



Republic v County Secretary County Government of Isiolo & 3 others; Mburu (Exparte Applicant) (Judicial Review E002 of 2024) [2025] KEHC 6004 (KLR) (Judicial Review) (12 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6004 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
JUDICIAL REVIEW
JUDICIAL REVIEW E002 OF 2024
SC CHIRCHIR, J
MAY 12, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY SECRETARY COUNTY GOVERNMENT OF ISIOLO 1ST RESPONDENT

CHIEF OFFICER, FINANCE AND ECONOMIC PLANNING COUNTY GOVERNMENT OF ISIOLO 2ND RESPONDENT

CHIEF OFFICER, LANDS, HOUSING PHYSICAL PLANNING AND URBAN DEVELOPMENT COUNTY GOVERNMENT OF ISIOLO 3RD RESPONDENT

COUNTY GOVERNMENT OF ISIOLO 4TH RESPONDENT

AND

MICHAEL KOOME MBURU EXPARTE APPLICANT

JUDGMENT

1. By way of a Notice of Motion dated 2092023, the ex-parte Applicant seeks for an order of Mandamus compelling the respondents to implement the Judgment award in Meru High Court Constitutional Petition No. 27 of 2018 by payment of the sum of Kshs. 1,650,541.43 being the decretal sum as at the date of the instant application, and payment of such further interest as shall have accrued at court rates pursuant to the certificate of order against the document dated 2032023. Earlier, on 2692023 the Applicant had been granted leave to bring the present Motion.



2. The prayers sought are against the County Secretary of the County Government of Isiolo (1st Respondent) Chief Officers in charge of implementation of policies and regulations (2nd and 3rd respondents) and the County Government of Isiolo (4th Respondent)

The Applicant's case

3. The Applicant states that he sued the respondents in Meru High Court Constitutional Petition No. 27 of 2018, seeking for damages for loss sustained following the 4th Respondent's refusal to grant him consent to charge his property, namely, LR Isiolo Township Block 4144 to secure some loan facilities.
4. The court returned a verdict in his favour and awarded him Kshs. 1,000,000 in general damages, costs and interest. Upon taxation of costs, a certificate of costs was issued to him on 23/2013. Further certificate of order against the Government was issued against the government for an aggregate of damages, interest thereon and costs. The certificate of order is dated 20/3/2023.
5. The Applicant states that the 4th respondent participated in all the proceedings at Meru High Court and all the documents, including certificate of order have been served on the 4th respondent, but has refused to make good the claim.
6. The decree in Meru Constitutional Petition No. 27 of 2018, issued on 18/12/2018, a certificate of costs dated 20/3/2023 and certificate of order against the government issued on 20/3/2023 are all attached to the supporting affidavit.

The Respondent's Case

7. In a replying affidavit sworn by Hashim Mohammed Abdi, the county Attorney, the 4th respondents oppose the Application (herein after referred to only as the respondent).
8. The respondent submits that the Application is premature as the Applicant ought to have entered into some negotiation with the respondents before seeking for an order of Mandamus. He further states that it is settled in law that an order of Mandamus can only issue if no other remedy is available.
9. The respondent further states that the Notice of Motion offends the statutory provisions of Section 9(2) (3) of the *Fair Administrative Action Act* in that he has not exhausted the alternative dispute resolution mechanism as espoused by Article 159 of *the constitution*; that other than writing one letter to the 4th respondent, he has not engaged the respondents in a constructive discussion in respect to his claim.
10. The respondent further states that it is a matter of common notoriety that after the August, 2022 Election, new officials came into office of the 4th respondent. They had to scrutinize the pending bills and some of the payments had to be approved by the controller of budget, leading to delays in payment.
11. The Application proceeded by way of written submissions.

Applicant's Submissions

12. It is the Applicant's submission that the 1st respondent, being the secretary to the County Executive Committee is answerable for the operation of the County Executive, while the 2nd and 3rd respondents are the Accounting officers of the 4th respondent. Consequently, it is submitted, they are properly enjoined in the proceedings. The decision in the case of *Republic v County Secretary, Nairobi City County & 3 Others [2020] eKLR* has been relied on.



