



Republic v Medical Superintendent and Nursing Officer in Charge, Nyahururu District Hospital & 2 others; Karimi (Ex parte Applicant) (Suing as the Legal Representative of the Estate of Eunice Wangui Waithaka) (Miscellaneous Civil Application E281 of 2023) [2025] KEHC 11095 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E281 OF 2023**

PN GICHOHI, J

JULY 28, 2025

BETWEEN

REPUBLIC APPLICANT

AND

**MEDICAL SUPERINTENDENT AND NURSING OFFICER IN CHARGE,
NYAHURURU DISTRICT HOSPITAL 1ST RESPONDENT**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF
LAIKIPIA 2ND RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF
FINANCE COUNTY GOVERNMENT OF LAIKIPIA 3RD RESPONDENT**

AND

JOSEPH MURIITHI KARIMI EX PARTE APPLICANT

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF EUNICE
WANGUI WAITHAKA**

RULING

1. This ruling is in respect of the Respondents’ Notice of Motion dated 20th June, 2025 and brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, Article 159 (2) of the Constitution and all other enabling provisions of the law, seeking for Orders;-

1. Spent.



2. The Honourable Court be pleased to arrest its judgment in the current suit, set for delivery on 25th June, 2025, pending the hearing and determination of this application.
 3. The Honourable Court be pleased to order the Ex Parte Applicant to serve a complete set of pleadings upon the Respondents.
 4. The Respondents be granted leave to defend the suit and file their Replying Affidavit and Submissions in response to the Ex Parte Applicant's pleadings.
 5. The Honourable Court be pleased to issue further orders as shall meet the ends of justice.
 6. Costs of this application be provided for.
2. The application is premised on the grounds on the face of the Motion and supported by the Affidavit sworn by Alexander Muchemi, the Acting County Attorney for Laikipia County, on even date.
 3. The deponent states that their offices became aware of this suit in early June 2025, upon receiving an incomplete set of pleadings from the Office of the Attorney General. He states that the County Government of Laikipia was not a party to the original proceedings in Nakuru Chief Magistrate's Court Civil Case No. 1138 of 2016, where judgment was delivered on 26th February, 2021, against the 1st Respondent only, and therefore never participated in it.
 4. He states that upon discovering that judgment in the current Judicial Review application was scheduled for 25th June, 2025, their advocates promptly filed the current application to protect their right to be heard.
 5. It is argued that service of pleadings against a County Government should be effected on the County Attorney, as mandated by Section 7 of the Office of the County Attorney Act, 2020. Instead, that the Ex- Parte Applicant served the Office of the Attorney General from the commencement of the suit but never served the Office of the County Attorney.
 6. He reiterates that the Attorney General represents the National Government and Article 6(2) of the Constitution distinguishes the national and county levels of government.
 7. It is his case that the email addresses allegedly used by the Ex Parte Applicant for service being; county.xxx.go.ke,xxx.go.ke, and xxx.go.ke) are not associated with or accessible to the Office of the County Attorney and therefore, that service was never affected to enable them defend this suit.
 8. He states that denying the Respondents the opportunity to be heard would result in significant prejudice and substantial financial loss, as the Ex Parte Applicant intends to execute a substantial decretal sum against them without them having had an opportunity to defend the suit.
 9. The Ex parte Applicant has opposed the application by his Replying Affidavit sworn on 3rd July, 2025. He termed the application a non-starter, frivolous, vexatious and an abuse of the court process.
 10. He details the procedural history of the case, indicating that on 24th August, 2024, he filed a Chamber Summons Application dated 7th August, 2023, seeking leave for an order of Mandamus to compel the 2nd and 3rd Respondents/Applicants (County Secretary and CECM Finance, Laikipia County) to pay sums from a Certificate of Order against Government issued on 13th April, 2023. This followed a judgment against the 1st Respondent/Applicant (Medical Superintendent, Nyahururu District Hospital) in Nakuru Chief Magistrate's Court Civil Case No. 1138 of 2016 delivered on 26th February, 2021.



