



**Republic v Attorney General & another; Seven Seas Technologies Limited
(Exparte) (Judicial Review Miscellaneous Application E125 of 2024)
[2025] KEHC 5865 (KLR) (Judicial Review) (7 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5865 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E125 OF 2024**

RE ABURILI, J

MAY 7, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

PRINCIPAL SECRETARY, MINISTRY OF HEALTH 2ND RESPONDENT

AND

SEVEN SEAS TECHNOLOGIES LIMITED EXPARTE

JUDGMENT

1. The ex parte applicant’s Notice of Motion dated 1st October 2024 seeks the following orders:
 - a. An order of mandamus to compel the Attorney General and the Principal Secretary, Ministry of Health to pay the ex parte applicant the sum of American Dollars Thirteen Million Two Hundred and Eighty-Eight Thousand and Ninety-One and Cents Forty-Three (USD 13,288,091.43) pursuant to the decree issued on 21st December 2022 together with interest at the rate of 12% p.a. from the date of the award.
 - b. An order of mandamus to compel the Attorney General and the Principal Secretary, Ministry of Health to pay the ex parte applicant the sum of Kenya Shillings Fifty-Two Million Two Hundred and Eighty-Four Thousand four Hundred and Fourteen only (Kshs. 52,284,414.00) together with costs of the award in the sum of Kshs. 1,243,875/=, being 75% of the total sum paid by the ex parte applicant pursuant to the decree issued on 21st December 2022 together with interest at the rate of 14% p.a. from the date of the award.



- c. The costs of this application be costs in the cause.
2. The application is supported by the affidavit sworn by Michael King'ori Macharia on 27th September 2024 and the statutory statement also dated 27th September 2024.
 3. The ex parte applicant's case is that the parties entered into a contract for the provision of Healthcare Information Technology (HCIT) Solutions for the Innovative Healthcare Management Equipment Solutions (MES) dated 2nd October 2017. The contract was for a total of Kshs. 4,943,417,903.68 (USD 47,569,731.00).
 4. A dispute then arose after the 2nd Respondent, the Principal Secretary, Ministry of Health, failed to provide a government support letter duly executed by the Ministry of Finance which was a fundamental contractual obligation. This, according to the Applicant, was a breach of contract which led to the termination of the contract on 18th November 2019.
 5. The Ex parte Applicant (Seven Seas Technologies Ltd) subsequently sued the Government for breach of contract, claiming USD 27,813,805.57. The dispute was referred to arbitration on 17th June 2021 and on 28th July 2022, the arbitrator awarded the applicant USD 13,288,901.43 being costs incurred, Kshs. 50,783,644/= costs of the reference and Kshs.1,243,875/= being 75% of the total sum paid by the Ex parte Applicant.
 6. It is the Applicant's further case that the court issued a decree enforcing the award on 21st December 2022, but that the Respondents have since failed to make payment in accordance with the decree of the court issued on 21st December 2022.
 7. That Applicant's asserts that as a result of the Respondents' default, the applicant has suffered severe financial distress, including mass layoffs, cancelled contracts, loss of investor confidence, multiple lawsuits and a near total erosion of shareholder value. According to the Applicant, it is under threat of collapse due to mounting debts, tax liabilities and enforcement actions. It is also averred that the Chief Executive Officer and the majority shareholder Mr Michael King'ori Macharia's matrimonial home was sold by Bank of Africa in order to repay the Ex parte Applicant's debts.
 8. The Ex parte Applicant also states that it has been unjustly excluded from the implementation of its own Integrated Healthcare Information System (IHIS) blueprint by the Ministry of Health, which intends to invest over Kshs. 104 billion in the project without compensating the Applicant.
 9. It is the Applicant's case that it has also lost out on favorable exchange rates as the shilling has in recent months gained against US Dollar. According to the Applicant, the rate of exchange for example as at 23rd January 2024 was approximately Kshs. 161 and that if the Respondents had made payment during the course of the financial year starting June 2023 which is the reasonable time to expect the decree issued on 21st December 2022 to have been satisfied, the Ex parte Applicant would have made a significant gain.
 10. The Ex parte Applicant also states that all loans advanced to it by Banks to finance the project continue to compound interest. Further, that the Central Bank Base Lending Rate interest on the loans shot up from 8.75% in December 2022 to 12.75% in September 2024. Further, that judgments against it continue to attract interest at the rate of 12% from the date of those judgments and this would ultimately turn into massive amounts which would have been avoided had the amount due to it from the Respondents been paid.
 11. In response the Respondents filed a Replying Affidavit sworn by Harry K. Kimtai, CBS, on 17th October 2024.



