



Republic v Principal Secretary, Ministry of Interior and Co-ordination of National Government; Gathura (Exparte Applicant) (Civil Miscellaneous Application E029 of 2024) [2025] KEHC 6037 (KLR) (13 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL MISCELLANEOUS APPLICATION E029 OF 2024**

LN MUTENDE, J

MAY 13, 2025

BETWEEN

REPUBLIC APPLICANT

AND

PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT RESPONDENT

AND

JACINTA WAIRIMU GATHURA EXPARTE APPLICANT

(In The Matter of an Application by Jacinta Wairimu Gathura for Leave to Apply for an Order of Mandamus And In The Matter Of Principal Secretary, Ministry of Interior And Cor-ordination Of National Government And In The Matter Of Nyahururu Chief Magistrate Court Civil Case Number 268 of 2022)

RULING

1. In conformity with leave of court obtained on 23rd October, 2024, through a substantive motion dated 30th October, 2024, the Exparte Applicant Jacinta Wairimu Gathura, seeks an order of mandamus to issue to compel the Principal Secretary Ministry of Interior and Coordination of National Government to pay her the judgment debt in Nyahururu CMCC No. 268 of 2022 in the sum of Kshs.533,690/- together with all accrued interest at the rate of 14% per annum from 24th May, 2024 till payment in full and costs be borne by the Applicant.
2. The application is premised on grounds that there is no justifiable reason for withholding payment of decretal sum in Nyahururu CMCC No. 268 of 2022 and there having been a judgment jointly and severally against the Attorney General and Danis Maina Ndegwa who was the complainant



in the Criminal Case, the Principal Secretary Ministry of Interior and Coordination of National Government should be compelled to settle the decretal sum in Nyahururu CMCC No. 268 of 2022.

3. The statement of fact divulge information that the Exparte Applicant was arrested and charged following allegations that she had wrongfully confined Davis Maina Ndegwa with the intent to cause him unnecessary suffering hence depriving him liberty. The case was heard and the Exparte Applicant was acquitted under Section 215 of the Criminal Procedure Code.
4. Subsequently, the Exparte Applicant instituted Nyahururu CMCC No. 268 of 2022 against the Attorney General and Danis Maina Ndegwa seeking general damages for malicious arrest, imprisonment and malicious prosecution as well as special damages.
5. In the result, a judgment was entered in the sum of Kshs.430,000/- with interest and costs, against the Attorney General and Danis Maina Ndegwa jointly and severally. The judgment debt now stands at Kshs.533,690/- which is sought together with all accrued interest at the rate of 14% per annum from 24th May, 2024, till payment in full.
6. The Respondent neglected and/or disregarded the application.
7. It is the submission of the Exparte Applicant that the Attorney General was served with copies of the judgment, decree and certificate of costs, but payment has not been made. It is hence urged that the application for mandamus was made because the Applicant could not execute against the government. That the test for granting orders sought have been met. Reliance in that respect is placed on Republic v Principal Secretary, Ministry of Internal Security & Another Ex-parte Schon Noorani & Another [2018]KEHC 9433 (KLR) where Mativo J (as he then was) stated that;

“The eight factors that must be present for 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.”



8. That the Respondent who has a duty of paying the decretal sum has failed to comply despite reasonable notice to perform. That there is no equitable relief sought as held in *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza* [2012] KEHC 1643 (KLR) where the court stated that;

“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.”

9. And, that it has taken unreasonably too long for the Exparte Applicant to enjoy fruits of the judgment as held in *Republic v Town Clerk of Webuye County Council & Another* [2014] that;

“...a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the *Constitution* particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay and under Article 159(2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of the *Constitution*.”

10. I have duly considered the submissions put forth. The order sought is a legal order of mandamus, commanding the Principal Secretary to perform a public duty he is legally obligated to do. In *Republic v Kenya National Examinations Council exparte Gathengi & 8 Others*, [1997] KECA 58 (KLR) the Court of Appeal cited with approval, Halsburg’s Law of England, 4th Edition, Vol. 7 P. 111 paragraph 89 thus;

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior



tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

11. In *Makupa Transit Shade Limited & Another v Kenya Ports Authority* [2015] KECA 891 (KLR) the Court of Appeal stated that;

“What of the Order for mandamus? The general rule is that the issuance of mandamus is limited to where there is specific legal right and there is no specific legal remedy for enforcing it or the alternative legal remedy is less convenient, beneficial and effectual. See Halsbury Laws of England 4th ed. Vol 1. Para 89. Its scope against public bodies is limited to performance of a public duty where statute imposes a clear and unqualified duty to do that act. See *Manyasi v Gicheru & 3 others*, [2009] KLR 687. However, if the duty is discretionary as to its implementation, then mandamus cannot dictate the specific way the discretion will be exercised. See *Halsbury’s Law of England*, 4th ed Vol. 1 in which it is stated that “Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way”. The 1st respondent had discretion to refuse or grant permission for the construction of the bridge or even to lease out the plot, this the court cannot dictate upon by issuing the orders sought. The applicant in addition has to show that it has a legal right to the performance of the legal duty by the party against whom it issues.”

12. There having been no response to the application refuting what has been submitted, copies of judgment obtained, the decree and certificate of the order made against the government, having been duly served; There was outright refusal to act as required by the law despite being legally bound to act.
13. Judgment having been duly entered, the Exparte Applicant has the right to have the order of the court enforced but the same has not which calls for issuance of the equitable remedy sought.
14. In the premises, I do order that a prerogative order of mandamus be and is hereby issued directed against the Principal Secretary, Ministry of Interior and Coordination of National Government requiring him to pay the Exparte Applicant the sum of Kshs.533,690/- being the debt that has accrued in Nyahururu CMCC No. 268 of 2022 together with accrued interest at the rate of 14% per annum from May 24, 2024 till payment in full; and, costs of the instant application.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF APRIL, 2025.

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L.N. MUTENDE

JUDGE

