



**Macharia v Inspector General of Police & 3 others (Judicial Review
E003 of 2023) [2025] KEHC 9915 (KLR) (9 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW E003 OF 2023
PN GICHOHI, J
JULY 9, 2025**

**IN THE MATTER OF SATISFACTION OF CERTIFICATE OF COSTS
UNDER ORDER 21 RULE 9 OF THE CIVIL PROCEDURE RULES, 2010**

AND

**IN THE MATTER OF SECTION 21 OF THE GOVERNMENT
PROCEEDINGS ACT, CAP 40 LAWS OF KENYA**

AND

IN THE MATTER OF AN ORDER OF MANDAMUS

BETWEEN

GEOFFREY KAMAU MACHARIA APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

**THE PRINCIPLE SECRETARY, MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT 4TH RESPONDENT**

JUDGMENT

1. Pursuant to leave granted to the Applicant on 20th March, 2023, the Applicant filed the Notice of Motion application dated 4th April, 2023 and brought under section 21 of the [Government Proceedings Act](#), Order 53 rule 1(1) and 2 of the [Civil Procedure Rules](#), 2010, Sections 8 and 9 of the [Law Reform Act](#), section 3A of the [Civil Procedure Act](#) and all the enabling provision of the law, seeking for Orders that; -



- a. The Honourable Court be pleased to issue an order of Mandamus compelling the Respondent to pay the Applicant the decretal sum of Kshs. 478,000 and the costs amounting to Kshs. 98,475 arising therefrom in satisfaction of the judgement of the Chief Magistrates Court at Nakuru in Civil Suit No. 1035 of 2019.
 - b. The Court be pleased to set timelines and or duration within which the Respondents will settle the decretal sum with interest accruing until the date of payment.
 - c. Costs of the Application be provided for.
2. The application is based on the grounds on the face of it, the statement of facts and a supporting Affidavit sworn by the Applicant on even date. The Applicant's case is that by a judgment dated 14th June, 2022, the Applicant was awarded Kshs. 478,000 as damages for malicious prosecution together with costs of the suit assessed at Kshs. 98,435 as evidenced by the Certificate of costs dated 30th January, 2023. Subsequently, that the trial Court issued a Certificate of Costs against the Government under Section 21 of the *Government Proceedings Act* on 2nd February, 2023.
 3. These documents were then served upon all the Respondents and despite service and repeated follow up for the satisfaction of the said decree from the Respondents, the Respondent did not pay them the decretal sum.
 4. He states that since no payments were received, he was forced to institute these proceedings.
 5. The 1st, 2nd and 4th Respondents filed their Grounds of Opposition dated 3rd October, 2023. Their grounds were that:-
 1. The 1st, 2nd and 4th Respondents were served with a copy of Decree, Certificate of Costs and Certificate of Order against the Government for the sum of Kshs. 478,000/- issued on 2nd February 2023.
 2. The 2nd Respondent forwarded the same to the Ministry of Interior and Co-ordination for processing of payment as per the procedure and the Respondents have not refused to settle the same. The Ministry of Interior and Coordination (4th Respondent) is a government entity thus such payments require budgeting and appropriation by Parliament before payment of liabilities (Decretal amounts). The liability will therefore need to be budgeted for before settlement and that in *Kisya Investments Ltd v AG* (2005) 1 KLR 74 the Court said: -

“Order 28, rules 2(1)(a), (2) and (4) of the *Civil Procedure Rules* subject themselves to the provisions of the *Government Proceedings Act* which include provisions prohibiting execution against or attachment in respect of the Government. The said Rules themselves expressly preclude such actions. In pursuance of the ends of justice, the courts are bound to apply the law as it exists. Many a times such application may indeed not attain that goal due to the effect of the said laws. On the question of abuse of the process of the court, the application of any written law cannot amount to an abuse of the process of the court however much its effect is harsh or even undesirable.... 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 threefold 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 decrees or judgements 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 moneys provided 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. See *Halsbury's Laws Of Engaland* 4th Edn Vol. 11 Para 970, 971 And 1370. 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 judgements. 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. See *Auckland Harbour Board v R* (1924) AC 318, 326. The second situation, which arises from the above, is that once a decree or judgement is obtained against the Government, it would require some reasonable time to have it forwarded to the ministry of Finance, Treasury, Comptroller 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 judgements and will be inundated with executions and attachments of its assets day in, day out. Its buildings will be attached and its plants and equipment will be attached, its furniture and office equipment will be attached, its vehicles, aircraft, ship 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 paralyzed and soon the Government will not only be bankrupt but it's 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.”