11. He asserts that the Chamber Summons Application and a Mention Notice dated 11th April, 2024, were served on the Office of the Attorney General-Nakuru on 12th April, 2024, and on the County Secretary and CECM Finance, County Government of Laikipia, on 17th April, 2024. Further service of a Mention Notice dated 19th April, 2024, was effected on the Office of the Attorney General on 22nd April, 2024, with acknowledgment of service.
12. On 3rd July, 2024, during the hearing of his application dated 7th April, 2024, Counsel for the 2nd and 3rd Respondents requested time to file their response and therefore, the Court ordered the 1st Respondent to be served again, requiring them to file their response and submissions within the same timeline as the 2nd and 3rd Respondents.
13. Directions were set for 23rd October, 2024. This Order was served on the Office of the Attorney General, the County Secretary, and the CECM Finance on 24th July, 2024 and on 23rd October, 2024, the Attorney General's Office had not complied with the court orders despite proper service. The Court then fixed a ruling date for 4th December, 2024. A Ruling Notice dated 4th November, 2024, was served upon the Office of the Attorney General, the County Secretary, and the CECM Finance on the same date.
14. In its Ruling on 4th December, 2024, the Court noted the Ex-parte Applicant's diligence in pursuing the judgment and observed that the Respondents were not keen on payment unless compelled to do so. Consequently, the Court granted the Ex-parte Applicant leave to file a substantive application for an order of Mandamus within 21 days, with costs awaiting its outcome.
15. Following this ruling, he filed the substantive Notice of Motion Application dated 17th December, 2024, which was served on the Office of the Attorney General-Nakuru, the County Secretary, and the CECM Finance on 28th December, 2024 and 15th January, 2025 respectively. On 17th February, 2025, the court directed that this application be disposed of by written submissions, granting the Ex-parte Applicant 14 days to file and serve his submissions.
16. He then drafted and served his submissions dated 27th February, 2025, on the Office of the Attorney General-Nakuru, the County Secretary, and the CECM Finance via their respective emails on the same date. Although he confirmed electronic filing and service on 26th March, 2025, the Court directed that the submissions be served afresh with an affidavit of service, including a process server's certificate if applicable. He complied by serving the submissions again via email, as confirmed by an Affidavit of Service sworn on 28th April, 2025.
17. On 28th April, 2025, his advocates confirmed compliance to the court, and the matter was fixed for judgment on 25th June, 2025. A Judgment Notice dated 29th April, 2025, was served on the Office of the Attorney General, the County Secretary, and the CECM Finance via their emails.
18. The Respondent therefore contends that the Applicants' assertion that the Office of the County Attorney Laikipia County was only notified of the suit in early June 2025 is factually incorrect and misleading. He argues that this is not a valid ground to arrest judgment in a matter with ongoing proceedings and proper notice.
19. He states that pleadings were duly served on both the Attorney General (as the statutory representative of the County Government) and the Respondents themselves, and any internal delays within the County Attorney's office should not prejudice the expeditious delivery of justice.
20. He asserts that the Applicants have not demonstrated any substantial or irreparable prejudice from the scheduled judgment, as he only seeks enforcement of an existing judgment.



21. He contends that under Article 159 of the Constitution, the Court is enjoined to administer justice without undue delay, and arresting judgment at this belated stage would offend this principle, especially after his nine-year wait for justice.
22. In conclusion, he states that the current application is a classic afterthought lodged at the eleventh hour without merit and is aimed solely at derailing the finalization of these proceedings. He therefore urges the court to dismiss the application with costs

Applicant's Submissions

23. The key issues submitted are:-
 1. Whether the Respondents' legal representative was served.
 2. Whether they should be heard.
 3. Whether judgment should be arrested.
 4. Whether the Ex Parte Applicant would face prejudice if the orders sought are granted.
24. On service, the Applicant maintains that the County Attorney's Office became aware of the suit in early June 2025 through incomplete pleadings from the Attorney General, despite the County Government not being a party to the original suit. They filed their application promptly upon realising the judgment date, arguing no inordinate delay as defined in *Utalii Transport Company Limited & 3 Others v NIC Bank Limited & Anor* [2014] eKLR.
25. They contend that the Ex Parte Applicant, by seeking execution against the County Government, who were not original parties, had a duty to ensure proper service, citing *Kenya Qatar Diaspora Sacco Ltd v Habakkuk H O Wamududa* [2021] eKLR on the imperative of service for a fair trial. They emphasise that Article 6(2) and Article 156(4) of the Constitution establish distinct National and County Governments, and the Attorney General represents the National Government unless formally requested by a County under Section 43 of the County Government Act, which was not done in this case.
26. They argue that Section 7 of the Office of the County Attorney Act, 2020, mandates service directly on the County Attorney, and failure to do so constitutes a procedural irregularity. They cite *Lawrence Ogaro Onyiego & another v Samwel Minika & another* [2017] eKLR, where Mutungi, J held:-

