



Republic v Chief Executive Officer, National Government Constituency Development Fund Committee & 2 others; Ngari (Ex parte Applicant) (Judicial Review Miscellaneous Application E151 of 2024) [2025] KEHC 10488 (KLR) (Judicial Review) (18 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10488 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E151 OF 2024**

JM CHIGITI, J

JULY 18, 2025

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF EXECUTIVE OFFICER, NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND COMMITTEE 1ST RESPONDENT

FUND MANAGER, DAGORETTI SOUTH CONSTITUENCY DEVELOPMENT FUND COMMITTEE 2ND RESPONDENT

CHAIRMAN, DAGORETTI SOUTH DEVELOPMENT FUND COMMITTEE 3RD RESPONDENT

AND

MARY WANJIKU NGARI EX PARTE APPLICANT

JUDGMENT

Applicant's Case

1. The Applicant herein filed a Notice of Motion dated 29th November, 2024. Under Sections 1A., 1B and 3A of the Civil procedure Rules Article 47 of *the Constitution* 2010 & Section 3, 4, 5 and 6 of the *Fair Administrative Action Act* seeking the following orders against the Respondents;

1. An Order of Mandamus be issued to compel the Respondents to pay the Exparte Applicant, the decretal sum together with interest thereon of Kshs. 38,217,552/= which is due to date on account of judgement delivered on 17th November 2017 against the Respondent's herein



in ELC No. 8 of 2015 Samwel Ngari Githinji –Vs- The National Constituency Development Fund Board & Dagoretti South Constituency Development Fund Committee.

2. An Order of Mandamus be issued to compel the Respondents to pay the Exparte Applicant, the taxed costs together with interest thereon of Kshs. 1,799,275/= which is due to date on account of the Certificate of Taxation dated 3rd September 2019 in ELC No. 8 of 2015.
 3. The Respondents be and is hereby ordered to comply by satisfying the Certificate of Order in the sum of Kshs. 38,217,552/= together with accruing Interest in ELC No. 8 of 2015 within fourteen (14) days from the date of service of the order of mandamus.
 4. In default, Notice to Show Cause do issue against the Respondents why they should not be cited for contempt of court.
 5. The costs of this application be borne by the Respondents.
2. The application is supported by a statutory statement dated 29th November, 2024 and Verifying Affidavit of Mary Wanjiku Ngari sworn on 29th November, 2024.
 3. It is the Applicant's case that she is the widow and joint administratrix of the estate of the late Samwel Ngari Githinji (Deceased), and that she has obtained the consent and authority of the co-administrator to institute and prosecute these proceedings both in her own right and on behalf of the estate and its beneficiaries.
 4. She deposes that the deceased had instituted proceedings in ELC No. 8 of 2015, being Samuel Ngari Githinji –vs- The National Constituency Development Fund Board and Dagoretti South Constituency Fund Committee. The suit was heard and determined, and judgment was delivered in favour of the Plaintiff (the Deceased) against the Defendants jointly and severally on 17th November 2017.
 5. The deceased passed away on 29th May 2019, shortly after the delivery of the judgment. Following the demise of the deceased, the deponent promptly applied for and obtained a limited grant of letters of administration for the purposes of representing the estate in the ongoing matter which was still pending the taxation of the party to party Bill of Costs.
 6. Upon obtaining the Grant of Letters of Administration, the Deponent applied for and was duly substituted in place of the deceased Plaintiff. The said application was served upon the Advocates for both Defendants, proceeded unopposed, and the substitution orders were accordingly granted by the Court.
 7. It is averred that she is aware the 1st Defendant lodged an appeal against the judgment in Civil Appeal No. 18 of 2018 at the Court of Appeal. Further, the 1st Defendant also filed an application for stay of execution in the High Court. The application for stay was not opposed, and the consent orders for stay were duly recorded by the Deponent.
 8. She states that the appeal by the 1st Defendant abated on or about 29th May 2020 by operation of law, and the stay of execution orders were thereby vacated automatically. Following the abatement of the appeal and absence of stay orders, the Deponent's Advocates, acting on her instructions, made several efforts to engage the Defendants to settle the decretal amount amicably, through letters and telephone communication. However, no acknowledgment or response was received.
 9. In view of the Defendants' non-responsiveness, the Deponent instructed her Advocates to initiate garnishee proceedings against an account held by the 2nd Defendant at Equity Bank Limited,