12. In the said affidavit, it is deposed in contention that the Tribunal did not award the Ex parte Applicant any form of interest and that the Arbitration Act does not allow the High Court to interfere with the final award by reviewing/amending it to make provision for payment of interest or to inflate awarded sums.
13. The respondents' deponent avers that the amounts that were awarded to the Ex parte Applicant were USD 13,288,091.43 being special damages and Kshs.52,566,432.75 being costs (including Arbitrator's fees).
14. The Respondents also contend that there is no Certificate of Order against the Government and as such, an order of Mandamus cannot issue.
15. In a rejoinder, the Ex parte Applicant filed a further affidavit sworn on 29th October 2024, deposing that this court has power to award interest owing to the substantial loss that the applicant has suffered and which has been occasioned by the delays either intentionally or due to bureaucratic long drawn processes by the Respondents to pay the decretal amount.
16. On the issue of the Certificate of Order against Government, the Applicant relies on the ruling dated 15th March 2024, where the High Court in Milimani Commercial Case No. E411 of 2023 Absa Bank Kenya PLC Versus Kenya Deposit Insurance Corporation (Prof Sifuna J) declared sections 13A and 21 of the Government Proceedings Act Cap 40 Laws of Kenya unconstitutional "until otherwise vindicated by a higher Court or resurrected by Parliament..."
17. According to the Applicant, pursuant to the above decision, the procedure under section 21 of the Government Proceedings Act which includes service of the Certificate of Order against the Government upon the Attorney General was not applicable at the time that these proceedings were instituted.
18. The applicant further asserts that it served a demand letter dated 5th August 2022, a decree dated 21st December 2022 and a Certificate of Order against the Government upon the 2nd Respondent on 29th October 2024.

Submissions

19. The application was canvassed by way of both written and oral submissions. The oral submissions were made before this court on 18th March 2025. In support of its application, the Ex parte Applicant's counsel filed written submissions dated 14th February 2025 and also filed submissions in response to the Respondents' submissions.
20. The Ex parte Applicant relies on the case of Kenya National Examination Council v Republic Ex parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR where the court is said to have held that an order of mandamus is available where there is a clear legal duty that has not been fulfilled, and there is no other effective remedy.
21. It is the Applicant's submission that the only avenue for recovering the decretal sum from the Respondents is through the issuance of an order of mandamus to compel payment. The Applicant relies on the case of Republic vs. Attorney General & Another Ex parte James Alfred Koroso [2013] eKLR to reaffirm its position.
22. The Applicant further submits that the demand for payment made through the letter dated 5th August 2022 amounted to adequate notice for the Respondents to make arrangements to satisfy the decree. According to the Applicant, although the demand did not elicit a response and/or further action, the



