



**Wambugu v Attorney General (Application 216 of 2019)
[2025] KEHC 8025 (KLR) (Judicial Review) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8025 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION 216 OF 2019
JM CHIGITI, J
JUNE 9, 2025**

BETWEEN

MIRIAM WAIRIMU WAMBUGU EXPARTE

AND

THE HON ATTORNEY GENERAL RESPONDENT

RULING

Brief background:

1. On or about 25th October, 2007, the Exparte Applicant instituted Civil Proceedings vide Nairobi HCC No. 661 of 2007 –Jacob Juma and Juma Construction Company Limited versus the Commissioner of Police and the Honourable Attorney General seeking compensation in the nature of special and general damages.
2. Judgement was thereafter delivered on 14th January, 2013, in favour of the Exparte Applicant awarding him Kshs 5,000,000/- as legal fees, Kshs 12,286,270/- for loss of business and Kshs 4,000,000/- as general and aggravated damages together with costs of Kshs 957, 720/- and interest.
3. The Exparte Applicant /Respondents thereafter filed Judicial Review Proceedings vide an Application dated 24th June, 2020 seeking payment of Kshs41, 453, 299.13/- together with interest which stood at Kshs1,503,819.65/-.
4. In a positive development, the Respondents remitted the Sum of Kshs 37,570,504.40/- on or about 27th October, 2021 to the Exparte Applicants in part satisfaction of the decree.The sum of Kshs 7,160,792.44/- is still pending payment.



5. The matter was thereafter mentioned so as give the parties room to pursue alternative dispute resolution which collapsed leading to an order directing the Attorney General do appear in court on 9th June 2025.
6. That precipitated the filing of the application dated 11th day of May 2025 by the Applicant wherein the Attorney General seeks the following orders;
 1. ...spent.
 2. That this Honorable Court be pleased to grant interim stay of the orders issued by Hon. Justice J. M. Chigiti (SC) on 29th April, 2025 pending the hearing and determination of this Application.
 3. That the Honourable Attorney General be struck out from this proceeding.
 4. That in the interim there be a stay of any further proceedings in this matter pending the hearing and determination of this instant application.
 5. That costs of this Application be in the cause.
7. That forms the subject of the ruling in this matter.

The Applicant's/Respondents' case;

8. It is the Applicant's/Respondents' case that the Exparte Applicant has wrongly directed execution proceedings against the Hon. Attorney General, despite clear legal precedent and statutory guidance on the identity of an accounting officer.
9. It is the Applicant's case that the role of the Attorney General is primarily one of legal representation and advisory, and not as an executor of financial obligations for other state departments.
10. The Applicant advances her case under Section 21(3) of the *Government Proceedings Act*, which provides that execution for money judgments against the Government must be directed to the relevant Accounting Officer:

“If the accounting officer fails to satisfy the decree, the court shall issue a certificate of order against the Government entity and not against an individual officer.”
11. Reliance is placed in Judicial Review Application No. 259 of 2019- Mwatsama v Attorney General & another, wherein it was held as follows;
 10. “Further, it is not in dispute that where the Attorney General is only sued as the Principal Legal Advisor to the Government and therefore, where a decree is issued, it cannot be executed against that office unless the cause of action directly arose from acts or omissions of that office.”
12. It is argued that the unpaid decretal sum of KShs. 7,160,792.44 arose from proceedings where the Commissioner of Police was a key party, and therefore, the Principal Secretary, State Department for Internal Security, is the correct accounting officer and not the Attorney General.
13. It is the Applicants case that the Attorney General's duty does not extend to settling financial liabilities incurred by other state entities.
14. The Respondent/Applicant relies on Article 11 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kenya, which prohibits imprisonment for failure to fulfill a contractual obligation.



15. A party who is deprived of their basic freedom by way of enforcement of a civil debt through imprisonment, their ability to move and even seek ways and means of repaying the debt is curtailed.
16. Section 21(4) of the *Government Proceedings Act* provides as follows;

“No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, and no person shall be individually liable under any order for the payment by the Government or any Government department”

17. Individual public officers including the Attorney General cannot be held personally liable or subjected to enforcement actions like committal to civil jail for debts owed by government entities especially in occasions where the money is yet to be transferred to the Attorney General’s Account by the responsible entity.
18. Reliance is also placed on the case Miscellaneous Application No. E049 of 2022 -Republic versus Attorney General and another; Gitukui & others (suing as the legal representatives of the Estate of William Ngugi) and another (Ex-parte Applicants) where Justice B. M. Eboso held as follows;

12. “From the foregoing, it is clear that the Attorney General was sued in a representative capacity on behalf of the National Land Commission. Whether or not that was tenable is not an issue for determination in this judgement. Secondly, it is clear from the materials presented before this Court that there is no evidence to suggest that the Solicitor General is the accounting officer responsible for the Government Department on whose behalf the Attorney General was sued in Thika ELC JR Case No. 4 of 2017. An order of mandamus can only be directed against the accounting officer on whose account the Attorney General was sued. The ex-parte Applicants’ pleadings in Thika ELC JR Case No. 4 of 2017 reveal that the Attorney General was sued on behalf of the National Land Commission. The said Commission is the 2nd Respondent and elected not to contest this motion.....

