



REPUBLIC OF KENYA



KENYA LAW
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Republic v Principal Secretary Ministry of Defence; Attorney General (Interested Party); Hussein & 13 others (Ex parte Applicants) (Miscellaneous Judicial Review E007 of 2024) [2025] KEHC 9474 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9474 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

MISCELLANEOUS JUDICIAL REVIEW E007 OF 2024

JN ONYIEGO, J

JULY 3, 2025

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR
AN ORDER OF MANDAMUS UNDER ARTICLE 47 OF THE
CONSTITUTION, SECTIONS 8 & 9 OF THE LAW REFORM ACT AND
ORDER 53 OF THE CIVIL PROCEDURE RULES.**

AND

**IN THE MATTER OF ARTICLES 155(2) & 201(D), (E) OF THE
CONSTITUTION**

AND

**IN THE MATTER OF SECTION 67 OF THE PUBLIC FINANCE
MANAGEMENT ACT**

AND

**IN THE MATTER OF SECTION 21(3) OF THE GOVERNMENT
PROCEEDINGS ACT**

AND

**IN THE MATTER OF UNSATISFIED JUDGMENT DEBT AGAINST THE
HON. ATTORNEY GENERAL ON BEHALF OF THE MINISTRY OF
DEFENCE IN THE SUM OF KES. 9,617,784 TOGETHER WITH
ACCRUING INTEREST ON THE DECRETAL SUM AT 12% P.A.,
COURT RATES AND COSTS AT 14% P.A. COURT RATES ARISING
FROM THE JUDGMENT OF THIS HON. COURT IN HIGH COURT AT
GARISSA PETITION NO.13 OF 2013 (DAKAN GABOW HUSSEIN &**



13 OTHERS VS THE CHIEF OF THE DEFENCE FORCES & THE
ATTORNEY GENERAL) DELIVERED ON 05.11.2016 AND
SUBSEQUENT DECREE, CERTIFICATE OF TAXATION AND
JUDICIAL REVIEW APPLICATION NO.E007 OF 2024 PAGE 1 OF 11
CERTIFICATE OF ORDER AGAINST THE GOVERNMENT ISSUED
THEREON.

BETWEEN

REPUBLIC APPLICANT

AND

THE PRINCIPAL SECRETARY MINISTRY OF DEFENCE RESPONDENT

AND

THE ATTORNEY GENERAL INTERESTED PARTY

AND

DAKAN GABOW HUSSEIN EX PARTE APPLICANT

DEROH SALAT ABDI EX PARTE APPLICANT

IBRAHIM ABDULLAHI ELMI EX PARTE APPLICANT

IBRAHIM GEDI ABDILLE EX PARTE APPLICANT

ABDULLAHI DUGOW MOHAMED EX PARTE APPLICANT

ABDIRAHSHID ALIOW IBRAHIM EX PARTE APPLICANT

GEDI HUSSEIN ISMAIL EX PARTE APPLICANT

MAASH HUSSEIN ABIKAR EX PARTE APPLICANT

BARYARE HUSSEIN ISMAEL EX PARTE APPLICANT

MUHUMED HUSSEIN BULLE EX PARTE APPLICANT

ALINOOR BISHAR HASSAN EX PARTE APPLICANT

HUSEEIN OMAR MARAADE EX PARTE APPLICANT

ISSACK ADEN MOHAMUD EX PARTE APPLICANT

WAJIR PARALEGALS NETWORK (WAP – NET) EX PARTE APPLICANT

RULING

1. Before this Court is the ex parte applicants' notice of motion dated 30th December, 2024 filed under Order 53 Rule 3(1) of the Civil Procedure Rules and Section 8(2) and 9 of the Law Reform Act. The motion seeks the following orders:



- i. That an order of mandamus do issue against the respondent compelling the respondent to pay the ex parte applicants the judgment debt in High Court (Garissa) Petition No. 13 of 2014 (*Dakan Gabow Hussein & 13 Others v The Chief of the Kenya Defence Forces & The Hon. Attorney General* in the sum of Kes. 9,617,784/- together with accruing interest on decretal damages at the court rates of 12% p.a. and 14% p.a. on the taxed costs until payment in full.
 - ii. That the respondent be condemned to bear costs of the proceedings herein.
2. The motion is supported by a verifying affidavit sworn on 09.12.2024 by Hussein Omar Maraade on his behalf and that of the other ex parte applicants. He averred that they were victims of torture after being arbitrarily arrested, tortured, ill-treated and thereafter unlawfully detained by the Kenya Defence forces. That they moved this Honourable Court via High Court (Garissa) Petition No. 13 of 2014 (*Dakan Gabow Hussein & 13 Others v The Chief of the Kenya Defence Forces & The Hon. Attorney General* consequences whereof they were awarded Kes. 6,346,863 as general damages (decretal sums) plus interest and costs.
3. They deposed that despite the entry and service of the said judgment and the decree thereof, the respondent has ignored and or refused to settle the award hence the need for mandamus orders compelling the respondent to honour the decree
4. The respondent opposed the application through a replying affidavit sworn on 05.02.2025 by Dr. Patrick Mariru who deposed that the Ministry had initiated the settlement process in the month of July, 2024 and that the respondent was still interested to pursue an out of court settlement. It was his averment that the respondent was yet to receive authority from the Hon. Attorney to settle the decretal sum. That it was not true that they had no regard to the rule of law and therefore urged this court to exercise its discretion in allowing parties to explore the suggested out of court settlement.
5. On 12.02.2025, Hussein Omar Maarade swore a further affidavit deposing that there is no law requiring the respondent as the accounting officer to seek for approval from the Attorney General before complying with a valid court order. That no reason was given why the Attorney General had not given the alleged approval as all the requirements as provided by the law had been met by the ex parte applicants.
6. He further averred that despite the respondent making a commitment that he would settle the debt in installments, the same has not been honoured. It was also pointed out that seven months had lapsed since the letter by the respondent to the Attorney General dated 09.07.2024 seeking the alleged authority. That there was no evidence that the respondent had made a follow up on the said subject. Further, that the respondent continues to give hollow promises hence the need for this court to issue orders as prayed.
7. The application was canvassed by way of written submissions. The ex parte applicants filed written submissions dated 16.03.2025. In the submissions, learned counsel for the applicants urged in relation to two issues as follows:
 - i. Whether the application meets the threshold for grant of the order of mandamus.
 - ii. Whether approval of the Attorney General is required to pay a decree and whether lack of such approval is a valid defence to the application.
8. On the first issue, it was submitted that it is common ground that the ex parte applicants obtained certificate of order against the government, served the same upon the respondent and the interested party as per the provisions under Order 29 Rule 3 of the *Civil Procedure Rules* and section 21(1) and (2) of the *Government Proceedings Act*. That once the ex parte applicants served the certificate of order



