



Republic v County Secretary Garissa County & another; Ganuni Construction Company Limited (Ex parte Applicant) (Judicial Review Miscellaneous Application E003 of 2025) [2025] KEHC 10445 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E003 OF 2025**

JN ONYIEGO, J

JULY 17, 2025

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF THE COUNTY SECRETARY, COUNTY
GOVERNMENT OF GARISSA**

AND

IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT, CAP 40

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY SECRETARY GARISSA COUNTY 1ST RESPONDENT

GARISSA COUNTY GOVERNMENT 2ND RESPONDENT

AND

GANUNI CONSTRUCTION COMPANY LIMITED EX PARTE APPLICANT

RULING

1. The matter falling due for determination is the ex parte applicant’s notice of motion dated 19.03.2025 seeking for the following orders:
 - i. That an order of mandamus be issued, directed at the respondents to compel them to pay out a sum of Kes. 13,208,570/- together with interest thereon at 14% p.a. from 25.04.2017 until



payment in full, being the decretal sum awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017.

- ii. That an order of mandamus be issued, directed at the respondents to compel them to pay out a sum of Kes. 706,751/- together with interest thereon at 14% p.a. from 25.04.2017 until payment in full, being the certified costs awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017.
 - iii. That costs of this application be borne by the respondents.
2. The application is founded on the grounds set out in the statutory statement of facts by his advocates dated 31.01.2025 and the affidavit verifying the facts sworn by Hassan Mzahim, the director of the ex-parte applicant. In a nutshell, the applicant's case is that it sued the 2nd respondent in HCCC No. 2 of 2017 at Garissa which matter was finalized in the applicant's favour. That the respondents participated in the proceedings and therefore, are aware of the court award. That despite having been further served with certificate of costs and certificate of order against government, they are yet to settle the bill.
 3. The applicant filed an affidavit of service sworn on 16.04.2025 deponing that the respondents are yet to file any response to the application despite being served. According to the applicant, it made reasonable and diligent effort to serve the said pleadings upon the respondents in vain. That upon being granted leave to initiate judicial review proceedings, it served upon the respondents the following pleadings, an application for judicial review, a certificate of order against the government, a certificate of costs and a decree.
 4. That the court granted the applicant leave to effect substituted service which service was executed on 15.04.2025. He annexed a copy of the said publication on Daily Nation, a newspaper widely circulated. That the said notice informed the respondents of the pendency of the matter herein, the hearing date scheduled as 30.04.2025 and the fact that copies of the said pleadings could be obtained at the High Court Registry at Garissa. It was further deposed that the said pleadings were served as directed by the court but the respondents declined to respond.
 5. A perusal of the record indeed confirms the contents of the affidavit of service as deponed by counsel above.
 6. At the hearing of the application, Mr. Mugwe Nyaga, counsel for the applicant relied on his written submissions dated 14.05.2025 wherein he crafted two issues for determination as follows; whether the respondents are under a public duty and obligation to satisfy the orders issued in favour of the applicant and; whether the ex parte applicant is entitled to the reliefs sought.
 7. On the first issue, it was submitted that the applicant obtained a judgment in HCCC No. 2 of 2017. Consequently, a Certificate of Order against the Government and a Certificate of Costs were duly extracted and the Respondents properly served.
 8. He contended that the respondents' refusal to pay is without merit, unreasonable, an abuse of power and violation of the ex parte applicant's right to fair administrative action under Article 47 of *the Constitution* of Kenya which states that every person has a right to administrative action that is expeditious, efficient, lawful and reasonable and procedurally fair.
 9. That as a result of this unjustified refusal to honour a valid court decree despite proper service and repeated demands, the applicant has been left with no alternative remedy but compelled to institute the present judicial review proceedings seeking an order of mandamus.



10. In that regard, the ex parte applicant relied on the case of Republic v The Attorney General & Another ex parte James Alfred Koroso [2013] which provides that;

“In the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a 4 Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit.”

11. That the circumstances under which judicial review order of mandamus are issued were discussed in the case Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996, 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 most extensive remedial nature and is in form, of 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.”...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 has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

12. That from the foregoing, it is clear that the respondents are under statutory obligation to satisfy the judgment debt owed to the applicant, having been duly served with the decree, a certificate of order against the government, and a certificate of costs issued pursuant to the judgment in HCCC No. 2 of 2017.
13. Counsel contended that failure or refusal by the respondents to honour these legal obligations is not only a breach of Section 21[3] of the Government Proceedings Act, but also a violation of the applicant’s constitutional rights under Articles 47 and Article 48 of the Constitution of Kenya.
14. On whether the applicant is entitled to the reliefs sought, Counsel urged that Section 21 of the Government Proceedings Act sets out the mandatory procedural steps that must be complied with before a party can seek an order of mandamus to compel the government to settle a judgment debt.



