



Republic v Principal Secretary Ministry of Internal Security; Mwakweka (Exparte Applicant) (Judicial Review E005 of 2023) [2025] KEHC 7934 (KLR) (9 June 2025) (Ruling)

Neutral citation: [2025] KEHC 7934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
JUDICIAL REVIEW E005 OF 2023
AN ONGERI, J
JUNE 9, 2025**

LAWS OF KENYA, THE CIVIL PROCEDURE RULES, THE INHERENT JURISDICTION OF THE COURT AND THE LAW REFORM ACT, CHAPTER 26 LAWS OF KENYA, AND IN THE MATTER OF CERTIFICATE OF ORDER FOR COSTS AGAINST THE GOVERNMENT AND CERTIFICATE OF JUDGEMENT OR DECREE AGAINST THE GOVERNMENT

AND

IN THE MATTER OF: IN THE CHIEF MAGISTRATE’S COURT AT MOMBASA, CIVIL SUIT NO. 152 OF 2014 PATREMY MWALUMA MWAKWEKA =VS= DAVID MACHARIA KANG’ETHE AND THE ATTORNEY GENERAL

BETWEEN

THE REPUBLIC PETITIONER

AND

PRINCIPAL SECRETARY MINISTRY OF INTERNAL SECURITY RESPONDENT

AND

PATREMY MWALUMA MWAKWEKA EXPARTE APPLICANT

RULING

1. The Ex-parte Applicant filed a Notice of Motion dated 23rd April 2024 seeking an order of mandamus to compel the Respondent to pay the Ex-parte Applicant the decretal sum awarded in Voi CMCC Case No. 152 of 2014 PATREMY MWALUMA MWAKWEKA =VERSUS= DAVID MACHARIA KANG’ETHE & THE ATTORNEY GENERAL in a judgment delivered on 12th July 2021. The Ex-parte Applicant was granted leave on 11th April 2024.



2. The Respondents were represented by the Attorney General in the trial court. The Attorney General did file grounds of opposition dated 30th May 2024 in response to the application in which it stated as follows:-
 - i. That the Applicant has not been able to fulfil the requirements for granting Mandamus orders against the Respondent. The test provided for in Republic =Versus= Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another (2018) eKLR where it was held that:-

“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 eight factors that must be present for the writ to issue are:-

 - a. There must be a public legal duty to act.
 - b. The duty must be owed to the Applicants.
 - c. There must be a clear right to the performance of that duty, meaning that: The Applicants have satisfied all conditions precedent; and There must have been: A prior demand for performance. A reasonable time to comply with the demand, unless there was outright refusal; and An express refusal, or an implied refusal through unreasonable delay. No other adequate remedy is available to the Applicants. The Order sought must be of some practical value or effect. There is no equitable bar to the relief sought. On a balance of convenience, mandamus should lie.
 - ii. That there are pillars on which rests the foundation of any order of Mandamus. It is established that all the above conditions and stages are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially.
 - iii. That the Applicant failed to serve upon the Respondent the judgment, decree and certificate of costs and therefore guilty of gross laches and has offered no explanation for the inordinate delay.
 - iv. That the application is made in bad faith and does not disclose all material facts relevant to the case hence disentitles the Applicant to the reliefs sought. The application fails to include the 1st Respondent in the original suit from whence this application emanates.
 - v. That the Applicant has not proved that no other adequate remedy is available to them to warrant the issuance of the order of mandamus.
 - vi. That the instant application is misconceived and forms a classical description of an abuse of the court process and should be dismissed with costs.
3. The Ex parte Applicant submitted that he has a statutory constitutional right to enjoy the fruits of his judgment.
4. He further submitted that he seeks an order of mandamus to compel the respondent to pay Kshs. 3,659,307, plus costs and interest, following a judgment delivered on 12th July 2021 in SRMCC No. 152 of 2014, with a decree issued on 1st July 2022.



5. The applicant argued that the respondent, represented by the Attorney General in the original suit, was duly served with a demand letter on 14th September 2023, notifying them of the intent to file this judicial review application.
6. The applicant contends that the respondent has no valid reason for non-payment and emphasizes that judicial review is the only available remedy since execution against the government is barred.
7. Citing relevant statutes and case law, including Republic v. Kenya National Examination Council ex-parte Gathenji, the applicant asserts compliance with legal requirements, including Section 21 of the [Government Proceedings Act](#), and urges the court to enforce the judgment, as the respondent's opposition lacks merit and the applicant is entitled to enjoy the fruits of the judgment.
8. The submissions are supported by affidavits, pleadings, and precedent to demonstrate that the orders sought are justified.
9. Further, he urged this court to exercise its supervisory powers to enforce the trial court's judgment.
10. The Ex-parte Applicant relied on the case of Republic =Versus= Town Clerk, Kisumu Municipality Ex-parte East African Engineering Consultants (2007) EA 441 where it was held that there is no other remedy available to the Ex-parte Applicant to remedy the infringement of his legal right since the Ex-parte Applicant is barred against executing against the Government.
11. That was the holding in JR E045 of 2021 Republic =Versus= The County Secretary Narok County & Another.
12. Further, that the Court of Appeal in Republic =Versus= The Kenya National Examination Council Ex-parte Gathering & 8 Others, Civil Appeal No. 234 of 1996 stated the circumstances under which Judicial Review Order of Mandamus are issued.
13. The Ex-parte Applicant further submitted that he has complied with Section 21 of the [Government Proceedings Act](#) and that the Respondent has not given any satisfactory reason as to why the decree has not been fulfilled.
14. The Respondent, represented by the Hon. Attorney General, opposes the Notice of Motion dated 23rd April 2024 on several grounds.
15. The respondent submitted that the Applicant has failed to meet the legal requirements for granting a Mandamus order, as outlined in the case of Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another [2018] eKLR.
16. The Respondent emphasized that Mandamus is an equitable remedy meant to compel a public authority to perform a legal duty, and the Applicant must satisfy eight specific conditions, including demonstrating a public legal duty owed to them, a clear right to performance, prior demand, refusal or unreasonable delay, lack of alternative remedies, practical value of the order, no equitable bar, and a favorable balance of convenience.
17. Further, that these conditions must be met sequentially, and that the Applicant has not fulfilled them.
18. Additionally, the Respondent asserts that the Applicant failed to serve the judgment, decree, and certificate of costs, resulting in gross laches without explanation for the delay.
19. The respondent further accused the Applicant of acting in bad faith by omitting material facts, including the exclusion of the 1st Respondent from the original suit.