13. It is further submitted that the Applicant has brought these proceedings in compliance with section 21 of the *government proceedings Act*; that there is no requirement for a creditor to first negotiate with the Government. The Applicant has relied on the decision of *Republic v County Secretary Migori County & Anor Ex parte Linet Magambo* [2020] eKLR, in this regard.

14. The respondents did not file any submissions.

Determination

15. The circumstances under which an order of Mandamus may be issued were set out in the case of *Republic v Kenya National Examination Council – Ex parte Gathengi & Others*, Civil Appeal No.2341996, in which the Court of Appeal cited with approval *Halisbury’s Law of England*, 4th Edition Vol. 7 page 111 and stated:

“The order of mandamus is the most extensive remedial nature and it is in form, a command issuing from the High Court of Justice, directed to any person, corporation or tribunal requiring him or them to do some particular things therein specified which appertain to his or her office and is in the nature of a public duty. It’s purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done, in all case 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 effective”.

This principles mean that an order of Mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

16. On the other hand, section 21(1) of the *Government Proceedings Act* provides as follows:

“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 the government department of 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.”

Section 21(3) provides that “if the order provides for payment of money by way of damages or otherwise, or any costs, the certificate should state the amount 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 on the certificate to be due to him together with interest, if any, lawfully due thereon

17. There is evidence that a decree was issued by the High Court in Meru on Constitutional Petition No. 27 of 2018 for payment of Kshs. 1,000,000 in damages; a certificate of costs was issued for Kshs. 142,925 and an order against the government for Kshs. 1,650,541.43 being the aggregate of damages of Kshs. 1,000,000 interest of Kshs. 507,616.43 as at 732023 and costs of Kshs. 142,925.



18. The above 3 documents were served on the 4th respondent on 27/3/2023 as per the Affidavit service sworn by Mwirigi Kaburu on 10/5/2023. Prior to that the Applicant's Advocate had issued an a demand Notice dated 21/3/2023 and served on the 4th respondent on 27/3/2023.
19. The reasons for non- payment is that the new office bearers , who took over the office after the 2022 Elections needed to vet the pending bills and had to liaise with the office of controller of budget for the approval of such payments; and that there are delays attendant to such processes.
20. The change of office in the month of August,2022 in by view, is a convenient but not valid excuse. Governments are permanent entities and save for very few exception in respect to County Governments , it does not change when the bearers change. In other words heads of government change but the entity itself remains. The governments have accounting officers who must manage the affairs government until a new set of officers are appointed. The allegation therefore that the new bearers had to come in and vet the bills prior to payment is insincere, in my view.
21. Further it has been three years since the country's general Election took place and it is now close to two years since the present Application was filed. There is no evidence that the payments have since commenced. Indeed, there was nothing preventing the respondents from making all or some payments during the pendency of these proceedings. If they had been making payments it would have been a sign of good faith. The Respondent's defence is not plausible.
22. The 4th Respondent has further relied on Section 9(2)(3) of the *Fair Administrative action Act*(FAA Act)They have argued that the Applicant ought to have exhausted available remedies before bringing the present Application. The alternative method alluded to is negotiation.
23. The FAA Act refers to internal or alternative remedies. These remedies must be shown to exist and binding on both parties . The existence of these remedies must be in statute, contracts, constitutions , by- laws and other documents, that both parties to the dispute ascribe to. The onus was on the respondent to demonstrate that these alternative methods did exist. Merely citing the FAA Act without demonstrating what remedies the opposite party has not exhausted, before filing suit is not helpful to the respondent.
24. Am satisfied that the Applicant in this case has no other remedy available to realize his claim and therefore the order of mandamus can validly issue.
25. The Application is warranted. Consequently, it is ordered that:
 - a). An order of Mandamus to hereby issue compelling the Respondent to pay the Applicant the sum of Kshs. 1,650,541.43 being the decretal sum, interest and costs as at the date of this judgment and payment of such further interest as shall have accrued at court rates pursuant to the certificate of order against the government dated 20/3/2023.
 - b). Costs of this Application to the Applicant.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 12TH DAY OF MAY 2025

S. CHIRCHIR

JUDGE

In the presence of:

Kashane Gollo- Court Assistant

Mr. Kaburu for the Ex-parte Applicant.