- Kawangware Branch. Pursuant to the garnishee proceedings, a decree nisi was issued in respect of the said account, which was subsequently made absolute.
10. This triggered multiple applications by the Defendants, including appeals and applications to revive the abated appeal and set aside the decree absolute, all of which were ultimately dismissed with costs, and the appeal formally marked as abated. Due to the failure to attach the Defendants' accounts or enforce the judgment by other means, the Deponent filed Judicial Review Application No. E125 of 2023, which was dismissed for non-compliance.
 11. Upon service of the pleadings in Judicial Review Misc. Application No. E125 of 2023, the 1st Defendant filed another application which was heard and dismissed
 12. She confirms that she applied for a Certificate of Order which was obtained and duly served upon the Defendant.
 13. The Applicant filed a further affidavit dated 14th February, 2025, written submissions dated 14th February, 2025 and further submissions dated 10th June, 2025.
 14. It is averred that on the same day of obtaining the Certificate of Order she attempted to effect personal service of the Certificate of Order upon the 2nd Respondent at its Dagoretti offices, but found the premises closed and despite making more than six subsequent visits, the offices remained inaccessible.
 15. She alleges that she was informed by youths in the vicinity that the offices only open during committee meetings, the timing of which was unknown. Consequently, on 16th September 2024, she effected service by slipping a copy of the Certificate under the office door, being familiar with the premises from prior visits. Additionally, she had earlier, on 12th September 2024, served the same certificate upon the Advocates on record for both Respondents.
 16. The applicant submits that her attempts of enforcement of a judgment have persistently been ignored. With garnishee and attachment proceedings unavailable, she urges the Court not to let the judgment go unenforced, emphasizing that the judicial review application complies with Order 53 of the Civil Procedure Rules.
 17. It is contended that the Respondents have willfully refused and neglected to settle the decretal sum, and it is evident they have no intention of doing so.
 18. Reliance is placed in the Court of Appeal in *Republic v Kenya National Examination Council Ex-parte Gatheni & Others* [1997] eKLR defined the scope of an order of mandamus as a powerful remedial command directing a person or authority to perform a public duty where a specific legal right exists but no adequate remedy is available. Its purpose is to ensure justice is done, even where alternative remedies exist but are less effective.
 19. She also placed reliance in *Republic v County Government of Bomet Exparte DKN* [2021] eKLR, where it was found that it is just that the judgment debtor be compelled to honor their obligation. Similarly, in *Republic v Attorney General Ex-parte Miriam Wambugu & Anor* [2021] eKLR, the court affirmed that mandamus is appropriate when a duty imposed by law remains unfulfilled despite written demand, particularly where judgment has been entered in favor of the applicant.
 20. Further, in *Republic v Attorney General & Anor Ex-parte James Alfred Koroso HCJR Misc Appl. No. 44 of 2012*, it was held that where execution against the government is barred, mandamus is the sole effective remedy to realize the fruits of a judgment, lest the decree remain unenforced indefinitely.
 21. On the issue of the 2nd and 3rd Respondents' claim that they were not served with the certificate of costs and that no reasonable efforts were made to effect service is a gross misrepresentation; the Applicant



- submits that she made six attempts to serve the certificate before successfully effecting service on 16th September 2024.
22. She maintains that its deliberate evasiveness by the Respondents to avoid satisfying the decree which action contradicts the authorities in *Kimeu v Kasese* (1970) KLR 32 and *George Washington Omondi v Guilders International Bank Limited* (2015) eKLR, which uphold service upon authorized agents or representatives as valid, making the Respondents' claim misleading and disingenuous given the Applicant's due diligence and good faith.
 23. It is also her submission that the 2nd and 3rd Respondents' contention that service upon the Attorney General was necessary is based on a fundamental misapprehension of the law, as the National Government Constituency Development Fund comprising the 1st, 2nd and 3rd Respondents is a state corporation, not a government ministry or department, and thus, despite receiving government funding, it is a separate corporate entity not governed by the *Government Proceedings Act*.
 24. In *Greenstar Systems Limited v Kenyatta International Convention Centre (KICC) & 2 Others* (2018) eKLR, the court, citing *Ikon Prints Media Company Limited v Kenya National Highways Authority & 2 Others* (2015) eKLR, held that state corporations are bodies corporate with perpetual succession, independent juridical entities capable of suing and being sued, and thus judgments against them are not judgments against the government. The *Government Proceedings Act* (Cap 40) does not automatically apply to such entities, and attempts to invoke it to bar execution are seen as attempts to frustrate enforcement of judgments.
 25. Similarly, in *Kimoi Ruto & Another v Samuel Kipkosgei Keitany & Another* (2014) eKLR, the court emphasized that state corporations, though created by the government to perform certain functions, are not strictly "government" under the Act but rather independent agents established to carry out functions beyond the scope of government ministries.
 26. The Applicant submits that justice must not only be done but also be seen to be done and having complied fully with all legal requirements for service and prosecution, she urges this Honorable Court to dismiss the Respondents' submissions and permit execution to proceed, thereby upholding the sanctity of judicial decisions and reinforcing the rule of law.