- Applicant had complied with the threshold set in Permanent Secretary Office of the President Ministry of Internal Security & Another ex parte Nassir Mwadhigi [2014] eKLR.
23. The Applicant's submission is that as was held in Republic vs. Permanent Secretary, Ministers of State for Provincial Administration and Internal Security Ex parte Manoah Egunza [2012] eKLR, the Respondents are now under a statutory duty to settle the decretal sum sought.
 24. On the issue of interest, the Applicant submits that Kenyan courts have power to award interest for late payment of a debt or damages if circumstances justify the same and that if such interest shall serve the ends of justice. The Applicant relies on the common law case in Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners and another [2007] UKHL 3 where the House of Lords is said to have held that the court has jurisdiction to award interest, simple and compound, as damages on claims for non-payment of debts as well as on other claims for breach of contract and in tort.
 25. According to the Applicants, interest serves two primary functions first, to compensate a party for the true cost of money damages incurred and second, to encourage settlement and deter parties from benefitting unfairly from delays in litigation. It is also submitted that the Applicant is merely seeking to invoke the court's discretion to grant post-award interest which is an established equitable remedy to ensure full compensation for the delayed payment.
 26. The Applicant further submits that the new issue raised by the Respondents that the Applicant has interfered with the arbitral award by claiming an additional payment of Kshs.1,658,500.00, the cost incurred in collecting the arbitral is false as the same was granted by the arbitral tribunal at Paragraph 116(2) of the arbitral award. This position, it is submitted, was reaffirmed by the decree and certificate of order. It is the Applicants' submission that parties are bound by their pleadings and as such, the attempt to introduce a new issue should be disregarded.
 27. The Respondents in their submissions dated 5th March 2024 urge that the Judicial Review Division of the High Court is not vested with the requisite jurisdiction to amend/review/set aside the arbitration award published on 28th July 2022. Further, that although Article 165(6) of *the Constitution* vests the High Court supervisory jurisdiction in cases where parties have referred a dispute to arbitration, the supervisory jurisdiction of the High Court at Nairobi is donated to the Commercial & Admiralty Division and not to the Judicial Review Division.
 28. It is also argued that the supervisory jurisdiction donated to the High Court is limited in scope by dint of Section 35 of the *Arbitration Act* which provides limited grounds upon which a challenge can be filed and also by limiting the manner in which a court can interfere with an award.
 29. The Respondents also submit that the Ex parte Applicant seeks to interfere with the Arbitral Award by adding an award for payment of Kshs. 1,243,875/= which was not awarded by the Tribunal and Interest awarded sums at 14% per annum from the date of the award.
 30. The Respondents submit that Section 35 of the *Arbitration Act* provides that an application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award. According to the Respondents, in the instant case, the Award was released to the parties on 4th August 2022 and the instant proceedings were instituted in September 2024.
 31. It is the Respondents' submission that the content of the arbitration award published on 28th July 2022 is final in nature and that as such, the Respondent is only liable to pay USD 13,288,091.43 as Special damages and Kshs. 52,566,432.75 as Costs (amount is inclusive of Arbitrator's fees).



32. The respondents relied on *Nyutu Agrovets Limited vs. Airtel Networks Kenya Limited*; Chartered Institute of Arbitrators-Kenya Branch (Interested Party) SCK Petition No. 12 OF 2016 [2019] eKLR where the court is said to have held that where the High Court sets aside an arbitral award, the same is binding upon the parties who so agreed and no steps can be taken to appeal against it; that parties must live with the said outcome unless they agree to go for a fresh arbitration.
33. The Respondents also submit that the *Arbitration Act* under Section 10 is self-governing hence, the *Civil Procedure Act* and the Civil Procedure Rules cannot be invoked. In support of this position, reliance is placed on the case of *Elevonic Lift Services Limited vs. The National Treasury, Nairobi HC ARB.E060/2023* where the court is said to have reiterated this position. It is urged that there is no avenue of recourse that is open to the Applicant and that the matter has proceeded to its logical conclusion as envisaged by the *Arbitration Act* and as such, the matter should rest.
34. On the issue of interest, it is submitted that the Ex parte Applicant's request for 14% interest per annum on the awarded sums if granted, would contravene the *Arbitration Act* by interfering with the award, thereby offending the provisions of the Act. Further, it is contended that imposing such interest would unfairly burden the public by penalizing the Government and taxpayers.
35. Reliance is placed on the cases of *Premier Bag & Cordage Limited v National Irrigation Board ML HC No. 1123 of 2001 [2014] eKLR* and *Ministry of Environment and Forestry v Kiarigi Building Contractors & Another ML Misc. Civil Application No. E320 of 2019 [2020] eKLR*, where the court is said to have held that interest must be compensatory rather than punitive and warned against awarding compound interest which amounts to unjust enrichment rather than fair compensation.