“Following the creation of the devolved units (County Governments) the Government Proceedings Act was not amended to align it to the new reality. The result is that if the Act is applied as is, it would result in absurdity as for instance Section 13 of the Act requires service of all documents relating to suits to be served on the Attorney General... Under Article 156 (4) of the Constitution the Attorney General is only mandated to act for and represent the National Government...The Attorney General cannot represent the County Government and hence the notice under Section 13 and 13A of the Government Proceedings Act cannot properly be served on the Attorney General. Thus, in my view, even if Section 13A had not been declared unconstitutional it would have no application to County Governments and I so hold.”
27. The Applicants further dispute the validity of email service to addresses stated, arguing that they are not associated with the County Attorney's Office. They term the service on the National Government's legal representative for a County execution as fundamentally misconceived and an abuse of process. They accuse the Ex- Parte Applicant of deliberately excluding the County Government.



28. They contend that if the Attorney General was involved, execution should be against the National Government. Alternatively, they refer to *Republic v Kenya School of Law & another; Abdi (Exparte)* (Judicial Review Miscellaneous Application E088 of 2022) [2023] KEHC 17633 (KLR), where a party was granted an opportunity to participate despite proper service to ensure a merit-based determination.
29. On the right to be heard, it was submitted that the right to a fair trial, enshrined in Article 50 (2) (b) and (c) of the Constitution, includes the right to be informed of a suit and adequate time for defence. They argue that the County Attorney was entitled to this information and service. They point out that the 2nd and 3rd Respondents were not parties to the original suit, and no judgment was issued against them, yet the Ex Parte Applicant is pursuing judicial review against them.
30. They claim this is cherry-picking and an attempt to covertly exclude the County Government. They argue that drawing the County Government into post-judgment execution without prior participation and hearing would be unjust and offend natural justice. They reiterate that a party facing substantive orders has a right to notification and opportunity to respond.
31. They state that the fundamental right to a fair trial under Article 25 of the Constitution cannot be limited, and justice should be administered without undue regard for procedural technicalities as stated in Article 159 (2) of the Constitution.
32. They seek a fair opportunity to be heard for a merit-based determination, citing the case of *Republic v Kenya School of Law & another [Supra]* and *Andrew Nthiwa Muthuku v Court of Appeal & 3 Others [2021] eKLR*, as quoted in *Republic v Kenya School of Law & another (supra)* laying emphasis on the importance of the right to be heard.
33. On the prayer to arrest judgement, they seek to arrest judgment pending proper service and response. They rely on Sections 1A and 1B of the Civil Procedure Act, which prioritise the just determination of matters. They argue that if judgment is delivered, the right to a fair trial and hearing cannot be exercised, rendering any orders moot. For that argument, they have cited the case *Evans Kidero v Speaker of Nairobi City County Assembly & another [2018] eKLR* on the doctrine of mootness. They submit that arresting judgment, supported by the inherent powers of the court under Section 3A of the Civil Procedure Act, would serve the ends of justice.
34. On prejudice, they contend that the Ex Parte Applicant will not suffer prejudice if the orders are granted, as he already holds a decree against the 1st Respondent. Conversely, the Respondents fear manifest injustice, irreparable harm, and substantial financial loss if forced to settle a significant decretal sum without defence.
35. They emphasise the need for caution when executing against public funds, which are held in trust, and the necessity of a compelling legal basis. They cite *Multiple Hauliers v Enock Bilindi Musundi & 2 others [2021] eKLR* where the court referenced *Tana and Athi Rivers Development Authority v Jeremiah Kilnigho Mwakio & 3 Others [2015] eKLR*) on the court's consideration of harm versus prejudice.
36. They conclude that denying them a hearing would impede a fair determination and that any prejudice claimed by the Ex Parte Applicant does not outweigh the fundamental rule of natural justice.