The 1st Respondent's case;

27. The 1st Respondent in response to the Applicants' Notice of Motion dated 29th November, 2024 filed a Replying Affidavit by Simon M. Ndweka sworn on 4th December, 2024 and written submissions dated 28th February, 2025 and written submissions dated 28th February, 2025.
28. Mr. Ndweka is introduced as the Corporation Secretary of the National Government Constituencies Development Fund Board, formerly known as the Constituency Development Fund Board.
29. It is the 1st Respondent's case that the Application before this Honorable court is defective and incurably bad in law, as the party sued as the 1st Respondent; the Chief Executive Officer, National Government Constituency Development Fund Committee, does not exist and was not a party to ELC No. 8 of 2015.
30. It is averred that there is no entity known as the National Government Constituency Development Fund Committee in Kenya, rendering the Judicial Review application against it fatally defective and liable to be struck out.
31. Further, although the Applicant obtained a Certificate of Order against the Government dated 4th September 2024, the same was not served on the National Government Constituencies Development



Fund Board (the Board) as required under Section 21 of the *Government Proceedings Act*, Cap 40. Consequently, the Board's obligation to pay the decretal amount has not yet arisen, puts the Applicant on strict proof of service of the Certificate of Order on the Board.

32. The 1st Respondent argues despite the aforementioned, the approved budget for the year 2024/2025 cannot accommodate the decretal sum. It asserts that the Board has already submitted its budget projections for the 2025/2026 financial year to the National Treasury and therefore requests additional time to include the decretal sum in the preparations for the 2026/2027 budget.
33. It is the 1st Respondent's submission that the application is fatally defective for naming a non-existent party and is premature, as the Certificate of Order was served after the 2024/2025 budget cycle began, making it unreasonable to expect payment before the 2025/2026 financial year; the application should therefore be dismissed with costs.

The 2nd and 3rd Respondents' case;

34. The 2nd and 3rd Respondents in response to the Applicants' Notice of Motion dated 29th November, 2024 filed a Replying Affidavit by Job Tuta sworn on 16th December, 2024 and written submissions dated 20th May, 2025.
35. The 2nd and 3rd Respondents maintain that the Committee, jointly sued with the National Constituencies Development Fund Board in Nairobi ELC No. 8 of 2015, was unaware of the judgment delivered on 3rd November 2017 awarding the Applicant Kshs. 19,000,000 plus interest until January 2021, when it was served with a garnishee order nisi attaching Kshs. 20,129,552 from its Equity Bank account; at that time, none of the sitting committee members whose terms are limited to two years under Section 43(8) of the NGCDF Act were aware of the judgment, as the officials in place during the 2015 suit and 2017 judgment had since left office.
36. The 2nd and 3rd Respondents posit that the Exparte order nisi was issued on 26th January 2021 against the Committee, freezing all its funds held at Equity Bank, Kawangware Branch, to satisfy the judgment debt of Kshs. 20,129,552.00, Upon service of the garnishee order, the Committee appointed Munyao Muthama & Kashindi Advocates in February 2021.
37. It is averred that at that time, they were unaware that Muturi Kamande and Company Advocates were the Committee's counsel in the trial court, as there had been no correspondence from them. The said firm of Munyao Muthama & Kashindi informed them that the Committee had prior counsel on record. This new firm took over the case from Muturi Kamande & Co., requesting pleadings on 25th February 2021. The pleadings revealed that Muturi Kamande & Co. had applied on 20th January 2019 to cease representing the Committee due to lack of contact and instructions since the suit began.
38. Upon taking over the case, Munyao Muthama & Kashindi Advocates, on the Committee's instructions, filed a Cross Appeal in Court of Appeal Civil Appeal No. 18 of 2018, challenging the judgment, and also applied for a stay of execution of the November 3, 2017 judgment and decree. While prosecuting Civil Application No. E052 of 2021 Dagoretti South Constituency Development Fund Committee vs. Samuel Githinji and Dagoretti South Constituency Development Fund Board, the Committee learned of the death of Mr. Samuel Ngari Githinji, the original plaintiff in ELC 8 of 2015, who passed away on April 29, 2018, and was substituted by Mary Wanjiku Ngari, joint administrator of his estate.
39. The Committee subsequently filed an application on April 9, 2021, under Rule 99(2) of the Court of Appeal Rules seeking leave to extend the time to substitute the deceased respondent in Appeal No. 18 of 2018, but the application was denied.