15. The court was further referred to the case of R v County Secretary Migori County Government & another [2019] eKLR where the Court stated that:

“I need not re-emphasize the need for strict compliance with Section 21 of the Act being the law of the land. In this matter I can gather from the record that a decree and a certificate of costs in the suit was drawn and issued. I did not set my eyes on any certificate of order. There is a specific procedure on how the certificate of order required under the Act is obtained. The procedure is contained in Order 29 of the Civil Procedure Rules. Under Rule 3 thereof the application is made to the Deputy Registrar in the High Court or to the court in the subordinate court. The format of the Certificate of Order is provided in Appendix A Form No. 22 of the Civil Procedure Rules. Form No. 23 provides the format for a certificate of costs in the event it is separately issued. Once a party obtains the certificate of order and the certificate of costs, in the event the certificate of costs is obtained separately, together with the decree, then such a party must satisfy the court of service of those documents upon the party named in the certificates.”

16. That in the present case, the applicant has met all the procedural requirements under Section 21 of the [Government Proceedings Act](#) and as such, the application ought to be allowed as prayed.
17. I have considered the application and the annexures thereto. It is clear that the applicant seeks the orders of mandamus against the respondents. It is trite that an order of mandamus if issued, is to compel 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 has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. [See Republic v Kenya National Examinations Council *ex parte* Gathenji and 9 Others, [1997] eKLR].
18. It is not in dispute that judgment was entered in favour of the applicant in HCCC No. 2 of 2017 at Garissa and a decree issued which the respondents have failed to fulfil.
19. Section 44 of the County Government Act of 2012 establishes the office of the County Secretary who is the secretary to the County Executive Committee, who is answerable for the operations of the County Executive, and whose functions include being head of the county public service. It is clear therefore that the respondents have a statutory and public duty to satisfy the decree herein.
20. The *ex parte* applicant contended that he had complied with the requisite requirements to warrant issuance of mandamus orders. Indeed, the condition precedent before issuance of the orders sought is proof that a certificate of order against government and certificate of costs extracted and served. This requirement is clearly captured under Section 21 [3] of the [Government Proceedings Act](#) which provides that:

“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.”



21. Section 21[5] of the *Government Proceedings Act* Cap. 40 Laws of Kenya recognises the application of Section 21 to 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. As such, the government has a duty to pay the decretal sum herein in fulfilment of a public duty by virtue of the said roles and functions.
22. It is trite that where a decree for payment of money or costs has been issued against the government in favour of a litigant, and the same remains unsatisfied, the same can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount. This is anchored on the basis that the government is protected and given immunity from execution and attachment of its property/goods under section 21[4] of the *Government Proceedings Act*. [See *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security* [2012] eKLR].
23. The above notwithstanding, there is a condition precedent to the satisfaction or enforcement of such decrees for money issued against the Government as stipulated under Section 21[1] and [2] of the *Government Proceedings Act*. It is trite that under the said provisions, the applicant ought to obtain a certificate of order from the court which issued the decree.
24. On the other hand, the certificate of order against the government should be issued by the court after expiration of 21 days after entry of judgment or where the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed. Once this requirement has been met and/ or complied with and the decree is not satisfied, the decree holder can then proceed to seek orders of mandamus.
25. I have perused the record herein and I note that the ex parte applicant obtained a certificate of order against the government issued on 12.01.2023 and a certificate for costs dated 10.05.2022. All these documents on their face show stamps acknowledging receipt by the 1st respondent, who's the 2nd respondent's accounting officer. Going by what has been deponed by counsel for the ex parte applicant in the affidavit of service sworn on 16.04.2025, there is thus sufficient proof that the respondents were served the application herein, decree, certificate of costs and certificate of order against government but chose not to defend this suit.
26. In a nutshell, it is my finding that the applicant has fully complied with the procedure under Section 21 of the *Government Proceedings Act*. In view of the foregoing, I hereby allow the application as prayed and therefore make the following orders:
 - i. An order of mandamus be and is hereby issued directed at the respondents to compel them to pay out a sum of Kes. 13,208,570/- together with interest thereon at 14% p.a. from 25.04.2017 until payment in full, being the decretal sum awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017.
 - ii. An order of mandamus be and is hereby issued directed at the respondents to compel them to pay out a sum of Kes. 706,751/- together with interest thereon at 14% p.a. from 25.04.2017 until payment in full, being the certified costs awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017.
 - iii. Costs to the ex parte applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF JULY 2025

J. N. ONYIEGO

JUDGE

