



Republic v County Secretary, County Government of Meru & 3 others; Kaburu t/a Mwirigi Kaburu & Co Advocates (Exparte Applicant) (Environment & Land Case E014 of 2024) [2025] KEELC 4161 (KLR) (19 May 2025) (Judgment)

Neutral citation: [2025] KEELC 4161 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E014 OF 2024**

**JO MBOYA, J
MAY 19, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF
MERU 1ST RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE, ECONOMIC
PLANNING & ICT 2ND RESPONDENT**

**THE CHIEF OFFICER, FINANCE AND ECONOMIC PLANNING, COUNTY
GOVERNMENT OF MERU 3RD RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, LEGAL AFFAIRS, PUBLIC
SERVICE, MANAGEMENT & ADMINISTRATION 4TH RESPONDENT**

AND

**JOSEPH MWIRIGI KABURU T/A MWIRIGI KABURU & CO
ADVOCATES EXPARTE APPLICANT**

JUDGMENT

1. The Ex-parte Applicant sought and obtained leave to commence Judicial review proceedings. The leave was granted by the court culminating into the Ex-parte Applicant filing the notice of motion application dated the 19th of December 2024, and wherein the Ex-parte Applicant has sought the following reliefs:

- i. That this Honourable court be pleased to grant an order of mandamus compelling the respondents to implement the judgment and decree issued in ELC Land Misc Application No.



E015 of 2023 by payment of the sum of Kshs.625,472/= being the decretal sum as the date of the instant application and payment of interest thereon at 14% p.a from 16th November 2023. Pursuant to the certificate of order against the government dated 12th November 2024.

- ii. That costs of this application be borne by the respondents.
2. The subject application is premised on the various grounds which have been enumerated in the body thereof. In addition, the application is supported by the statement of facts dated 11th December 2024 as well as the affidavit in verification of the statement of facts sworn on even date, namely; 11th December 2024.
3. The Respondents herein responded to the application vide the replying affidavit sworn on 28th January 2025 and to which the respondents have raised a plethora of issues. In particular, the deponent of the replying affidavit has contended that the dispute beforehand does not fall within the jurisdictional remit of the Environment and Land Court.
4. To this end, it has been posited that this court is therefore divested of the requisite jurisdiction to entertain and adjudicate upon the subject matter.
5. The instant application came up for directions on the 30th of January 2025 whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of written submissions. In this respect, the court proceeded to and circumscribed the timelines for filing and exchange of the written submissions.
6. The Ex-parte applicant filed written submissions dated 10th February 2024 [which ought to be the 10th February 2025] and wherein the Ex-parte applicant has raised and canvassed four [4] pertinent issues, namely; that the court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject application; that the respondents herein are obligated to comply with and or adhere to the orders of the court; the respondents have failed and or neglected to comply with the orders of the court; and that the application beforehand is meritorious.
7. Regarding the first issue, namely; that the court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject application, it is imperative to highlight that learned counsel for the Ex-parte applicant has submitted that the dispute beforehand arises from the proceedings in respect of Meru ELC Land Misc E015 of 2023.
8. In particular, it has been submitted that to the extent that the instant proceedings stem and or arise from the previous proceedings, which were conducted before the Environment and Land Court and not otherwise, then this court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject matter/ application.
9. Moreover, it has been submitted that in so far as the bill of costs which culminated into the decree under reference was dealt with by the Environment and Land court, it is only the Environment and Land court that can entertain and adjudicate upon the subject dispute and issues incidental thereto.
10. To buttress the foregoing submissions, learned counsel for the Ex-parte applicant has cited and referenced various decision[s], including Bruce Odeny and Co. Advocates vs Pride Kings Security Services Ltd [miscellaneous civil application no. E113 of 2023] [2024] KEHC 5180 KLR and Dennis Magare & Ben Musundi t/a Magare Musundi & Co. Advocates vs Parminder Singh Manku & another (2021) eKLR, respectively.
11. As regards the second issue, namely; that the respondents herein are obligated to comply with and or adhere to the orders of the court, learned counsel for the ex-parte applicant has submitted that the ex-



parte applicant herein was duly retained and instructed by the 5th respondent to defend same in respect of Meru ELC Appeal No. 112 of 2021. Furthermore, it has been submitted that the ex-parte applicant duly complied with the instructions issued by the 5th respondent and defended the 5th respondent's interest in the said appeal.