40. The 2nd and 3rd Respondents assert that they actively pursued the appeal, cross-appeal, and related applications until the appeal was marked abated on October 18, 2023. Therefore, contrary to the applicant's claim of a delay exceeding five years, the Committee has consistently exercised its legal rights and sought court indulgence throughout the proceedings.
41. The 2nd and 3rd Respondents deny knowledge of the alleged Certificate of Taxation awarding the applicant Kshs 1,799,275.00 as costs in Nairobi ELC 8 of 2018, and posit that at the time of filing their response, the said Certificate of Order dated 4th September 2024 had not been served on the Attorney General as required under Section 21 of the *Government Proceedings Act*.
42. It is their case that the Committee operates under the National Government Constituency Development Fund Act, 2015, within budgetary allocations from the Board. As prescribed by Section 28(1)(1) of the Act, the Committee prepares and submits annual budgets and proposals to the Board, prioritizing allocations. The budget proposals for 2024/2025 have already been submitted there allowing this application would cause substantial loss to the Committee and the people of Dagoretti South, as the funds managed are public monies strictly budgeted for priorities including school bursaries for constituents.
43. It is submitted that submit that the Applicant's motion is fatally defective, unmeritorious, premature, and constitutes an abuse of court process. Execution of court decrees against the Government is governed by the *Government Proceedings Act*, Cap 40, which mandates that after obtaining a decree against the Government, a certificate of order must be extracted from the court record and served on the Attorney General, as confirmed in *Republic v County Secretary, County Government of Busia & 2 others; Antaf Company Limited (Exparte)* [2024] KEHC 5000.
44. It is contended that the Applicant has failed to comply with the mandatory requirement under Section 21(2) to serve the Certificate of Order on the Attorney General and the specific public entity. Additionally, the suit from which the Certificate of Order allegedly arises (Milimani ELC No. 8 of 2015) involved different parties, and the current Respondents were not parties to it.
45. It is also their submission that the Committee's office is open during normal hours, contradicting claims of service difficulties, and no attempt was made to serve the Attorney General as required by law. Service of the certificate of order on the Attorney General is mandatory before enforcing a government decree, as confirmed by court rulings. Liability to pay arises only after this service, not upon issuance of the decree.
46. Reliance is placed in *Republic v County Secretary, County Government of Busia & 2 others; Antaf Company Limited (Exparte) (Judicial Review E004 of 2023)* [2024] KEHC 5000 (KLR) (16 May 2024) (Judgment), the Court stated that duty to pay or settle a court decree or order, accrues, not upon the order or decree being passed, but upon the accounting document, known as certificate of order against Government, being served on the relevant Government official. The Court stated as follows;

“Mandamus is available where a statutory or public duty exists, and it issues to enforce that duty. See *Kenya National Examination Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR (Omolo, Tunoi & Shah, JJA). The duty, on the part of Government, with respect to court orders and decrees, to pay or settle a court decree or order, accrues, not upon the order or decree being passed, but upon the accounting document, known as certificate of order against Government, being served on the relevant Government official. Mandamus can only be obtained on the strength of service of the said certificate, for it is upon that service that the duty to act accrues.



The question in this case then is, whether the duty to pay had accrued. The answer to that question would depend on whether a certificate of order against Government was obtained, and, if it was, whether it was served on the relevant Government functionary.

As due process was not followed, to bring the existence of the decree, in Busia CMCCC No 14 of 2019, to the knowledge of the respondents herein, the duty upon them, to satisfy that decree, did not accrue, and there is, therefore, no basis upon which a mandamus order can issue against them”

47. It is urged this Court to find that the Applicant failed to properly serve the Certificate of Order on the Government/1st and 2nd Respondents, and therefore the Accounting Officer was unaware, meaning the duty to pay has not arisen.
48. Reliance is placed in *Kungu v County Government of Nairobi* [2024] KEHC 3265, where a similar application was dismissed for failure to serve the certificate properly. Accordingly, without mandatory service of the Certificate of Order/Costs on the Dagoretti South Constituency Development Fund Committee and the 2nd and 3rd Respondents, the duty to pay has not arisen, making the order of mandamus premature and unsustainable.
49. The 2nd and 3rd Respondents pray that the application be dismissed with costs to them.

Analysis and Determination

50. Upon perusing the pleadings that responses submissions in the authorities relied upon by council this court, finds the following to be the issues for determination;
 1. Whether or not this court has jurisdiction.
 2. Whether or not the applicant is entitled to the reliefs sought.

