



**Republic v County Government of Kiambu; Kariuki t/a Jesse Kariuki
& Co Advocates (Ex parte Applicant) (Judicial Review Application
E015 of 2025) [2025] KEHC 11143 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11143 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
JUDICIAL REVIEW APPLICATION E015 OF 2025
FN MUCHEMI, J
JULY 24, 2025
IN THE MATTER OF AN APPLICATION FOR
THE JUDICIAL REVIEW ORDER OF MANDAMUS
AND
IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015
AND
IN THE MATTER OF ORDER 53(1) OF THE CIVIL PROCEDURE RULES, 2010
AND
IN THE MATTER OF ARTICLES 22, 23, 47, 48, 50,
129 & 159 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF EXECUTION OF A TAXED
CERTIFICATE OF COSTS OF KSHS. 159,544.40/-

BETWEEN
REPUBLIC APPLICANT

AND
THE COUNTY GOVERNMENT OF KIAMBU RESPONDENT



AND

**JESSE KARIUKI T/A JESSEE KARIUKI & CO ADVOCATES EX PARTE
APPLICANT**

JUDGMENT

Brief Facts

1. By a Notice of Motion dated 15th April 2025, the ex parte applicant seeks the following orders:-
 - a. An order of mandamus be issued to compel the County Secretary in the County Government of Kiambu to pay the ex parte applicant the sum of Kshs. 159,544.40/- together with all accrued interest on the taxed amount from the date of judgment of this court was entered and in default, execution to issue against him/her.
2. The substantive motion was served on the respondent and time to file response extended on 26/06/2025. However, no response was filed and as such the motion is unopposed.

The Ex parte Applicant's Case

3. The ex parte applicant states that he is the decree holder in Kiambu Miscellaneous Application No. 140 of 2019 where the Deputy registrar ordered that the respondent to pay him the sum of Kshs. 159,544.40/- as per his bill of costs. The ex parte applicant states that he is aggrieved by the respondent's inaction in paying the taxed costs to date. Further, despite requesting and seeking compliance from the respondent via numerous emails exchanged calling for the issuance of cheques to settle the taxed costs, the respondent has failed to settle the same.
4. The ex parte applicant avers that he served the respondent with a Certificate of Order against the Government on 30th January 2025.
5. The ex parte applicant states that the respondent has failed, ignored, refused and/or neglected to perform its statutory and public duty by failing to comply with the certificate order and the said sum continues to accrue interest.
6. Directions were issued that parties put in written submissions and the record shows that the ex parte applicant complied by filing submissions on 7th May 2025. The respondent on the other hand had not filed its submissions by the time of writing this ruling.

The Ex parte Applicant's Submissions.

7. The ex parte applicant relies to Article 47 of *the Constitution*, Section 3 of the Fair Administrative Act and the cases of Civil Appeal No E052 of 2021 Michael Ntouthi Mitheu vs Abraham Kivondu Musau (no citation given) and Republic vs Kenya National Examination Council ex parte Gathenji & Others (1997) eKLR and submits that an order of mandamus is of a most extensive remedial nature and is in form a command from the High Court directed to any person requiring him to do some particular thing therein specified which pertains to their office. The ex parte applicant submits that was awarded costs of Kshs. 159,544.40/- as per the attached taxed certificate of costs dated 10th February 2019 and sent correspondence to the respondent as per the attached letter dated 26th November 2019 indicating his account details where the said amount would be deposited but the respondent failed to do so. Further, the ex parte applicant submits that he served the respondent with the certificate of



order against the Government in compliance with Section 21 of the *Government Proceedings Act* on 30th January 2025. To support his contentions, the ex parte applicant refers to the cases of Republic vs County Government of Vihiga ex parte Global Exhibitions Incorporated Ltd (2021) eKLR; Republic vs Permanent Secretary, Ministry of State for Provincial Administration & Internal Security ex parte Fredrick Manoah Egunza (2012) eKLR; Republic vs County Secretary Migori County Government & Another (2019) eKLR and Environment & Land Court Misc Application No. 90 of 2020 Republic vs Principal Kadhi Mombasa ex parte Alibhai Adamali Dar & 2 Others; Murtaza Turabali Patel (Interested Party). Further, the ex parte applicant submits that he has fulfilled all the requirements for issuance of mandamus.

The Law

8. The Court of Appeal discussed the nature of the remedy of mandamus in Republic vs Kenya National Examinations Council ex parte Githinji & 8 Others [1997] eKLR citing with approval Halsbury's Laws of England 4th Vol. 7 p. 111 para 89:-

The order of mandamus is the 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 remedy, yet that mode of redress is less convenient, beneficial and effectual...”These principles mean that an order of mandamus compels 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 had failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.

9. In the instant case, the ex parte applicant has moved this honourable court to compel the respondent satisfy a judgment in terms of costs already decreed in its favour by a competent court of law. It is not disputed that the Deputy Registrar in High Court Kiambu Misc. Civil application No. 140 of 2019 awarded the ex parte applicant costs of 159,544.40/- and a Certificate of Taxation issued on 10th February 2019. The issues therefore that require to be determined are whether the respondent is under a public duty and obligation to satisfy the certificate of taxation in favour of the ex parte applicant and if so, whether the ex parte applicant is entitled to the relief it seeks.
10. The procedure required to be followed for payment of damages or costs due from the government in civil proceedings are elaborated in Section 21 of the *Government Proceedings Act*. It 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.
11. Evidently, Section 21(3) above provides that the person responsible for the payment of any damages or costs awarded against the government is the accounting officer of the Ministry or public body concerned, who is the one under a statutory duty to satisfy a judgment made by the court against that ministry or body. This position was explained in *Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) eKLR* 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 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 Honourable 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 Honourable 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.



12. It is evident that the ex parte applicant has annexed a demand letter dated 26th November 2019 to the respondent enclosing the certificate of taxation and demanding payment in Misc. Application No.s 139 -143 for a total sum of Kshs. 833,617.46/-. The ex parte applicant has further annexed the certificate of order against the government dated 19th June 2024. The said certificate bears the receiving stamp for the County Government of Kiambu dated 30th January 2025. The respondent has not opposed the application and neither have they took part in the proceedings despite being served. The ex parte applicant has thus shown that the respondent is aware of the claim as they were served with the demand letter dated 26th November 2019 enclosing a copy of the certificate of taxation and certificate of order against the government. Thus, it is evident that the ex parte applicant followed the procedure as outlined in Section 21 of the *Government Proceedings Act*.
13. It is my considered view that the ex parte applicant has fully complied with the legal requirements for an order of mandamus to issue in this application.

Conclusion

14. I therefore find that the application dated 15th April 2025 has merit and is hereby allowed in terms of prayers 2 and 3.
15. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