20. The Respondent also argues that the Applicant has not demonstrated the absence of alternative remedies, making the Mandamus order unnecessary.
21. Lastly, the respondent claim that the application is misconceived and amounts to an abuse of court process, warranting dismissal with costs.
22. The Ex-parte Applicant is seeking a sum of Kshs. 3,659,307/= as at 22nd April 2024.
23. I have considered the application dated 23rd April 2024 together with the Replying Affidavit and the submissions by both parties.
24. The issues for determination in the said application are as follows;
 - i. Whether the Ex-parte Applicant has met the legal requirements for the grant of an order of mandamus.
 - ii. Whether the order sought would be of practical value.
 - iii. Whether the Ex-parte Applicant is guilty of laches (unreasonable delay) in pursuing the enforcement of the decree, and if so, whether such delay bars the grant of mandamus.
 - iv. Whether the omission of the 1st Respondent (David Macharia Kangethe) from the judicial review proceedings renders the application defective or amounts to bad faith.
 - v. Whether the Ex-parte Applicant has demonstrated that there is no other adequate remedy available to enforce the judgment, given the restrictions on execution against the government under the *Government Proceedings Act*.
 - vi. Whether the application is an abuse of the court process as alleged by the Respondent.
25. Having carefully considered the pleadings, affidavits, and submissions by both parties, the court finds that the Ex-parte Applicant has established a proper case for the grant of an order of mandamus.
26. The judgment in Voi CMCC No. 152 of 2014 was delivered on 12th July 2021, and a decree was subsequently issued on 1st July 2022.
27. The Respondent, represented by the Attorney General, does not dispute the validity of the judgment or the decree but instead raises procedural objections.
28. On the first issue, the court is satisfied that the Applicant has demonstrated a public legal duty owed by the Respondent to satisfy the decree, as required under Republic v Kenya National Examination Council ex parte Gathenji(supra).
29. The demand letter dated 14th September 2023 placed the Respondent on notice, and the failure to pay the decretal sum despite the lapse of a reasonable time amounts to an implied refusal.
30. The conditions set out in Schon Noorani(supra) have been met, particularly since the Applicant has no other means of enforcing the judgment against the government due to the restrictions under Section 21 of the *Government Proceedings Act*.
31. The conditions for the grant of mandamus were set out in Republic v Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another(supra), including:
 - i. The existence of a public legal duty owed to the Applicant;
 - ii. A clear right to the performance of that duty, including prior demand and refusal or unreasonable delay;



- iii. Lack of any other adequate remedy;
32. Regarding the alleged delay, the court finds that the Ex-parte Applicant has provided sufficient justification for the time taken to pursue payment before resorting to judicial review.
33. I find that the delay is not inordinate or unreasonable to warrant dismissal on the grounds of laches, as held in *Republic v Town Clerk, Kisumu Municipality ex parte East African Engineering Consultants* [2007] EA 441.
34. The Respondent's contention that the application is defective for excluding the 1st Respondent (David Macharia Kangethe) is without merit.
35. Judicial review proceedings are directed at public bodies or officers to compel the performance of a legal duty.
36. Since the Attorney General was the legal representative for the government in the original suit, the exclusion of the 1st Respondent does not vitiate the application.
37. The argument that the Applicant has alternative remedies is unsustainable. As reiterated in *Republic v County Secretary Narok County & Another (JR E045 of 2021)*, execution against the government is barred, leaving judicial review as the only viable remedy.
38. The Respondent's opposition, therefore, lacks substantive merit.
39. Finally, the court finds no evidence of bad faith or abuse of process. The application is properly before the court, and the Applicant is entitled to enjoy the fruits of the judgment, as emphasized in *Republic v Kenya National Examination Council ex parte Gathenji*.(supra)
40. For these reasons, the court grants the order of mandamus compelling the Respondent to pay the Ex-parte Applicant the decretal sum of Kshs. 3,659,307/= plus costs and interest as awarded in Voi CMCC No. 152 of 2014.
41. The Respondent shall comply with this order within sixty (60) days from the date hereof, failing which further legal consequences may follow.
42. Costs of this application are awarded to the Ex-parte Applicant.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF JUNE 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:

Court Assistant: Millicent

