



Republic v Attorney General & another; Muchika (Exparte Applicant) (Judicial Review E206 of 2023) [2025] KEHC 6172 (KLR) (Judicial Review) (15 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6172 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E206 OF 2023
JM CHIGITI, J
MAY 15, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

PRINCIPAL SECRETARY, MINISTRY OF INTERIOR 2ND RESPONDENT

AND

ALEX MUCHIKA EXPARTE APPLICANT

JUDGMENT

1. The application that is before this court for determination is the one dated January 25, 2025 wherein the applicant seeks the following orders: -
 1. That the Honourable court be pleased to issue an order of mandamus directed to the 1st Respondent to pay the Applicant the sum of Kshs. 664,458.50/= as awarded by the Honourable Court in Nairobi Civil Suit No. 7457 of 2017; Alex Muchika vs The Attorney General.
 2. That the costs of the application be borne by the Respondents.
2. The Decree holder filed Civil suit No. 7457 OF 2017; Alex Muchika vs The Attorney General wherein a judgment was delivered on 17th June, 2019 in favour of the Applicant against the Defendants for a sum of Kshs. 400,000/= as General damages, Kshs. 18,363/= as special damages plus costs and interest.
3. The Applicant extracted and served the decree, a certificate of costs and a certificate of order against the government upon the Attorney General.



4. The applicant thereafter wrote to the Attorney General requesting for the payment of the amount of Kshs. 664,458.50/= awarded by the court.
5. It is his case that efforts to have the decretal amount settled have been futile and hence the necessity of the current application. The Application is unopposed.

Analysis and determination;

6. In *Republic v Attorney General Ex Partes Miriam Wairimu Wambugu & another* [2021] eKLR the learned Judge placed reliance on the holding in *Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security* (2012) where Githua J. held as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. 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.”

7. This court is satisfied that the applicant has proven its case and in particular, that it served the decree it seeks to execute, the certificate of costs and the certificate of order against the Government as enjoined under Section 21 of the *Government Proceedings Act*.
8. The decree holder has a legitimate expectation that it should be paid. As at the time of filing this suit, the judgment Respondents had not settled the claim to the detriment of the decree holder.
9. Article 47 (1) of *the Constitution* stipulates that “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”.
10. The delay offends this guarantee. The foregoing amounts to an illegality.
11. The Respondents have not tendered any explanation as to why the amount claimed remains outstanding.



On the issue of Costs:

12. The court in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR held as follows;
13. In his work, *Judicial Hints on Civil Procedure*, 2nd Ed. (Nairobi; LawAfrica 2011) at page 94, Mr. Justice (Rtd) Kuloba observed:

“Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise: *Chamilabs v. Lalji Bhimji and Shamji Jinabhai Patel*, High Court of Kenya, Civil Case No. 1062 of 1973.”

Disposition;

14. The Applicant has made out a case for the grant of the orders sought.

Orders;

1. An order of mandamus is hereby issued directed to the 1st Respondent to pay the Applicant the sum of Kshs. 664,458.50/= as awarded by the Honourable Court in Nairobi Civil Suit No. 7457 of 2017, *Alex Muchika vs Attorney General*.
2. Costs to the applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MAY 2025.

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J. M. CHIGITI (SC)

JUDGE