Analysis and Determination

36. I have considered the Ex parte Applicant's notice of motion, the supporting documents, statutory statement, verifying affidavit and further affidavit. I have also considered the Respondents' replying affidavit and the written as well as oral submissions by both parties' counsel. The issue for determination is whether the orders sought are available to the Ex parte Applicant.
37. The Ex parte Applicant seeks an Order of Mandamus compelling the Respondents to honour the court's decree issued on 21st December 2022.
38. There is no dispute that a decree exists in favour of the Ex parte Applicant against the 2nd Respondent.
39. It is trite that no execution of decree by way of attachment and sale can be made against the Government. Section 21(4) of the *Government Proceedings Act* pronounces that position clearly as follows:
 - “(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 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.”
40. The rationale for this law was succinctly stated in *Kisya Investments Ltd vs Attorney General & Another [2005] 1 KLR 74* by the High Court comprising Ibrahim and Visram JJ (as they were in the High Court) as follows:
 - “History and rationale of government's immunity from execution arises from the following...Firstly, there has been a policy in respect of Parliamentary control over revenue



and this is three fold and is exercised in respect of (i) The raising of revenue (by taxation or borrowing);(ii)Its expenditure; and (iii) The audit of public accounts. The satisfaction of decree or judgments is deemed to be an expenditure by Parliament and as a result of this must be justified in law and provided for in the Government’s expenditure. It is for this reason that Section 32 of the *Government Proceedings Act* provides that any expenditure incurred by or on behalf of the Government by reason of this Act shall be defrayed out of the monies provide by Parliament. Parliamentary control over expenditure is based upon the principle that all expenditure must rest upon legislative authority and no payment out of public funds is legal unless it is authorized by statute, and any unauthorized payment may be recovered. As a result of the foregoing, which was borrowed from the Crown Proceedings Act, 1947 (Section 37) of England, this is a warning that any payment by Government must be covered by some appropriation. It is said that parliament is very jealous of its control over the expenditure and this is as it should be. No ministry or department has any ready funds at all times to satisfy decrees or judgments- while existence of claims and decrees may be known to the ministries and departments, they have to notify the Ministry of Finance and Treasury of the same so that payment is arranged for or provisions made in the government expenditure. The second situation, which arises from the above, is that once a decree or judgment is obtained against the government, it would require some reasonable time to have it forwarded to the Ministry of Finance, Treasury, Controller and Auditor General etc for scrutiny and approvals for it to be paid from the consolidated fund. The Ministries and Departments do not have their “own” funds to settle such decrees or payments and considering the nature of the government structure, procedures, red tape and large number of claims, this could take a long time. If execution and or attachment against the government were allowed, there is no doubt that the government will not be able to pay immediately upon passing of decrees and judgments and will be inundated with executions and attachments of its assets day in day out. Its buildings will be attached and its plans and equipment will be attached, its vehicles , aircraft, ships and boats will be attached. There will be no end to the list of likely assets to be attached and auctioned by the auctioneer’s hammer.

No government can possibly survive such an onslaught. The government and therefore the state operations will ground to a halt and paralysed and soon the government will not only be bankrupt but its constitutional and statutory duties will not be capable of performance and this will lead to chaos, anarchy and the breakdown of the Rule of Law. This is the rationale or the objective of the law that prohibits execution against and attachment of the government assets and property.”