3. The Execution of decrees against the Government is not undertaken as in the ordinary civil cases but must be in accordance with Provisions of the [Government Proceedings Act](#).
4. It will therefore be an injustice for this Court to pronounce itself in the timeline and or/ duration within which the Respondents will settle the decretal sum seeing that this timeline cost is already covered by the interest the decretal sum continues to earn.
5. This Notice of Motion Application dated 4th April 2023 is therefore premature considering the fact that the additional costs of this application shall be borne by the tax payer which will be an injustice.
6. The process of settling the same has already began.



7. It is in the interest of justice, equity and fairness that this application be dismissed and parties ordered to bear their own costs.
6. The application was canvassed by written submissions.

Applicant's Submissions

7. The Ex-parte Applicant submitted that in line with Order 29 (3) of the [Civil Procedure Rules](#) 2010 and Section 21 of the [Government Proceedings Act](#), he applied for and was issued with a Certificate of Order against the Government which he served upon the Respondents on 23rd February, 2023 for payment and despite this, the Respondents have failed to pay the decretal sum and costs.
8. He submitted that the Judicial Review Application is premised on enforcing the judgment against the 1st and 2nd Respondents. That under Order 29, Rule 2(2) of the [Civil Procedure Rules](#) 2010, no order can be made against the government for recovery or execution of decrees save under Order 29, Rule 3 that provides that for satisfaction of orders against the government, an application for a certificate under Section 21 of the [Government Proceedings Act](#) should be made to the subordinate court, and the issued Certificate is used to claim against the government.
9. In the circumstances, he submitted that the Respondents' failure to abide by Section 21 of the [Government Proceedings Act](#) and pay the decretal sum is considered an abuse of the court process and a disregard of Court Orders.
10. Citing the case of [Republic v Jomo Kenyatta University of Agriculture and Technology Ex parte Elijah Kamau Mwangi](#) [2021] eKLR, he argued that in discussing the principles for issuing an Order of Mandamus, the Court stated that a court will only compel the satisfaction of a public duty if it has become due and any necessary condition precedent has been met.
11. Further, he submitted that in [Republic v Kenya National Examinations Council ex parte Gathenji & Others](#) (1997) eKLR, the Court explained that Mandamus is a remedial order from the High Court, directing a person, corporation, or tribunal to perform a specific public duty, especially where there is a legal right but no other effective legal remedy. That an Order of Mandamus is appropriate when there is an existing public duty that remains unfulfilled due to delay or disregard of orders.
12. He therefore asserts that he has followed due process and his claim is based on an unfulfilled duty.
13. Further reliance was placed in the case of [Republic v County Government of Kiambu Ex Parte Laban J Macharia Muiruri](#) [2021] eKLR, where the Court held that the Respondent (County Government of Kiambu) was jointly responsible with the County Executive Committee Member of Finance for satisfying court orders and decrees for money owed. The court emphasized that a decree holder's right to enjoy the fruits of judgment should not be thwarted, and courts should favour enforcement to secure accrued rights, in line with constitutional values of justice and access to justice.
14. Based on the above, the Applicant argued that he has demonstrated that he sought fulfilment of the decretal award through correspondence without success.
15. He maintained that service of the Certificate of Costs against the Government having been made to the Hon. Attorney General as per Section 21 of the [Government Proceedings Act](#), the delay in payment is an abuse of the court process considering that he has fulfilled the prerequisites for an Order of Mandamus.
16. He therefore, urged this Court to issue an Order of Mandamus compelling the Respondents to make the payment as per the Certificate of Order against the Government dated 2nd February, 2023



17. Regarding the costs of the application, he cited Section 27 of the *Civil Procedure Act*, he prayed that the Respondents bear the costs for the Judicial Review on Mandamus Application dated 4th April, 2023 as costs follow the event.