12. Nevertheless, it has been contended that despite having complied with the instructions issued by the 5th respondent, same [5th respondent] failed to pay the instruction fees to the ex-parte applicant. To this end, it has been submitted that the ex-parte applicant was obliged to and indeed filed an Advocate/client bill of costs.
13. Moreover, it has been submitted that the advocate client bill of costs was subsequently taxed culminating into a certificate of taxation. Moreover, it has been posited that thereafter the ex-parte applicant sought and obtained judgment in terms of the certificate of taxation.
14. Despite procuring and obtaining judgment, the ex-parte applicant has submitted that the 5th respondent failed to comply with the orders of the court. In this regard, it has been contended that the 5th respondent and her officers [the 1st - 4th respondents] are obligated to comply with and or abide by the orders of the court.
15. As pertains to the third issue, namely; the respondents have failed and or neglected to comply with the orders of the court, learned counsel for the ex-parte applicant has submitted that following the entry and endorsement of judgment in accordance with the certificate of taxation, the ex-parte applicant procured and obtained the certificate of order; certificate of costs and thereafter proceeded to and served the 5th respondents. Furthermore, it has been submitted that the ex-parte applicant also generated and served a formal demand letter upon the 5th respondent and its officers.
16. Nevertheless, it has been contended that despite due compliance with the provisions of section 21 of the Government Proceedings Act, the 5th respondent and its officers [the 1st - 4th respondents] have failed and neglected to pay the decretal sum. In this regard, it has been posited that the monies at the foot of the decree remain due, owing and outstanding.
17. In respect of the last issue, namely; whether the orders sought ought to issue, it has been submitted that the respondents are obligated by the Constitution 2010 and the provisions of sections 21 of the Government Proceedings Act to comply with court orders and in particular, to pay the decretal sum without unreasonable delay. Nevertheless, it has been posited that the respondents have failed to pay and or liquidate the decretal sum and hence a reasonable basis has been established to warrant the grant of the orders of mandamus.
18. Moreover, it has been submitted that the orders of mandamus ought to issue and or be granted where a statutory body or a public officer, the respondents not excepted, have failed to perform and or discharge a statutory duty provided under the law.
19. To this end, learned counsel for the ex-parte applicant has cited and referenced various decisions, including Republic vs County Secretary, Nairobi City County and 3 others; Koceyo & Co. advocates [2020] eKLR; Republic vs County Secretary, County Government of Kisumu and two others; Otieno Ragot & Co. Advocates [2022] KEHC; and Republic vs County Secretary, Migori County & another exparte Linet Magambo [2020] eKLR, respectively.
20. The respondents filed written submissions and wherein same [respondents] have highlighted four [4] pertinent issues, namely; that the honourable court is divested of jurisdiction to entertain and adjudicate upon the subject dispute; that no attachment can issue and or be sanctioned against the government; that the inclusion of the individual officers of the 5th respondents is irregular and illegal;



and that no funds can be paid out of the County Government Treasury without compliance with the provisions of the *public finance management act*; and without the requisite approval of the County Assembly of Meru.