41. Order 29 Rule (2) of the Civil procedure Rules provides that:

2. Rules to apply to proceedings by or against the Government

(1) Except as provided by the *Government Proceedings Act* (Cap. 40) or by these Rules—

(a) these Rules shall apply to all civil proceedings by or against the Government; and

(b) civil proceedings by or against the Government shall take the same form as civil proceedings between subjects and shall, if no special form is applicable, take the form of a suit instituted by a plaintiff.

(2) No order against the Government may be made under—

(a) Order 14, rule 4 (Impounding of documents);



(b) Order 22 (Execution of decrees and orders);

(c) Order 23 (Attachment of debts)

42. Thus, since the law prohibits execution proceedings against the Government, including County Governments, the sole remedy available to decree holders seeking enforcement of court judgments against the Government is to pursue judicial review through an order of mandamus, compelling the relevant Accounting Officers within the concerned State Departments to satisfy the court decree.
43. The Ex parte Applicant has however alerted this Court the ruling in Nairobi High Court in Milimani Commercial Case No. E411 of 2023 Absa Bank Kenya PLC Versus Kenya Deposit Insurance Corporation where Prof Sifuna J declared sections 13A and 21 of the *Government Proceedings Act* Cap 40 Laws of Kenya to be unconstitutional. It is on this ground that the applicant argues that owing to this decision, execution against the government must not be done as provided under section 21 of the Government Proceedings and that therefore, the applicant is not required to serve a Certificate of Order against Government.
44. It is important to note that the Court of Appeal has since stayed the said order vide Kenya Deposit Insurance Corporation v ABSA Bank Kenya PLC (ABSA) [2024] KECA 1753 (KLR) and therefore, the procedure for execution of decrees against government remains as provided under Section 21 of the *Government Proceedings Act*.
45. Moreover, this Court is not bound by the decision of a judge of concurrent jurisdiction, which decision was made in proceedings whose subject matter or cause of action had nothing to do with prayers for declaration of the respective provisions of the *Government Proceedings Act* as unconstitutional. The order was made in execution proceedings.
46. In my humble view, the policy behind section 21 of the *Government proceedings Act* and the bar to execution against the government in the same manner as would happen to private entities is because, Government property is held in trust for the public. It includes assets that are crucial for the operation of public services, infrastructure and governance. Allowing the attachment and sale of government property is in my humble view, against public policy and could disrupt the functioning of essential public services and harm the public interest and public good.
47. For example, the Government may own assets necessary for maintaining law and order, delivering social services or running critical infrastructure. Allowing such property to be sold to satisfy private claims would undermine the government's ability to function and serve the people effectively.
48. Additionally, legal protections for the state's assets and property ensure that the property and resources of the state cannot be taken or sold without proper legislative authorization. Allowing such attachment and sale without the proper legislative processes could violate these constitutional provisions. Government property is considered under the control of the public and the legislature, not subject to the same enforcement mechanisms used for private individuals or corporations.
49. The attachment and sale of government property could also impede the state's ability to function, especially if key assets are seized. For example, the government might be required to maintain law enforcement agencies, courts, and other critical functions. If assets needed for these functions were sold to satisfy a court order, it could lead to dysfunction in government operations, negatively affecting the administration of justice and the well-being of citizens.
50. The above position notwithstanding, I note that even though the Applicants have challenged the procedure under section 21 of the *Government Proceedings Act*, they have complied with the said



procedure and they served a Certificate of Order against the Government upon the 1st Respondent who is the Principal Legal Advisor of the National Government, on 25th October 2024.

51. The Respondents have not denied that there is a subsisting court decree which is yet to be satisfied or that they have no knowledge of the said order. This can be confirmed by the fact that in their affidavit and written submissions, the respondents refer to the impugned orders that the Court or Arbitral Tribunal issued.

52. Having established as much, it is my finding that the Applicants have satisfied the court for the grant of the order of mandamus. However, two issues impede the grant of this order in the manner as prayed and that is, whether the orders sought to be enforced are the same ones that were issued by the court and two, whether this court ought to grant the prayer for interest which order was not granted by the arbitrator.