.....for the above reasons, it is my finding that the Solicitor General is not the accounting officer in charge of the Government Department responsible to satisfy the Decree in Thika ELC JR Case No. 4 of 2017”

19. The Respondent/Applicant further relies on the case Republic versus the Attorney General and another Ex-parte Orbit Chemicals Limited (2017) eKLR where Justice Odunga (as he was then) held as follows;

“It is therefore clear that in applications for mandamus seeking to compel the satisfaction of a decree, it is the accounting officer of the relevant government department that is obliged to satisfy the decree notwithstanding the fact that the said officer was not a party to the trial proceedings and that in fact the only defendant there in was the Attorney General. Therefore whereas I agree with the position in Peter Anyang’ Nyong’o and 10 others versus Solicitor General(2011) Eklr, that it is for the Attorney General to advise his clients to pay the costs which attracted his representation on behalf of the said client and that being a constitutional representative and being the principal legal advisor or to the three arms of Government, he is required to direct any arm of Government he represented to pay the costs of any suit which he acted on its behalf; I however do not subscribe to the view that if any costs or liability accrues from his representation, he is obliged to pay the same and that if a particular organ refuses to pay, he will be responsible on behalf of his agent.”



20. It is argued that the substantial compliance has been made with a partial payment of Kshs. 37,570,504.40 as at 27th October 2021. Only a balance of Kshs. 7,160,792.44 /= is outstanding.
21. The Attorney General has exercised due diligence in furnishing the responsible government entity with payment advisories vide the letters dated 11th September, 2024 and 7th April, 2025.
22. It is argued that the Hon. Attorney General has no statutory mandate to process payment where money is yet to be remitted to the Attorney General's Account.
23. The Applicant argues that the Exparte Applicant should have moved to cite the rightful office as opposed to weaponize Judicial review weaponizing and this was addressed by the Supreme Court in Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] eKLR where it was emphasized that: "Courts must avoid rendering decisions that may adversely affect innocent public officers performing their lawful duties.

The Exparte Applicant/Respondents' case;

24. It is the The Exparte Applicant's case that the judgment and decree issued on 14th January, 2013 in HCCC No 661 of 2007 was specific to the Attorney General as the party sued in the said civil claim.
25. The certificate of order against the government issued on 17th May,
26. The judgment and decree issued on 18th November, 2021 in HC JR No 216 of 2019 was specific to the Attorney General as the party sued in the said judicial review claim.
27. The claim by the Attorney General that she is not liable for the decree issued on 14th January, 2013 in HCCC No 661 of 2007, Jacob Juma & Juma Construction Company Limited v Commissioner of Police & Attorney General and the decree issued on 18th November, 2021 in HC JR No 216 of 2019, Republic v Attorney General, Ex Parte Miriam Wairimu Wambugu & Anne Wanjira Githenya since she only acted for and represented the State Department for Internal Security and National Administration is not true and correct.
28. According to The Ex-Parte Applicant Attorney General cannot be struck out of these proceedings post judgment in HCCC No 661 of 2007 and HC JR No 216 of 2019.
29. The Ex-Parte Applicants argues that The Attorney General ought to settle the balance due from the of the judgments and decrees in HCCC No 661 of 2007 and HC JR No 216 of 2019 or be committed to civil jail.
30. The Ex Parte Applicant/Respondent prays that the Notice of Motion dated 11th May, 2025 be dismissed with costs.

Analysis and determination;

- a. Whether the applicant is entitled to the orders sought.
- b. Who shall bear the costs?

Whether the applicant is entitled to the orders sought.

31. The Judgment Debtor/Applicant has made part settlement of the decretal sum leaving a balance of Kshs 7,160,792.44 /=. This forms the subject of the pending court process that prompted the court to issue an order that the Attorney General to attend court on 9.6.25 to show cause why she should not be committed to civil jail.



32. This matter has come up for mention on numerous occasions to allow the parties to engage in out of court steps towards the settlement of decree. The alternative dispute resolution attempt didn't yield fruit.
33. It goes without saying that The decree holder has a legitimate expectation that the Applicant would settle the claim. For the Attorney General to lodge an application at this stage in the proceedings seeking an order that Honourable Attorney General be struck out from these proceedings is clearly not in good faith.
34. The Attorney General has actively participated in the proceedings all through since inception. The Attorney General has even made part payment of the decretal sum. Striking out the name of the Attorney General at this hour in the day is going to be prejudice to the decree holder.
35. One is left to wonder why the Attorney General allowed herself to remain, participate and engage in this suit right from the time she was sued to the stage where she suddenly feels like exiting from the suit.
36. The vertical and the horizontal application of the law under Article 3 and 20 of *the Constitution* binds the Attorney General when it comes to upholding the rule of law.
37. Article 27 (1) of *the Constitution* provides that "Every person is equal before the law and has the right to equal protection and equal benefit of the law."
38. Article 47(1) of *the Constitution* provides that (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
39. This court has a duty to ensure each party who appears before it is treated in a manner that is administratively and fair and reasonable even during the phase of execution in line with Article 27 and 47 of *the constitution*. This is what will accord with the guarantee to access to justice under Article 48 of *The Constitution*. The Applicant has failed to uphold these provisions to the Decree Holders detriment.
40. It is this court's finding and I so hold, that striking out the name of the Attorney General pegged on the reasons that have been fronted by the Applicant will amount to an abuse of the rule of law as provided for under Article 10 of *the constitution*.
41. The Applicant has not tendered any tangible evidence that would persuade this court to strike out its name at the execution stage. Allowing the Application will defeat and erode this court's dignity.
42. The court directed that Applicant to attend court on 9.6.25 to show cause why she should not be committed to civil jail. Committal to civil jail is a process that is preceded by processes that promote the right to fair hearing. This includes the Notice to show cause. In the circumstances it is clear that the Application before this court is premature and speculative in nature.
43. To allow the application will amount to short changing the decree holder which this court will not countenance.
44. This court finds that the prayer for an order of an interim stay of the orders issued on 29th April, 2025 has not been proven disallowing the same.

Who shall bear the costs?

45. Costs follow the event. The respondent shall have the costs.

Determination:

46. The application lacks merit.



Order:

The application is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE, 2025.

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J.M. CHIGITI (SC)

JUDGE