Whether or not this court has jurisdiction.

51. In determining the 1st issue, I am guided by The Supreme Court Case of Dickson Ngigi Ngugi v Commissioner of Lands S.C Petition No. 9 of 2019 [2019] eKLR;

“(36) Jurisdiction goes to the root of any cause or dispute before a court of law. A court must exercise restraint to avoid overstepping its constitutional role in order to maintain its legitimacy. If a court has no jurisdiction, a judgment rendered therein does not adjudicate the dispute. It does not bind the parties, nor can it be made the foundation of any right. It is a nullity without life or authority. In short, it is coram non judge and amounts to a nullity because, as Nyarangi, JA famously said in the locus classicus, *Owners of the Motor Vessel “Lillian S” v Caltex Oil, (Kenya) Ltd* [1989] KLR 1, “jurisdiction is everything. Without it, a court has no power to make one more step”.

(37) It is, therefore a basic rule of procedure that jurisdiction must exist when the proceedings are initiated. Because the question of jurisdiction is so fundamental, a limitation on the authority of the court, it can be raised at any stage of the proceedings by any party or even by the court suo motu. As a matter of practice, this Court has a duty of jurisdictional inquiry to satisfy itself that it is properly seized of any matter before it.



- (38) It is a settled legal proposition that conferment of jurisdiction is a legislative function and it can only be conferred by *the Constitution* or statute. It cannot be conferred by judicial craft. See Samuel Kamau Macharia & Another v Kenya commercial Bank & 2 Others, SC Application No. 2 of 2011; [2012] eKLR. Nor can parties, by consent confer on a court power it does not have.

Kenya now have diversity in the specialized courts that have their strength when it comes to the determination of specific matters like land and environment cases.”

52. In buttressing this the court referred to the case of Republic v Karisa Chengo & 2 others [2017] eKLR in which it upheld this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High Court and vice versa. After extensive analysis of the law, the appointment and swearing in of Judges, the apex Court held:

“It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of *the Constitution*, which prohibits the High Court from exercising jurisdiction in respect of matters “reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)”.

53. Article 162(2) (b) of *the Constitution* empowers Parliament to “establish Courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to land.” In this regard and pursuant to Article 162(3) or *the Constitution*, Parliament enacted the *Environment and Land Court Act, Act No. 19 of 2011*.

54. In the instant suit the following has come to be the rival submissions;

It is not in dispute that a judgement was delivered on 17th November 2017 against the Respondent's herein in ELC NO. 8 OF 2015 Samwel Ngari Githinji –Vs- The National Constituency Development Fund Board & Dagoretti South Constituency Development Fund Committee.

55. It is the Applicants case that the Deceased had instituted proceedings in ELC No. 8 of 2015, being Samuel Ngari Githinji –vs– The National Constituency Development Fund Board and Dagoretti South Constituency Fund Committee. The suit was heard and determined, and judgment was delivered in favour of the Plaintiff (the Deceased) against the Defendants jointly and severally on 17th November 2017.

56. It was the 1st Respondent's case that the Application before this court is defective and incurably bad in law, as the party sued as the 1st Respondent; the Chief Executive Officer, National Government Constituency Development Fund Committee, does not exist and was not a party to ELC No. 8 of 2015.

57. The 2nd and 3rd Respondents maintain that the Committee, jointly sued with the National Constituencies Development Fund Board in Nairobi ELC No. 8 of 2015, was unaware of the



judgment delivered on 3rd November 2017 awarding the Applicant Kshs. 19,000,000 plus interest until January 2021,

58. The Applicant is seeking orders of Mandamus as the main relief in a bid to execute the judgment that was issued in ELC NO. 8 OF 2015 Samwel Ngari Githinji –Vs- The National Constituency Development Fund Board & Dagoretti South Constituency Development Fund Committee.

59. Mandamus is a Prerogative order which the Employment and land Court has powers to issue.

60. Section 13 (1) of The Employment and Land Court Act provides that;

“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)

(5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including —;(b) prerogative orders.”

61. In any event, the doctrine of exhaustion guides that a matter, like the one before this court should be fast heard in the court that has the appropriate jurisdiction.

The second issue;

62. Having determined that is this court lacks jurisdiction it cannot proceed to determine the second issue and I so hold.

A disposition;

63. This Court is of the view that the issues raised here in Colby sorted out at the Environmental and Land Court and so hold

Order;

This suit is hereby transferred to the Environment and Land Court for the hearing and determination.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2025.

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J. CHIGITI (SC)

JUDGE