53. On the first issue, the court notes that the Arbitrator in his final award stated as follows:

116. Having considered the parties' pleadings, the oral and documentary evidence adduced, and the submissions of Counsel for the parties, herein, i do hereby award and direct in full and final settlement of the claims in this arbitration, that an award shall issue on the following terms:

1. The Respondent shall pay to the Claimant the sum of American Dollars Thirteen Million Two Hundred and Eighty-Eight Thousand and Ninety One and Cents Fourty Three (\$13,288,091.43) forthwith.
2. The Respondents shall pay to the Claimant the sum of Kenya Shillings Fifty Two Million Two Hundred and Eighty four Thousand Four hundred and Fourteen only (Kshs.52,284,414/=) together with seventy five percent (75%) of such further sum as the Claimant may pay in order to collect the Award."

54. The decree of the Court issued on 21st December 2022 reads as follows:

It is hereby decreed;

1. That the Plaintiff be and is hereby granted leave to enforce the arbitral award published on 28th July 2022 as a decree of the court in the following terms;
 - a. The Respondents shall pay to the Plaintiff/Claimant the sum of American Dollars Thirteen Million Two Hundred and Eighty-Eight Thousand and Ninety-One and Cents Fourty-Three (\$13,288,091.43) forthwith.
 - b. The Respondents shall pay to the Plaintiff/Claimant the sum of Kenya Shillings Fifty-Two Million Two Hundred and Eighty four Thousand Four hundred and Fourteen only (Kshs.52,284,414.00/=) together with Seventy-Five percent (75%) of such further sum as the Plaintiff/Claimant may pay in order to collect the Award.
2. That the costs of the application be provided for.

54. The Certificate of Order against the government issued on 25th October 2024 and served upon the 1st Respondent on 29th October 2024 reads as follows:

Particulars As In Decree

- a. Total USD.....USD 13,288,091.43
- b.Kshs 52,284,414.00



c. 75% of total sum paid to collect the award....Kshs 1,243,875.00

Total Kshs.....Kshs 53,528,289.00

56. I note from the above that the only distinct figure from the Final Arbitral Award and the Decree is the sum of Kshs.1,243,875.00/= which the Respondents contend should not be included as the same was not included in the Arbitral Award. The Applicant in response has explained that the figure is a calculation of 75% of the total cost that was incurred in collecting the arbitral award which totaled to Kshs.1,658,500.00/=.
57. There being no evidence challenging the position that indeed the Applicant incurred the said costs as provided for in the Arbitral Award reproduced above, I find no reason to accept the Respondents' statement.
58. On the issue of interest, the Applicant argues that it is entitled to an award of interest owing to the substantial loss it has suffered and which has been occasioned by the delays either intentional or due to bureaucratic long drawn processes by the Respondents to pay the decretal amount.
59. In response, the Respondents contend that the Tribunal did not award the Ex parte Applicant any form of interest and that the *Arbitration Act* does not allow the High Court to interfere with the final award by reviewing/amending it to make provision for payment of interest or to inflate awarded sums.
60. It is a well-established principle that arbitration is intended to be final and binding. As stipulated in Section 35 of the *Arbitration Act*, the Court's intervention is strictly limited to setting aside an award on narrowly defined procedural or jurisdictional grounds.
61. The *Arbitration Act* does not empower the Court to vary, review, or supplement the substantive terms of an arbitral award. Consequently, to grant interest in the absence of an express award by the arbitrator would amount to the Court exceeding its mandate and undermining the doctrine of finality that underpins the arbitral process.
62. It is for that reason that this Court concurs with the Respondents' submission that, having found that the arbitral award did not award interest to the Ex parte Applicant, the court lacks jurisdiction to impose such interest at this stage.
63. In *Kilele Ventures Limited v Susan Wanjiru Muritu* [2019] eKLR, Kasango J stated as follows, on being urged to award interest on an arbitral award:

“9. The Applicant by his Chamber Summons, in addition to seeking recognition of the Arbitral Award, also seeks that this Court will order the amount awarded by the Arbitrator do attract interest until payment in full.

