express refusal, or an implied refusal through unreasonable delay;
 - iv. No other adequate remedy is available to the Applicants;
 - v. The Order sought must be of some practical value or effect;
 - vi. There is no equitable bar to the relief sought;
 - vii. On a balance of convenience, mandamus should lie”
11. Of significance is the fact that there must be a certificate of order issued against the Government and the said certificate must be served upon the Attorney general or in the case of County Governments, it must be served upon the County Attorney with a demand for settlement. The County Attorney will then forward the decree to the accounting officer responsible for settlement, that being a statutory public duty imposed on accounting officers to ensure that decrees are budgeted for and funds sourced for settlement.
12. In this case, other than the judgment and decree, there is no certificate of order against the government issued against the respondents. There is also no evidence that the costs as awarded were taxed or even service of the said certificate of order against the Government upon the County Attorney and neither is there any evidence of demand for settlement of the said certificate of order against the Government.
13. In *Kungu v County Government of Nairobi (Judicial Review Miscellaneous Application E034 of 2023) [2024] KEHC 3265 (KLR) (Judicial Review) (3 April 2024) (Ruling)* the Court dismissed a Judicial Review Application against the county government of Nairobi where the applicant failed to follow the mandated procedure. The Court stated as follows and I agree that:
- “...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. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis added].
- Disposition:
- 27. The Applicant has not made a case for the grant of an order of mandamus, and I hereby decline to grant the same.
14. Accordingly, I find and hold that the provisions of section 21 of the *Government Proceedings Act* have not been complied with and no attempt has been made to comply with the same even during the pendency of these proceedings, despite the respondents raising the issue in the grounds of opposition and submissions.
15. It follows that these proceedings for mandamus are premature and the orders sought cannot be issued by this court.
16. That aside, as to who is liable to settle the decree on behalf of the County Government, section 21 is clear that it is the accounting officer.



17. In the case of the national government, it would be the Principal Secretary responsible for the respective Government Ministry or Department while in the case of the County Governments, it is the Chief Officer for Finance or any other Chief Officer designated by the County executive Committee member for Finance.
18. In *Solo Worldwide Inter-Enterprises vs County Secretary Nairobi County and Another* [2016] eKLR the court held:
- “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...”
19. The above decision is self-explanatory. Where the CECM has not appointed an accounting officer, then he or she will be held to be the accounting officer. In addition, the CECM designates who the accounting officer is. Section 148(1) of the *Public Finance Management Act*, 2012 provides:
- “148. Designation of accounting officers for county government entities by the County Executive Committee Member for finance.
1. A County Executive Committee member shall, in accordance with Article 226(1)(a) of *the Constitution*, appoint accounting officers to be responsible for the proper management of finances in the county government entities.”
20. Section 149 of the said Act provides for responsibilities of accounting officers. It therefore follows that it is erroneous to cite the County CECM and Country secretary as accounting officers where there is a designated accounting officer as stipulated in section 148 of the PFMA.
21. There is however, another question that this court must resolve. This is in respect of the Judicial review proceedings herein, seeking to enforce decree issued by the Environment and Land Court in Nairobi ELC Cause No. 823 of 2013. In that case, the exparte applicant herein was the plaintiff while the Nairobi County Government was the 3rd defendant, jointly sued with Godfrey Hinga Gatiro, Geoffrey Kariuki Muriithi and Joyce Nyambura Macharia. Judgment was entered against all the defendants jointly and severally. The applicant has only elected to pursue the Nairobi County Government and has not stated the reasons for not seeking to have the judgment executed against the other defendants in the manner provided for under the Civil Procedure Rules, which procedure does not require judicial review proceedings.
22. Furthermore, the decree of the Environment and Land Court issued against any person or the County Government or National Government can only be enforced by that court and not by the High Court. Section 13 (5) (b) of the Act is clear that in exercise of its jurisdiction under the Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
- a.;



- b. prerogative orders;
23. Judicial review remedy is one of those prerogative orders. Additionally, section 19 (2) of the Act provides that the Court shall be bound by the procedure laid down by the Civil Procedure Act (Cap. 21).
24. On enforcement of decrees of the Environment and Land Court, section 14 of the Act provides that: A judgement, award, order or decree of the Court shall be enforceable in accordance with the Civil Procedure Act (Cap. 21).
25. It follows that the Environment and Land Court, being a Court of equal status with the High Court, is clothed with jurisdiction to issue orders including prerogative orders and mandamus is one of the prerogative orders as was traditionally known. Secondly, that the Court has the power to enforce its own decrees and orders. Thus, the Court had the power to enforce its decree in ELC 823 of 2013 in the manner set out in the Civil procedure Rules made under the Civil Procedure Act.
26. As such, the ex parte applicant cannot be excused for transporting a decree of the ELC to the High Court for enforcement against the County Government of Nairobi. The High Court exercises its exclusive jurisdiction in judicial review matters and so does the Environment and Land Court. Article 165(5) (b) of the Constitution expressly bars the High Court from exercising jurisdiction that is exclusively preserved for the Supreme Court and the specialized Courts contemplated in Article 162 (2) of the Constitution, namely, the Employment and Land Court and the Environment and Land Court. It cannot therefore, be, that after the ELC has entered judgment in a matter it has exercised jurisdiction, parties would transfer the decree to this Court for enforcement against the Government. That is unacceptable.
27. Therefore, for want of jurisdiction and for the judicial review proceedings being initiated prematurely and in contravention of section 21 of the Government proceedings Act, before serving certificate of order against the government, effecting service upon the County Attorney and demanding for settlement, I have no option but to proceed and strike out the Notice of Motion application dated 14th October, 2024.
28. I make no orders as to costs of the application.
29. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MAY, 2025

(VIRTUALLY) for the parties

R.E. ABURILI

JUDGE

