



Republic v Principal Secretary, Ministry of Interior and Coordination of National Government & another; Muchelule (Ex parte Applicant) (Judicial Review Application E007 of 2024) [2025] KEHC 8247 (KLR) (Judicial Review) (11 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8247 (KLR)

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

JUDICIAL REVIEW APPLICATION E007 OF 2024

RE ABURILI, J

JUNE 11, 2025

BETWEEN

REPUBLIC APPLICANT

AND

**THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT**

THE HON ATTORNEY GENERAL 2ND RESPONDENT

AND

HO JUSTICE AGGREY MUCHELULE EX PARTE APPLICANT

JUDGMENT

1. The Notice of Motion dated 29th January 2024 seeks judicial review orders of *mandamus* pursuant to leave of court granted on 25th January 2024 by Ngaah, to J, to compel the 1st respondent accounting officer of the Ministry of Interior and Coordination of National Government, to settle costs certified to be Kshs 868,825 awarded in *HCCJR E112 of 2021/////* as per the certificate of order against the Government dated 1st December, 2023. The applicant also seeks for costs. The application is supported by the applicant’s own sworn affidavit.
2. The facts giving rise to the application are that on 11th November 2022, the applicant got judgment against the Inspector General of Police and others, prohibiting them from arresting or preferring any criminal charges against the applicant based on the illegal search conducted on the applicant’s premises on 22nd July 2021 and condemned the IG to pay him costs of the suit in *JR E112 of 2021*.



3. The costs were taxed vide ruling of 3rd October 2023 and a certificate of costs was issued dated 4th October 2023. Thereafter, the applicant was issued with certificate of order against the Government dated 1st December 2023 as required under section 21 of the *Government Proceedings Act*, which were all served upon the Attorney General, demanding for settlement as per the letter dated 7th December, 2023.
4. The applicant has therefore approached this court seeking orders to compel the accounting officer of the Ministry of Interior and coordination of National Government which is the policy Ministry in charge of the National Police Service to settle the costs awarded to him.
5. The respondents did not file any response to the application which was argued orally on 28th April, 2025 with the applicant's counsel reiterating the facts leading up to the application as reproduced above while the respondent's counsel submitted that the Attorney General had send an advisory to the Ministry of Interior who stated that if they get a supplementary budget, they will remit the money to the Office of Attorney General who will in turn pay the applicant.
6. The applicant's counsel submitted that the respondents had been promising to settle the costs in vain hence the application for *mandamus*.
7. The respondent's counsel's submission is that payment is being awaited from the Ministry of Interior who have been advised by the Attorney General to settle and that once the exchequer is received, the costs will be settled.

Analysis & Determination

8. I have considered the ex parte Applicant's application, affidavits and submissions together with annexures. I have also considered the respondent's counsel's submission that payment is being awaited from the Ministry of Interior who have been advised by the Attorney General to settle and that once the exchequer is received, the costs will be settled.
9. I am guided in determining this matter, the holding by the Court of Appeal on the nature, scope and efficacy of the remedy of mandamus in *Republic v Kenya National Examinations Council ex parte Gathenji and 9 Others*, [1997] eKLR where it was stated:

“The next issue we must deal with is this: 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....”

10. The requirements for an order of mandamus to issue were further explained by Mativo J. (as he then was) in *Republic v Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR as follows:

“*Mandamus* is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for *mandamus* is set out in *Apotex Inc. v Canada (Attorney General)*, and, was also discussed in *Dragan v Canada (Minister of Citizenship and Immigration)*. The factors that must be present for the 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
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

11. It is not disputed in the present application that judgment for costs was entered in favour of the ex parte Applicant in *Nairobi HC JR MISC Appl. No. E 112 of 2021* and the certificate of costs and certificate of order against the government were issued pursuant thereto.

12. It is also not in dispute that the issues therefore that require to be determined are firstly, whether the Respondent is under a public duty and obligation to satisfy the decree issued in favour of the ex parte Applicant in the said judgment, and secondly, if so, whether the ex parte Applicant is entitled to the relief sought.



13. Section 21 of the [Government Proceedings Act](#) provides as follows regarding the requirements to be met in the enforcement of orders as against the Government and other state organs or public entities in civil proceedings:

“(1) (1) 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 a Government department, or 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:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so 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 by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

(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 under 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.”

14. As to whether the 1st Respondent herein is under a duty to pay the subject assessed costs, translated into the certificate of order against the Government, an order of mandamus is normally issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed.

15. Execution proceedings against a government or public authority under the [Government Proceedings Act](#) is prohibited by section 25 of the [Government Proceedings Act](#) as read with Order 29 of the [Civil Procedure Rules](#). Such execution can therefore only be as against the accounting officer or chief officer



of the county government or authority, who is under a statutory duty to satisfy a judgment rendered by the Court against that body or authority.

16. This was the holding in *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security* [2012] eKLR where Githua J. held as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.”

17. There is good reason for the law to provide for this procedure for settlement of decrees by government and government entities. If Government entities were to be subjected to the same execution process as private entities or individuals, then all government properties would be attached and sold in execution of decrees.
18. Government properties include Government buildings, motor vehicles, The National Treasury and even Central Bank. The situation in my view would be chaotic and against the public good as government and its entities would cease to function. See *Republic v County Executive Member for Finance, County Government of Kisumu; Otieno Ragot & Co. Advocates (Ex parte Applicant)* (Judicial Review E041 of 2023) [2024] KEHC 3406 (KLR) (3 April 2024) (Judgment)
19. In the instant case, the assessed costs are not disputed by the Respondent, and the ex parte Applicant annexed copies of the judgment decree and certificate of order against the Government for the costs awarded in his favour in Nairobi HC *JR E112 of 2021*.
20. It is also not disputed that the 1st respondent is the accounting officer of the Ministry which was in charge of the National Police Service who were prohibited from arresting the applicant and or commencing criminal proceedings against him.
21. This Court therefore finds that arising from these provisions, the 1st Respondent is responsible for the satisfaction of Court orders and decrees on payment of money owed by the Ministry of Interior and Coordination of National Government, by virtue of his roles and functions.



22. In *Republic v Town Clerk of Webuye County Council & Another* HCCC 448 of 2006 the Court highlighted the importance of the Court in ensuring the right of a successful litigant to enjoy the fruits of his judgement is not curtailed as follows:

“...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 Constitution particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of Constitution.”

23. The ex parte Applicant has adduced evidence to demonstrate how he made a demand and request for payment which has not been heeded to by the 1st Respondent. There is thus an implied refusal on the part of the 1st Respondent to settle the demanded decretal sums.

24. In the end, I find and hold that the ex parte Applicant’s Notice of Motion dated 29th January, 2024 is merited. I allow it and issue the Judicial Review Order of Mandamus to compel the 1st respondent accounting officer and office holder, Principal Secretary, Ministry of Interior and Coordination of National Government or its successor in title to settle the certificate of order against the government for costs amounting to Kshs 868,829 as awarded in Nairobi HC *JR E112 of 2021*, being the certified and decreed costs awarded to the ex parte Applicant.

25. To avoid escalation of costs after costs which is a burden on the tax payer, I order that the costs of these proceedings shall be Kshs 50,000 awarded to the applicant, which shall be paid together with the decreed costs.

26. Decree for mandamus to issue forthwith and be served upon the respondents for settlement within sixty (60) days of today and in default, the applicant is at liberty to apply.

27. Mention before the Deputy Registrar on 11th August, 2025 to confirm settlement.

28. I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