21. Regarding the first issue, namely; that the honourable court is divested of jurisdiction to entertain and adjudicate upon the subject dispute, learned counsel for the respondent has submitted that the dispute beforehand does not touch and or concern title to or ownership of land and use thereof. In this regard, it has been contended that the jurisdiction of the environment and land court is circumscribed by the provisions of Article 162 (2) (b) of *the Constitution* 2010.
22. Premised on the foregoing, counsel for the respondents has therefore invited the court to find and hold that in so far as the dispute does not touch on title to or ownership of land, the court ought to find that same is bereft of jurisdiction. In this regard, it has been posited that jurisdiction is everything and without same, a court of law ought not to make any step in the matter.
23. As pertains the second issue, namely, that no attachment can issue and or be sanctioned against the government, it has been contended that the net effect of the application beforehand and the reliefs sought thereunder, is to facilitate attachment as against the County Government of Meru. Nevertheless, it has been posited that no attachment can issue and or will be taken as against the government, including the county governments.
24. In a nutshell, learned counsel for the respondents has cited and referenced the provisions of section 21 [4] of the *government proceedings act*, Chapter 40, Laws of Kenya; which prohibit any form of attachment and or execution against the government or the properties thereof.
25. Regarding the third issue, namely; that the inclusion of the individual officers of the 5th respondent is irregular and illegal, learned counsel for the respondents has submitted that the officials of the 5th respondent do not have any control over the resources and sources of money for the county government. In this regard, it has been submitted that in so far as the said officials have no control over the sources of money for the county government or the budget allocation for county expenditure, same [officials] therefore, ought not to be sued.
26. Arising from the foregoing, learned counsel for the respondents has therefore submitted that the joinder and or inclusion of the 1st – 4th respondents in the subject application, is therefore irregular and illegal. In short, it has been posited that the application as against the 1st to the 4th respondents is therefore premature and misconceived.
27. In respect of the last issue, namely, that no funds can be paid out of the county government treasury without compliance with the provisions of the *Public Finance Management Act* and without the requisite approval of the county assembly of Meru, learned counsel for the respondents has submitted that the funds of the 5th respondents can only be spent and or utilized in accordance with the provisions of the *public finance management act* and with the approval of the County Assembly of Meru.
28. However, it has been submitted that the ex-parte applicant herein has approached the court with a view to procuring the orders of mandamus and thereby to force payments from the treasury of the 5th respondent without due regard to the provisions of the *Public Finance Management Act* and without the approval of the county assembly. To this end, it has been posited that such an order would not only be illegal but unconstitutional.
29. In view of the foregoing, it has been submitted that the application beforehand is therefore misconceived and legally untenable. In this regard, learned counsel for the respondents has implored



the court to find and hold that the orders sought ought not to issue. In short, the court has been invited to dismiss the application with costs to the respondents.

30. Having reviewed the application and the response thereto and having taken into account the written submissions filed by and on behalf of the respective parties I come to the conclusion that the determination of the subject dispute turns on three [3] key issues, namely; whether the Environment and Land court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject dispute or otherwise; whether the provisions of section 21 of the Government Proceedings Act bars and or prohibits the grant of an order of mandamus or otherwise; and whether the Ex-parte applicant has established a basis to warrant the issuance of the orders of mandamus or otherwise.
31. Regarding the first issue, whether the Environment and Land court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject dispute or otherwise, it is imperative to state and observe that the subject matter stems and or arises from the previous proceedings that were undertaken before the Environment and land court. In particular, it is worthy to recall that the 5th respondent herein retained and engaged the Ex-parte applicant to defend its rights vide Meru ELC Appeal No. 112 of 2021.
32. Pursuant to the instructions by and on behalf of the 5th respondent, the ex-parte applicant proceeded to and defended the said suit, namely; Meru ELC Appeal No. 112 of 2021. However, despite having defended the 5th respondent, same failed to settle the professional fees and incidental expenses incurred by the ex-parte applicant.
33. Arising from the failure of the 5th respondent to settle the professional fees incurred by the ex-parte applicant, the ex-parte applicant was constrained to and filed an advocate-client bill of costs for purposes of taxation. Instructively, the said advocate client bill of costs were duly taxed culminating into the issuance of a certificate of taxation. [see certificate of taxation dated 21st June 2024].
34. Additionally, the ex-parte applicant thereafter proceeded to and filed an application for entry of judgment in accordance with the certificate of taxation. [See the provisions of Section 51[2] of the Advocates Act]. Suffice it to state that the application for entry of judgment was duly heard and disposed of. For good measure, the application was allowed and judgment was entered in accordance with the certificate of taxation.
35. Pertinently, the application that culminated into the entry of judgment in accordance with the certificate of taxation was heard and disposed of by a judge of the Environment and Land Court. In this regard, what becomes apparent is that the background proceedings that culminate into the instant matter were undertaken by the environment and land court and not otherwise. To this end, there is no gainsaying that the instant matter is an offshoot of the previous matters that were handled by the Environment and land court.
36. Moreover, it is imperative to underscore that the subject application is intended to facilitate the enforcement and or realization of the judgment and decree that was issued by the Environment and land court. Essentially, the application beforehand is more or less an execution process intended to actualize the decree of this court, albeit via Mandamus.
37. The question that does arise is whether such an application, which has its roots in proceedings that were undertaken and adjudicated upon by the Environment and land court and which essentially constitutes execution of the Decree of the Environment and Land Court, ought to be heard by the High court in the manner posited by the respondents.



