



Republic v Principal Secretary Ministry of Interior and Coordination of National Government; Ndegwa (Ex parte Applicant) (Judicial Review Miscellaneous Application 5 of 2024) [2025] KEHC 10825 (KLR) (21 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 5 OF 2024**

**PN GICHOHI, J
JULY 21, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT RESPONDENT**

AND

NANCY KABURA NDEGWA EX PARTE APPLICANT

JUDGMENT

1. Pursuant to leave granted by this Court on 25th November, 2024, the *ex parte* Applicant filed the Notice of Motion dated 29th November, 2024, under Order 53 Rule 3(1) of the *Civil Procedure Rules* seeking Orders that : -
 1. This Honourable Court do issue an Order of *Mandamus* against the Respondent to the effect that he pays the *ex parte* Applicant the sum of Kshs 714,827 within 14 days of service of this Order and in default he be committed to civil jail for a period not exceeding six (6) months.
 2. The costs of this Application be provided.
2. The grounds are on the face of the Motion and supported by the affidavit sworn by the *ex-parte* Applicant on even date. She stated that her fundamental rights and freedoms were grossly violated when she was maliciously prosecuted in criminal case No. 2990 of 2021 and therefore that she sought and obtained compensation for malicious prosecution, which she urged this Court to compel the Respondent to pay her.



3. The background of her case is that she was arrested on 29th June, 2012 and charged with stealing contrary to section 275 of the penal code. She was tried and sentenced to probation for 6 months and in addition ordered to pay Kshs.10,000/= the money she was alleged to have stolen. On Appeal, the Court ordered for her release and the money she had paid was order to be reimbursed.
4. Subsequently, she filed Nakuru CMCC No. 937 of 2016 claiming compensation for malicious prosecution, where the trial court awarded her Kshs. 600,000/= plus costs and interest, which overtime has accrued to Kshs. 739,916/=.
5. She stated that she has served the decree and certificate of costs against government upon the Attorney general but that the Respondent has refused to pay her the decretal sum, necessitating these Judicial review proceedings to compel them to pay.
6. Despite service of this Application as evidenced by the Affidavit of service sworn by Paul Ndegwa Wandaka, a licensed process server, on 25th November, 2024, the Respondent did not file any response to the same.

Analysis and Determination

7. The only issue that arise for determination herein is whether the *ex parte* Applicant has established grounds to warrant this court to grant the orders sought.
8. 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.”

9. 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 Gatbenji 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).

10. In this case, the record shows that a Certificate of Order against the Government was issued on 3rd October, 2023 for the sum of Kshs. 714, 827/= and served upon the Respondent through the Hon. Attorney General on 2nd November, 2023 as evidence by the Affidavit of service sworn by Paul Ndegwa Wandaka, a process service, on 25th November, 2024.
11. The law is clear that once the Certificate of Order against the Government is served on the Hon 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 notable that when a writ of *mandamus* is issued, it compels an Accounting Officer to pay a decretal sum as tabulated in the Certificate of Costs against the Government.
13. However, the court cannot dictate the specific method or timeline for compliance, as judicial review proceedings for *mandamus* are distinct from execution proceedings.
14. The purpose of seeking an Order of *Mandamus* is not to obtain relief directly against the Government, but to compel a government official to fulfil a duty mandated by Parliament. In essence, the relief sought is not about execution, attachment, or making an individual personally liable for payment.



Instead, it is about obliging a government officer to pay a debt, determined by the High Court, from funds provided by Parliament, in accordance with their parliamentary duty.

15. In the circumstances, a request to hold the Accounting Officer in contempt can only be considered if the judicial review orders are not complied with, at which point the applicant may initiate contempt of court proceedings. At this stage, the prayer for contempt is untenable.
16. In light of the foregoing, this Court is satisfied that the *ex parte* Applicant has demonstrated that she is deserving of the Order of *Mandamus* sought in the application dated 29th November, 2024.
17. Accordingly, the application is granted in the following terms:-
 1. An Order of *Mandamus* is hereby issued compelling the Respondent to pay the *ex parte* Applicant the sum of Kshs. 714,827/= being the decretal amount together with costs and interest arising from Nakuru CMCC No. 937 of 2016 until payment in full.
 2. The Respondents shall pay to the *ex parte* Applicant costs of this application.

DATED, DELIVERED AND SIGNED AT NAKURU THIS 21ST DAY OF JULY, 2025.

PATRICIA GICHOCHI

JUDGE

In the presence of:

Mr. Muchindi h/b for Mr. Wandaka for Applicant

N/A for the Respondent

Ng'eno, Court Assistant