10. Parties in entering into the Sale Agreement, which had an Arbitration Clause, consented to their dispute to be subjected Arbitration process. Arbitration is a consensual process. That process the parties consented to is governed by the Act. Section 10 of the Act provides:

“Except as provided in this Act, no Court shall intervene in matters governed by this Act.”

11. The Applicant in seeking that this Court award him interest on the amount awarded by the Arbitrator is leading the Court to go contrary to Section 10 of the Act. The Arbitrator awarded the application an amount of Kshs. 17,160,000 with no interest accruing on the same. It would be a travesty to



the Act for this Court to amend that award to include interest. This was what was stated in the case *Kenyatta International Convention Centre (KICC) V Greenstar Systems Ltd* [2018] eKLR thus:

“In any event, matters to do with the propriety or otherwise of the Arbitrator awarding a specific sum, or interest or costs are matters over which only the Arbitrator had jurisdiction to deal; and which this Court would have no mandate to interfere. I would therefore concur with the decision in *D. Manji Construction Limited vs. C & R Holdings Limited* [2014] eKLR in which the Court observed that:

“The Applicant has cited some alleged erroneous decisions by the Arbitrator on matters to do with completion date, double gauge windows, rate of interest awarded, final accounts, disregard of evidence, extension of time, only to mention but a few...those arguments did not really show that the law was violated as they are matters which fall within the fallibility of every person who is exercising judicial or quasi-judicial authority. They also relate to the merits and factual appreciation of the case by the Arbitrator; which again falls squarely on the competence of the Arbitrator as the master of facts...

The issue on whether or not to award interest on the sum awarded was within the competence of the Arbitrator and this Court will steer clear of the same.” [emphasis added]

64. Although the applicant argued that interest can be awarded by this court to compensate the applicant for the loss occasioned by the delay, such power and discretion if any, is yet to crystallize in Kenya, in view of sections 10 and 35 of the *Arbitration Act*.
65. I must also caution that the Attorney General, though a party to proceedings against the Government as mandated by section 12(1) of the *Government proceedings Act*, is not necessarily the judgment debtor and the proceedings giving rise to the decree do not directly affect her office. She was sued pursuant to her statutory and constitutional mandate as the principal Legal Advisor to the National Government, (Article 156(4) (a) of *the Constitution*), not because the cause of action directly arose from her office.
66. From the evidence on record, there is no independent or joint claim against the Attorney General. Neither is the Attorney General an Accounting officer as defined under the Public Finance Managements Act. For that reason, mandamus shall not issue against the Attorney General as prayed.
67. In the end, this Court issues the following orders:
 - i. An order of Mandamus is hereby issued compelling the Principal Secretary, Ministry of Health to pay the ex parte applicant the sum of American Dollars Thirteen Million Two Hundred and Eighty-Eight Thousand and Ninety-One and Cents Forty-Three (USD 13,288,091.43) pursuant to the decree issued on 21st December 2022.
 - ii. An order of mandamus is hereby issued compelling the Principal Secretary, Ministry of Health to pay the ex parte applicant the sum of Kenya Shillings Fifty-Two Million Two Hundred and Eighty-Four Thousand four Hundred and Fourteen only (Kshs. 52,284,414.00) together with costs of the award in the sum of Kshs. 1,243,875/=, being 75% of the total sum paid by the ex parte applicant pursuant to the decree issued on 21st December 2022.
 - iii. Owing to the major loss incurred by the Applicant due to the Respondents failure to honour the decree, the 2nd Respondent is hereby given 90 days of today to settle the decree and in



default, the Applicant is at liberty to apply for appropriate penal orders as provided for in the law noting.

- iv. The applicant will have costs of these judicial review proceedings.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 7TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