38. To my mind, the application before hand is an incidental/ auxilliary proceeding that arises from the previous proceedings [substantive proceedings] which were undertaken by the Environment and land court and hence same [application] falls within the jurisdictional remit of the Environment and land court and not otherwise.
39. Furthermore, it is worth recalling that in the process of entertaining and adjudicating upon the subject matter, the court tasked with the mandate of hearing the application will be obliged to call for and authenticate the orders [if any] that were issued and which form the basis of the current application. Suffice it to state that the said orders having been issued by the Environment and land court, it is only the said Court [ELC] that can call for them and not otherwise.
40. To hold otherwise, namely; that the high court would be seized of the jurisdiction to entertain the subject application, which constitutes enforcement/implementation of the orders of the Environment and land court, would be tantamount to subordinating the Environment and land court to the High Court.
41. Put differently, such a holding would be tantamount to placing the high court in a higher pedestal and bestowing upon same [high court] the mandate to superintend the Environment and land court. Such an endeavor would be contrary to the import and tenor of article 162 of *the Constitution* 2010 as read together with article 165 (5) & (6) of *the Constitution* 2010.
42. Be that as it may, I beg to posit that the High court and the court of equal status, namely; the Environment and land court on one hand and the Employment and labour relations court on the other hand, have equal status. Nevertheless, each court has designated area of operation and jurisdiction. Neither of the courts is at liberty to encroach upon and or usurp the jurisdiction of the other.
43. In the case of *Republic v Chengo & 2 others (Petition 5 of 2015)* [2017] KESC 15 (KLR) (26 May 2017) (Judgment), the Supreme Court of Kenya [the apex Court] had occasion to discuss the meaning of status and the distinct jurisdiction of the High court; Environment and land court; and the Employment and Labour relations court, respectively.
44. The Supreme Court stated thus;

It is against the above background, that Article 162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of *the Constitution* intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts. Concurring with this view, the learned Judges of the Court of Appeal in the present matter observed that both the specialised Courts are of “equal rank and none has the jurisdiction to superintend, supervise, direct, shepherd and/or review the mistake, real or perceived, of the other”. Thus, a decision of the ELC or the ELRC cannot be the subject of appeal to the High Court; and none of these Courts is subject to supervision or direction from another. In their words: “By being of equal status, the High Court therefore does not have the jurisdiction to superintend, supervise, direct, guide, shepherd and/or review the mistakes, real or perceived, of the ELRC and ELC administratively or judiciously as was the case in the past. The converse equally applies. At the end of the day, however, ELRC and ELC are not the High Court and vice versa. However, it needs to be emphasized that status is not the same thing as jurisdiction. *The Constitution* though, does not define the word ‘status’. The intentions of the framers of *the Constitution* in that regard are obvious given the choice of... words they used; that the three Courts (High Court, ELRC and ELC) are of the same juridical hierarchy and therefore are of equal footing and standing. To us it simply



means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialised jurisdiction but they are not the High Court.”

45. Before concluding on this issue, I also beg to reference the decision in the case *Bruce Odeny & Co. Advocates v Pride Kings Security Services Ltd* (Miscellaneous Criminal Application E115 of 2023) [2024] KEHC 5002 (KLR) (15 May 2024) (Ruling), where the court considered a near similar situation where the resultant proceedings arose from and or were incidental to proceedings which had hitherto been undertaken by the Environment and land court.
46. For coherence the court stated and held thus;
12. An advocate who represents a client before an ELRC can only seek for taxation of his or her advocate/client bill of costs before the ELRC superior court of equal status with the High Court. This is because it is that superior Court that has the power to exercise jurisdiction of calling for the lower court file in an ELRC matter and determine the issue of whether the bill of costs as taxed is proper.
 13. Article 165 (5) (b) of *the Constitution* expressly bars the High Court from hearing and determining disputes exclusively reserved for the ELC and ELRC, which are courts established under Article 162 (2) (a) and (b) of *the Constitution*. In as much as advocate client bills of costs are not necessarily disputes in land and environment, as long as they are consequent to proceedings before the ELRC, then there is no reason why such bills should be filed in the High Court thereby forcing the High Court to call for court files from the ELRC for perusal, consideration of the itemised bills and return to the ELRC. In my view, the law does not contemplate such a situation where files are allowed to fly from one jurisdiction to another jurisdiction especially.
 14. That being the case, the Deputy Registrar of the High Court cannot, in that capacity, receive or call into this court an ELRC or ELC file for purposes of taxation of advocate/client bill of costs where the services of an advocate were retained and or sought in the ELRC matter. Such bills would be taxed before the Court where the services were rendered by the advocate.
 15. To find otherwise will be tantamount to usurping jurisdiction of other courts and infusing them into the High Court.
47. Arising from the foregoing analysis, I come to the conclusion that the contention by the respondent[s] pertaining to and concerning the jurisdiction of this court is premised on a misapprehension of the law and in particular, the provisions of article 165 (5) & (6) of *the Constitution* 2010.
48. Expressed differently, I find and hold that this court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject matter, which in my humble view constitutes an application for enforcement of the Decree of the Court albeit via Mandamus.
49. As pertains to the second issue, namely; whether the provisions of section 21 of the *government proceedings act*, Chapter 40, Laws of Kenya, prohibit the grant/issuance of an order of mandamus, it is worthy to recall and reiterate that an order of mandamus is underpinned by the provisions of sections 8 and 9 of the *law reform act*, cap 26 laws of Kenya.
50. The provisions under reference are couched in mandatory terms and same are stated to apply notwithstanding the provisions of any other act or written law. I beg to state that the said provisions do apply subject only to *the constitution*, the latter which is the supreme law. [see Article 2 of *the Constitution* 2010].