Ex parte Applicant/Respondent's submissions

37. The core issues addressed were:-
 1. Whether the Respondents/Applicants were entitled to the orders sought.



2. Who should bear the costs.
38. Accordingly, it is argued that the Respondents/Applicants are not entitled to the orders. They have highlight that the Respondents/Applicants were aware of the judgment delivered on 26th February, 2021, in Nakuru CMCC Case No. 1138 of 2016.
39. Regarding service, the Ex-parte Applicant cites Order 5 Rule 22B of the Civil Procedure Rules, 2010, which allows for electronic service, including email, SMS, MMS, and WhatsApp, with service deemed effected upon receipt of a delivery confirmation.
40. While detailing numerous instances of service as captured in the Replying Affidavit, they argue that the Respondents' claim of improper service lacks merit, as electronic service was affected in accordance with Order 5 Rule 22C of the Civil Procedure Rules, 2010.
41. The Ex-parte Applicant/Respondent further argues that the Respondents had not made a case to warrant arresting the Court's judgment noting the Respondents' awareness of the 2021 judgment and their sudden interest in June 2025, just before judgment, which raised questions about their bona fides.
42. They invoke the doctrine of laches argument that Equity aids the vigilant, not the indolent and that the Respondents had ample opportunity to intervene but failed. In support of this argument, reliance is placed on the case of Habo Agencies Limited vs Wilfred Odhiambo Musingo [2015] eKLR, which emphasise that an Applicant must demonstrate vigilance and promptness.
43. It is submitted that the Respondents had not cited any procedural irregularity, jurisdictional defect, or breach of natural justice. Judicial Review proceedings, it was argued, focus on the decision-making process, not the merits of the original case, and the court was being asked to enforce an existing Order, not reopen the merits.
44. For that argument, reliance was placed on the case of Republic vs Kenya Revenue Authority Ex Parte Yaya Towers Limited [2008] eKLR, which stated that;- "once a judicial review application has been properly commenced, the parties must be vigilant and prosecute or respond in a timely manner".
45. The Ex-parte Applicant characterises arresting a judgment as a draconian prayer. In support, the case of Kipngeno Arap Ngeny V Municipal Council Of Eldoret [2004] ECLR is referenced, which held that Judicial review is a special jurisdiction with strict timelines and formalities and the Respondents, having slept on their rights, cannot invoke Article 50 as a shield to defeat the finality of litigation. On that basis, the Ex-Parte Applicant submitted that the Respondents' application was merely a tactic to delay justice and frustrate the enforcement of a valid decree.
46. It is argued that the Ex-parte Applicant represents the estate of a deceased person, whose rights have been delayed since 2021, and the claim arose from the negligence of the 1st Respondent, which resulted in the death of the Ex-parte Applicant's wife. He deems it unjust to allow further delays through last-minute procedural objections.
47. Furthermore, he asserts that the County Government could not feign ignorance of proceedings concerning a public facility under their jurisdiction post-devolution. Moreover, that the Respondents had not filed any application under Order 10 Rule 11 of the Civil Procedure Rules to set aside an interlocutory judgment, nor had they invoked the procedure under Sections 8 and 9 of the Law Reform Act for Judicial Review.
48. In conclusion, the Ex-parte Applicant submits that the Respondents' application is unmerited, brought too late, and an abuse of the court process. He urges the court to dismiss the Notice of Motion dated 20th June, 2025 in its entirety and order that the judgment be delivered.



49. Regarding costs, it is submitted that the award of costs is discretionary and ordinarily follows the event under Section 27 of the Civil Procedure Act. In support, he cites the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant vs Ihururu Dairy Farmers Co-Operative Society Ltd Judicial Review Application NO 6 OF 2014 which stated that costs follow the event and compensate the successful party for their efforts, rather than penalizing the losing party. The Ex-parte Applicant/ Respondent therefore prays for costs

Analysis and Determination

50. Upon perusal of the application, the Affidavit in support and opposition of the application as well as the rival submissions, the broad issue for determination in this case is whether the Respondent/Applicants' Notice of Motion dated 20th June, 2025 is merited.
51. The Applicants are seeking to arrest judgement of this Court, the basis upon which the application is made is that the Applicants were not served with the application herein and therefore could not respond or participate in its hearing. The Ex parte Applicant on the other hand maintains that the Applicant were served and thus the Application is without merit.
52. The application which is the subject of the judgement sought to be arrested is the substantive Notice of Motion dated 17th December, 2024 and which was filed pursuant to leave of this Court granted on 4th December, 2024. The record indicates that the said Notice of Motion was served upon the Attorney General chambers in Nakuru and the CEC of Finance and County Secretary of Laikipia County vide email addresses:-

xxx.com,

xxx.go.ke,

xxx.go.ke

53. As evidenced by the Affidavit of service sworn by their advocate Ms. Elizabeth Wangare Mukira on 12th February, 2025, it is noted that the County Attorney was not served with this Application. In Republic v County Secretary, County Government of Busia & 2 others; Antaf Company Limited (Exparte) (Judicial Review E004 of 2023) [2024] KEHC 5000 (KLR), W. Musyoka, J held:-