1st , 2nd and 4th Respondents' Submissions

18. They emphasised that the Applicant's requested orders are directed at a state Ministry, which is a government entity, and thus the payment of decretal sums is governed by a procedure requiring budgeting and parliamentary appropriation. They asserted that they have not refused to settle the decretal sum and costs, and the Applicant has not provided any evidence to the contrary.
19. While relying on the case of *Kisya Investments Ltd (Supra)*, they argued that the Court noted Parliament's strict control over expenditure, explaining that no Ministry or Department has readily available funds to satisfy decrees or judgments. Rather that Ministries and Departments must notify the Ministry of Finance and Treasury to arrange payment or make provisions in the Government's expenditure.
20. They argued that after a decree or judgment is obtained against the Government, a reasonable time is required to forward it through various government offices (Ministry of Finance, Treasury, Comptroller and Auditor General) for scrutiny and approvals before payment from the Consolidated Fund. It was reiterated that Ministries and Departments lack their 'own' funds for such payments, and due to the government structure, procedures, red tape, and numerous claims, this process can be lengthy.
21. They further elucidated that allowing execution and/or attachment against the Government would lead to its immediate inability to pay, resulting in an inundation of executions and attachments of assets such as buildings, plants, equipment, furniture, office equipment, vehicles, aircraft, ships, and boats. That such an onslaught would paralyse state operations, potentially leading to bankruptcy, the inability to perform constitutional and statutory duties, chaos, anarchy, and the breakdown of the Rule of Law, hence, this rationale underpins the law prohibiting execution against and attachment of Government assets and property.
22. Based on this argument, the Respondents submitted that it would be unjust and unfair for the court to set a timeline for settling the decretal sum, as payment occurs only after Parliament allocates funds to the Ministry of Interior & Coordination of National Government.
23. It was submitted further that if the Applicant's claims were not factored into the 2023/2024 budget, they would be factored in the 2024/2025 financial year, and they intend to comply with settling the sum and seek more time to do so.
24. On cost, it was argued that awarding further costs to the Applicant from this application would be an injustice to them, and therefore, in the interest of justice, equity, and fairness, the Notice of Motion application should be dismissed, with parties bearing their own costs.

Analysis and Determination

25. After considering the application, the responses thereto and the rival submissions, the only issue that arise for determination is whether the orders of mandamus should issue as prayed by the Applicant.



26. It is settled law that before an order of mandamus is issued, an Applicant must abide by the procedure in Section 21 of *Government Proceedings Act* which provides: -

- “(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.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.

27. The circumstances under which judicial review order of mandamus are issued were discussed in the case *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] KECA 58 (KLR), where the Court of Appeal cited with approval, *Halsbury’s Law of England*, 4th Edition. Vol. 7 p. 111 para 89 thus:-

“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. 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.” (Emphasis added).

28. In this case, there is a decretal sum together with the costs awarded to the Applicant herein by the trial Court. A Certificate of Order against the Government was issued on 2nd February, 2023 and served upon the Respondents vide the letter by the Applicant’s Advocates dated 3rd February, 2023 and an Affidavit of service filed to that effect. Indeed, the Respondents have admitted in their grounds of opposition to receiving the Certificate of Costs. Their only contention is that the payment of such decretal sum go through lengthy government process and thus they are unable to pay the same promptly. They however added that the payment of the Applicant’s decree is in the pipeline.
29. It is trite that once the Certificate of Order against the Government is served on the Hon Attorney General, the Accounting Officer concerned is obligated under Section 21(3) of the Government Proceedings Act, to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.
30. What is clear is that the above provision does not condition the payment to budgetary allocation and Parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.
31. In the case of the case of Kisya Investments Ltd (Supra) relied on by the Respondent, the learned Judges’ remarks which the Respondent reproduced in his submissions, described the internal mechanisms that Government ministries undertake when making provisions to satisfy monetary decrees issued against the Government. In making the observations, the Court’s aim was to rationalise the purpose and usefulness of the immunity and protection granted to the Government against the attachment of its goods and properties in the execution of monetary decrees.
32. However, the Court did not make a finding that successful litigants should refrain from moving with reasonable speed to enforce payment of decrees issued in their favour against the Government. It is therefore evident that once a decree holder obtains a Decree against the Government and serves the Attorney General with the Certificate of Order, the decree holder obtains a legal right to obtain the payment from the Government, through the relevant ministry’s accounting officer, the decretal amount specified in the Certificate of Order.
33. The 4th Respondents, acting as the Accounting Officer in the Ministry of Interior and Coordination of the National Government, holds both a statutory and public duty to satisfy the decree issued in favour of the Applicant by a Court of law.
34. It is undisputed that at the commencement of these proceedings, the Respondents had failed and/ or neglected to fulfil their duty and that was to the detriment of the Applicant, considering that there was no appeal lodged by the Government against the judgment in the subordinate court. I also note that in as much as the Respondent allege that they are in the process of settling the decretal sum, no evidence was attached to that effect.



35. In light of the circumstances herein , this Court is satisfied that the Applicant’s Notice of Motion dated 4th April, 2023 is merited and therefore, the following Orders are hereby issued:-

1. An Order of Mandamus be and is hereby issued compelling the 4th Respondent to pay the Applicant the decretal sum of Kshs. 478,000 and the costs amounting to Kshs. 98,475 arising therefrom and in satisfaction of the judgement of 14th June, 2022 from the Chief Magistrates Court at Nakuru in Civil Suit No. 1035 of 2019.
2. The Respondents to bear costs of this application.

DATED, DELIVERED AND SIGNED AT NAKURU THIS 9TH DAY OF JULY, 2025.

PATRICIA GICHOCHI

JUDGE

In the presence of:

N/A for Applicant

N/A for the Respondents

Ruto Court- Assistant