51. Given the importance of the provisions of sections 8 and 9 of the Law Aeform act [supra], it is imperative to reproduce same.
52. For ease of appreciation, the named provisions are reproduced as hereunder;

Orders of mandamus, prohibition and certiorari substituted for writs

- (1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari.
- (2) In any case in which the High Court in England is, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, (1 and 2, Geo. 6, c. 63) of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make a like order.
- (3) No return shall be made to any such order, and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5) of this section.
- (4) In any written law, references to any writ of mandamus, prohibition or certiorari shall be construed as references to the corresponding order, and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

Any person aggrieved by an order made in the exercise of the civil Jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal.

9. Rules of court

- (1) Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court—
 - (a) prescribing the procedure and the fees payable on documents filed or issued in cases where an order of mandamus, prohibition or certiorari is sought;
 - (b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;
 - (c) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made.

53. Flowing from the foregoing provisions, it is my holding that the orders of judicial review, which include prohibition, certiorari and mandamus, can and do issue irrespective of the provisions of the [Government Proceedings Act](#).
54. Moreover, the manner in which execution can be taken out as against the government, including the county government, has been the subject of various judicial pronouncements. In particular, the court



in the case of Republic vs. Attorney General & Another Exparte James Alfred Koroso [2013] eKLR [per Odunga, J, as he then was] held thus:

“In the present case, the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realized. Unless something is done, he will forever be left babysitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of *the Constitution* which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers...”

55. Similarly, the court in the case of Republic vs. Attorney General & Another ex- parte Stephen Wanyee Roki [2016] eKLR, considered the same legal position and held as hereunder:

“That being the position, execution under the Civil Procedure Rules is barred in so far as the County Governments are concerned. What then is the option available to a party in whose favour judgement has been decreed? ...It follows that the only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus compelling the County Government to settle the decree in question...” [Emphasis added].

56. The Court of Appeal on its part has also had occasion to consider whether an order of judicial review in the nature of mandamus can issue against the government in execution of a decree of the court. In the case *Five Star Agencies Limited & another v National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023* (Consolidated)) [2024] KECA 439 (KLR) (12 April 2024) (Judgment), the court stated as hereunder;

It is clear beyond any peradventure that the procedure to be followed in execution against the government is to seek an order of mandamus to compel the relevant person in the Government to settle the decree in question. This finding, in our view, readily answers the question posited by Five Star whether its right to prompt compensation and equality under the relevant provisions of *the Constitution* and the *Land Act* can exist in the absence of a legal remedy.

57. Bearing in mind the holdings in terms of the decisions cited [supra], it is evident and apparent that the provisions of section 21 of the *Government Proceedings Act* do not bar and or prohibit the issuance of an order of mandamus in appropriate circumstances, subject to the claimant satisfying the statutory threshold for the issuance of such an Order/ Writ.
58. Put differently, an order of mandamus is the only established mechanism for executing decrees against the government including the county governments. In this regard, it is my finding and holding that the submissions by learned counsel for the respondents that section 21 of the *Government Proceedings Act* bars the grant of an order of mandamus is erroneous and constitute a misconception of the said section.
59. Regarding the last issue, namely; whether the ex-parte applicant has established and demonstrated a basis for the issuance of an order of mandamus, it is imperative to highlight that the ex-parte applicant herein procured and obtained a decree of the court. [see the Judgment issued on the 23rd October 2024].