“The accounting instrument, for the purposes of Government operations, that unlocks payment of money from Government, in satisfaction of a court order or decree, is the certificate of order against Government. This document is critical. Without it, the process of payment cannot be unlocked. Any person desiring to be paid by Government, on account of a decree or order made against it, must first obtain the said certificate. That certificate must then be served on the Attorney General, in case the decree or order is against the National Government, or the County Attorney, where the order or decree is against a County Government. The Government should be expected to settle or satisfy the decree only upon being notified of the same, through that certificate being served upon the relevant officer, in accordance with the law.”

54. Execution proceedings against a Government are primarily governed by the Government Proceedings Act (Cap 40), which applies to County Governments with necessary modifications. Section 21 (3) of the said Act provides:-

“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.”

55. The question then is, who is the Accounting Officer on who statutory duty is imposed upon to satisfy the decree? The Respondents argue that the County Attorney was not served with the pleadings as such that the proper service was not effected to the County since the County Attorney as stated in Section 7 of the Office of the County Attorney Act is the only person responsible for handling all legal matters on behalf of the County.

56. Indeed, the function of the County Attorney are enumerated at Section 7 of the County Attorney Act thus:-

“Functions of the County Attorney The County Attorney—

- (a) is the principal legal adviser to the county government;
- (b) shall attend the meetings of the county executive committee as an exofficio member of the executive committee;
- (c) shall, on the instructions of the county government, represent the county executive in court or in any other legal proceedings to which the county executive is a party, other than criminal proceedings;
- (d) shall advise departments in the county executive on legislative and other legal matters;
- (e) shall negotiate, draft, vet and interpret documents and agreements for and on behalf of the county executive and its agencies;
- (f) shall be responsible for the revision of county laws;
- (g) may liaise with the Office of the Attorney-General when need arises; and
- (h) shall perform any other function as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.”

57. The Accounting officer for the County however is the County Executive Committee member of finance as provided for under Section 103 (2) (a) and (3) and Section 148 (2) and (3) of the Public Finance Management Act, No.8 of 2012 (PMFA). For emphasis, Section 103 stipulates:-

“There is established for each county government, an entity to be known as County Treasury.

- (2) The County Treasury shall comprise— (a) the County Executive Committee member for finance; [Rev. 2022] Public Finance Management CAP. 412A 77 (b) the Chief Officer; and (c) the department or departments of the County Treasury responsible for financial and fiscal matters. (3) The County Executive Committee member for finance shall be the head of the County Treasury.



58. Section 148 on the other hand provides tha:-

- “(1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.
- (2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.
- (3) A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.
- (4) The Clerk to the county assembly shall be the accounting officer of the county assembly.
- (5) A county government may, in order to promote efficient use of the county resources, adopt, subject to approval by the county assembly, a centralised county financial management service.”

59. Accordingly, the County Executive Committee Member of Finance is the Accounting Officer of the County Government and the person that should be served with execution documents against the County Government.

60. Since the application was demonstrably served on the CEC for Finance and the Secretary to Laikipia County Government via email, and the County Attorney's sole contention is lack of access to said email not non-working addresses, the onus is on the CEC for Finance and the County Secretary to transmit the application to the County Attorney for the defence of this suit. Their internal procedural failures and lapses within their offices do not concern the ex -parte Applicant herein and therefore , such cannot be used to his prejudice.

61. From the foregoing:-

1. The Respondent/ Applicants' Notice of Motion dated 20th June, 2025 is without merit and therefore dismissed.
2. Costs are awarded to the Ex parte Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF JULY, 2025.

PATRICIA GICHOCHI

JUDGE

In the presence of:

Ms. Kiambati for the Respondents/Applicants

Mr. Oyondi h/b for Mr. Mukira for Ex-parte Applicant

Ruto Court- Assistant

