



Republic v County Government of Machakos; Koto Housing Kenya Limited (Exparte) (Judicial Review Miscellaneous Civil Application E041 of 2024) [2025] KEHC 6855 (KLR) (19 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6855 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
JUDICIAL REVIEW MISCELLANEOUS CIVIL APPLICATION E041 OF 2024**

RC RUTTO, J

MAY 19, 2025

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF MACHAKOS RESPONDENT

AND

KOTO HOUSING KENYA LIMITED EXPARTE

RULING

1. The applicant moved this court by way of Judicial Review in an ex-parte chamber summon dated 4th November 2024 seeking leave to be granted to apply for a judicial review procedure. Leave was granted and the applicant proceeded to file a notice of motion application dated 13th November 2024. The application seeks the following prayers;
 - a. That an Order of Mandamus do issue to compel the County of Machakos to pay the Ex-parte Applicant Ksh.4,255,542.50/= together with any other further accruing interest being the decretal sum and costs arising out of Magistrate’s Court Civil case No. E410 of 2023, Koto Housing Kenya Limited Vs Machakos County Government together with interest accruing thereon at the rate of 12% per annum from the 11th January 2024 until payment in full.
 - b. That the County Government of Machakos shall comply by satisfying the Decree, cost and interest in Chief Magistrate’s Court Case No. 410 of 2023, Koto Housing Kenya Limited Vs Machakos County Government within fourteen (14) days from the date of service of the order.
 - c. That in default, notice to show cause do issue against the County Secretary Machakos County Government for him to show cause why he should not be cited for contempt of Court.



- d. That the cost of Application be provided for.
2. The application is based on grounds on the face of it and on the supporting affidavit sworn on 13th November 2024 by Beth Kimani. The grounds include that judgment and decree were issued in the Civil Case No. E410 of 2023 Koto Hosing Kenya vs Machakos County wherein the defendant was ordered to pay a sum of Ksh. 4,052,505.50 together with cost of 203,037.00 and interest at the rate 12% with effect from 11th January 2024; as per the certificate of order against the Government as at 23rd August 2013 the amount stood at Ksh.4,255,542; the certificate of order against the Government herein was never appealed against nor disputed at all; the respondents have failed to settle payment despite the demand and the applicant has no other option to realize the judgment since it is barred from executing against the Government.
 3. The application is further supported by the submissions dated 13th November 2024, in which they set out the history of the dispute. They also make reference to the case of Republic v Permanent Secretary in charge of Internal security – Office of the President & the Attorney General ex-parte Joshua Mutua Paul (2013) KEHC 86 KLR to urge that an order of mandamus be issued to direct the County Secretary Machakos County Government compelling him to honor and satisfy the judgment issued in Machakos Magistrate Civil Case E410 of 2023, Koto Housing Kenya limited vs Machakos County Government in the sum of Ksh 4,255,452 plus costs and interest. They also prayed for costs of this motion.
 4. The respondents did not file any submissions despite being granted an opportunity to do so.
 5. Upon analysing the pleadings before this court the only issue arising for determination is whether this court should grant the prayers sought.
 6. In the case of Republic v Kenya National Examinations Council ex parte Gathenji and 9 Others, [1997] eKLR the Court held 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. v Canada (Attorney General)* and was also discussed in *Dragan v Canada (Minister of Citizenship and Immigration)*. The eight factors that must be present for the writ to be issued 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.
7. From the evidence before court, the applicant sued the respondent, the County Government of Machakos in Machakos Chief Magistrate Civil Case No E410 of 2023 Koto Housing Kenya Limited vs Machakos County Government. In that suit the applicant moved the court seeking a sum of kshs.3,405,466.50 being an amount due and owing by the defendant; interest at court rate of 12% per annum from 25th May 2022 until payment in full as well as costs of the suit.
8. It is not in dispute that judgment was delivered on 19th December 2023 in favour of the applicant and a decree/certificate of cost against the respondent was issued on 11th January 2024 wherein the respondent was ordered to pay the applicant kshs.4,255,542.50 together with interest at the rate of 12% with effect from 11th January 2024. However, the respondents have failed and or refused to settle the decretal sum. The Applicant now seeks that this court grants the order of mandamus compelling the county government to pay the decretal amount as the county is protected with immunity from execution and attachment of its property/goods under section 21(4) of the Government Proceeding Act.
9. This court notes that despite the respondent being served and granted an opportunity to file its response it did not do so thus the application was unopposed and the issues raised therein uncontested.
10. In the premise I do find that the applicants have demonstrated that they have a judgment in their favour issued by a competent court of law. A certificate of cost against the respondents has been issued. There is no reason advanced why the judgment has not been settled. Consequently, the ex parte applicant deserves the Orders sought. Accordingly, I make the following orders.
- a. An order of Mandamus is hereby issued to the Respondents and is directed to the County Secretary, Machakos County Government compelling them to honour and satisfy the judgment and decretal sum made in Machakos Chief Magistrate Civil Case No E410 of 2023 Koto Housing Kenya Limited vs Machakos County Government in the sum of kshs.4,052,505.50 together with costs of kshs.203,037.00 being the decretal sum thereof plus costs and interest at the rate of 12% per annum up to 11th January 2024 and until payment in full within the next 90 days from the date of service of this order
 - b. The ex parte applicant will have the costs of this motion.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF MAY, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Sam, Court Assistant