60. Moreover, upon obtaining the judgment under reference, the ex-parte applicant proceeded to and extracted the decree and thereafter served same upon the respondents. In addition, the ex-parte applicant also extracted the certificate of order in line with the provisions of section 21 (1) & (2) of the *Government Proceedings Act*; and thereafter served same upon the respondents. For good measure, the question of service has not been disputed.
61. It is imperative to state that upon being served with the decree the certificate of order and the formal demand for payment of the decretal sum, the 5th respondent, through her designated officers, namely; the county executive, was obligated to process, facilitate and make the payments without unreasonable delay. In any event, it is imperative to recall that the respondents herein are under duty to comply with and or adhere to the provisions of Articles 10 (1) & (2) of *the Constitution* as read together with Article 47 of *the Constitution* 2010.
62. In the premises, it is the statutory obligation of the respondents to ensure that same abide by and or complies with the statutory and constitutional obligations without undue delay. Instructively, payments of lawful debts, including decrees of the court, is one of the obligations of public bodies in terms with the provisions of Article 201 of *the Constitution* 2010.
63. Notwithstanding the fact that the judgment and decree of the court has not been challenged, reviewed and varied, the 5th respondent and its officers have failed and or declined to comply with and or adhere to the decree. The failure to comply with and or abide by the decree and thereby liquidate the decretal sum, constitutes dereliction [abdication] of public duty and obligation. In this regard, an order of mandamus suffices.
64. It is not lost on the court that an order of mandamus is intended to compel and or command a public body or officer to undertake a public duty bestowed upon same and which the public body has neglected to discharge and or perform.
65. The scope of an order of mandamus was highlighted and elaborated upon in the case of Kenya National Examination Council vs. Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR where the Court of Appeal stated thus:

“What is the scope and efficacy of an order of Mandamus? Once again, we turn to Halsbury’s Law of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says:

“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.”

At paragraph 90 headed “the mandate” it is stated: “The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. 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.”What do these principles mean? They mean that an order of mandamus will compel 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.”

66. In my humble view, the respondents herein by virtue of article 179 of *the Constitution* 2010 as read together with the provisions of section 103 of the Public Finance and Management Act, were under duty to process and facilitate the payments of the decretal sum. However, same have failed and or neglected to do so.
67. Such failure and or neglect constitutes dereliction/abdication of public duty.
68. In the circumstances and bearing in mind the dictum in the case of Kenya National Examination Council [supra], I come to the conclusion that an order of mandamus suffices in the circumstances of this matter.

Final Disposition:

69. Having analyzed the various issues that were highlighted in the body of the Judgment, it must have become crystal clear that the application beforehand is meritorious. To this end, the ex-parte applicant [subject] is no doubt entitled to the orders of mandamus.
70. In the circumstances, the final orders of the court are as hereunder;
 - i. An order of Mandamus be and is hereby issued compelling and commanding the respondents to implement the judgment and decree issued in ELC Land Misc Application No. E015 of 2023 by payment of the sum of Kshs.625,472/= being the decretal sum as the date of the instant application and payment of interest thereon at 14% p.a from 16th November 2023 and pursuant to the certificate of order against the government dated 12th November 2024.
 - ii. The Respondents herein shall comply with and or abide by the terms of the order of mandamus within a duration of 60 days from the date hereof.
 - iii. In default to comply with the terms of the order of mandamus, the Ex-parte applicant shall be at liberty to take out contempt proceedings and or such other proceedings in accordance with the prescription of the law.
 - iv. Costs of the Application shall be borne by the 5th respondent herein.
 - v. Such costs to be agreed upon and in default same to be taxed in the conventional manner.
71. It is so ordered.

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

OGUTTU MBOYA, FCI Arb, CPM [MTI]

JUDGE.

In the presence of

Mutuma– Court Assistant

Mr. Mwirigi Kaburu for the Ex-parte applicant.



Mr. Ikioo holding brief for Mr. Kanyumoo for the Respondents.