against government and certificate of costs on the respondent and the interested party, the obligation on the respondent as the responsible accounting officer is to pay the debt.

9. It was also stated that upon the fulfillment of the requirements as stated above, the respondent promised in writing to pay the judgment debt 'quarterly in the course of the Financial year 2024/2025. It was counsel's contention that, the promise to pay has not come to fruition as there has been no remittance made notwithstanding that the first quarter ended on 30.09.2024 with no word from the respondent.
10. Learned counsel urged that the respondent having reneged on his promise and/or responsibility, the ex parte applicants have been left with no choice but to seek for the order of mandamus. To that end, reliance was drawn from the case of *Republic v The Attorney General & Another, ex parte James Alfred Koroso* [2013] eKLR where the court stated that:

“In the present case, the ex parte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the government. Apart from mandamus, he has no option of ensuring that the judgment that he has been awarded is realized. Unless something is done he will forever be left babysitting his barren decree”.
11. That noting that section 21(4) of the *Government Proceedings Act* prohibits attachment against the government in execution of a decree, it is only mete that the orders sought herein be granted.
12. On the second issue, it was urged that when the respondent proposed to settle the debt, he did not peg the proposal on any approval by the Attorney General. In the same breadth, counsel contended that compliance to settle the decree of a competent court does not require an approval from the Attorney General. Further, it was urged that noting that the ex parte applicants complied with all the requirements as provided for by the law, it was only mete that the application herein be allowed.
13. The respondent filed submissions dated 20.03.2025 urging that he was willing to settle the decretal amount and further, he had initiated the process of payment by writing to the Attorney General seeking authority to pay. That he was waiting for the Attorney General's response on the same. Additionally, he denied the contention that the respondent had refused, neglected and/or ignored to settle the claim. It was his contention that failure to pay was due to the bureaucratic nature of the government in matters of national budget hence the need to seek for Attorney General's authority's approval. According to the respondent, he was willing to have the matter settled out of court and therefore sought for time to explore the same. In the end, this court was urged to dismiss the application with costs.
14. I have considered the arguments advanced by the parties herein. The only issue for determination is whether an order of mandamus ought to issue. 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:

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- “(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.”

15. Section 21 (3) of the said Act on the other hand 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.”

16. In this case, the ex parte applicants moved this Court to compel the satisfaction of a judgment already decreed in their favour by this Honourable Court. The applicants demonstrated by way of evidence in compliance with the provisions of Section 21 of the Government Proceedings Act. The respondent on the other hand apart from admitting to settle the amount, stated that he was waiting for approval from the Attorney General to do so thus the lack of satisfaction of the claim was not denied.

17. In my considered view, the legal position is that, where a decree for the payment of money or costs has been issued against the Government in favour of a litigant, and the same remains unsatisfied, it 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. (See Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) eKLR).

18. The only requirement which serves as a condition precedent to the satisfaction or enforcement of such decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act. Under the said provisions, the applicant is supposed to obtain a certificate of order from the court which issued the decree. 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, whichever is the later. 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. Thus the law does not provide that prior to complying with a valid court order, the accounting officer responsible should seek for approval from the Attorney General.

19. I have perused the application herein and I note that indeed the applicant obtained a certificate of order dated 02.07.2019 against the government. The applicant further obtained certificate for taxation also issued on 02.07.2019. In the same breadth, the respondent does not deny receiving the same. His only reason for non-payment is that he needs an approval from the Attorney General before paying and further, that he is seeking for an out of court settlement.



20. Having also noted that the respondent had made a proposal on how he intended to settle the decree but without any success, there is no proper reason given for the delay and/or non-compliance. It is clear that there is no justification given for non-payment of the decretal sum. It is trite that a successful litigant ought to enjoy the fruits of his judgment. See *Machira t/a Machira & Co Advocates v East African Standard* [2002] KEHC 1167 (KLR).
21. In view of the above holding, it is my view that the applicants have demonstrated that they are deserving of the relief sought hence allow the application with orders that;
- i. An order of mandamus is hereby issued as prayed.
 - ii. Costs to the ex parte applicants is awarded.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF JULY 2025

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J. N. ONYIEGO

JUDGE

