



**Republic v County Government of Garissa & 3 others; Possible Limited (Ex parte Applicant)
(Judicial Review E005 of 2024) [2025] KEHC 13167 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13167 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
JUDICIAL REVIEW E005 OF 2024
JN ONYIEGO, J
SEPTEMBER 25, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF GARISSA 1ST RESPONDENT

**COUNTY SECRETARY GARISSA COUNTY GOVERNMENT ... 2ND
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE GARISSA COUNTY
GOVERNMENT 3RD RESPONDENT**

**CHIEF OFFIER FOR FINANCE & ECONOMIC PLANNING GARISSA
COUNTY GOVERNMENT 4TH RESPONDENT**

AND

POSSIBLE LIMITED EX PARTE APPLICANT

RULING

1. The application for determination before me is a Notice of Motion dated 23.10.2024 brought under the provisions of sections 8 & 9 of the *Law Reform Act* and Order 53 Rule 1 of the Civil Procedure Rules. The ex - parte applicant through the firm of Kinaro & Associates Advocates sought the following orders: -
 - i. That an order of mandamus to remove into this Honourable Court compelling the respondents jointly and severally to pay the ex parte applicant decretal award of Kes. 72,340,820.63 together with interest and cost as per the judgment entered on 14.07.2021 and decree issued in Civil Suit No. 2 of 2021 – Possible Limited vs County Government of Garissa do issue



- ii. That Costs of this application be provided for.
2. The application is based on grounds appearing on the face thereof and the verifying affidavit in support thereof sworn by Abas Hajir, the managing director of the applicant.
 3. According to the ex-parte applicant, a judgment in its favour was obtained in Civil Suit No. 2 of 2021– Possible Limited vs County Government of Garissa wherein the 1st respondent had previously engaged the ex parte applicant under Tender GGT/T/001/2014 - 2015 for the rehabilitation of Garissa Urban Water supply at a consideration of Kes. 135, 185,390.13. That the ex parte applicant performed its contractual obligation and the respondent instead paid Kes. 62,844,569/- but failed to pay the balance of Kes. 72,340,820.63/- prompting the ex parte applicant to file Garissa High court Civil Suit No. 2 of 2021 – Possible Limited vs County Government of Garissa.
 4. The ex-parte applicant stated that despite service of summons to enter appearance and file defence, the respondent did not hence entry of default judgment on 14-07-2022 which remains unsatisfied to date. That the respondents have refused to honour the court decree and pay the applicant; that the Government Proceedings Act as read together with the Civil Procedure Act prohibit attachment of Government properties in execution of court decrees and the only remedy available to the ex parte applicant is to have the order of mandamus issued to compel the respondents to pay the applicant the decreed sum of Kes. 72,340,820.63/-.
 5. The respondents opposed the application vide a replying affidavit sworn by Khadija Ahmed Mohamed, the County Attorney on 21.01.2025 deponing that the respondents were never served with the initial pleadings in respect of Civil Suit No. 2 of 2021 – Possible Limited vs County Government of Garissa hence a default judgment was entered against the respondent.
 6. That the ex parte claim falls under government pending bills in respect of which the 1st respondent is currently undertaking a verification and confirmation exercise before any payment can be made. It was averred that the Auditor General undertook verification and confirmation exercise of all pending bills for the County Government of Garissa and the ex parte applicant’s claim herein was not part of the verified pending bills. Additionally, that the respondents have not refused to pay only that any liability or expenditure incurred against the County Government can only be defrayed from monies provided to it by the national government. As a consequence, it was urged that, the application herein was premature, misconceived and frivolous thus the same ought to be dismissed with costs.
 7. The application was canvassed by way of written submissions wherein the ex parte applicant submitted that it was not in dispute that there is a judgment by the trial court in Civil Suit No. E002 of 2021 ordering the 1st respondent to settle the sum of Kes. 72,340,820.63/- plus costs of the suit and interest which amount remains unpaid to date. That noting that the 1st respondent is insulated from execution, the ex parte applicant has no other means of enforcing payment of the decretal award except through an order of mandamus as sought in the application herein.
 8. Counsel contended that section 21 of the Government Proceedings Act was complied with and the certificate of order against government and Certificate of Order for Costs duly issued and served upon extracting the consequential decree for Kes. 145,620,672.34/-; That an amended Certificate of Order against the County Government of Garissa and Certificate of Order for Costs against the County Government of Garissa of Kes. 1,373,076 dated 23.08.2023, were served upon the respondents on 12.07.2024.
 9. This court was urged that it is impossible and unprecedented for a portion of a claim to be verified and paid, while the remaining balance allegedly remains under verification. That the same also defied



- the established procedure that for any payment to be effected, the same must first be verified. Counsel contended that the ex parte applicant's claim cannot be a part of the alleged pending bills to be verified by the Auditor General for the reason that a part payment of the claim had already been made.
10. On costs, this court was urged that ordinarily, costs are granted to a successful party in a litigation. As such, counsel urged that the respondents bear the costs of the suit herein.
 11. On the other hand, the respondents through their Advocates, Issa, Dayib & Co. Advocates filed submissions dated 30.05.2025 wherein it was argued that an order of mandamus is a unique order that requires certain conditions to be fulfilled for it to be granted. That what stands out is the fact that the respondents have not refused or neglected to satisfy and settle the decretal sums in question, but rather the claim that however any liability or expenditure incurred against the County Government can only be defrayed from monies provided to it by the National Government. It was urged that the ex parte applicants' claim had not been factored in the Respondents' budget for the financial year 2024/2025, and the same shall be settled once the claim is verified and monies released by the National Treasury.
 12. Counsel urged that an order of mandamus can only issue to compel an institution/individual to do some particular thing and in this case, to pay the said sum. Counsel relied on the case of *Republic vs Kenya National Examinations Council ex parte Gathenji & 8 Others Civil Appeal No. 234 of 19196* where the Court of Appeal held that:

“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 ant 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...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.”
 13. That the ex parte applicant did not prove that the respondents have declined to pay the said sum hence the prayer for an order of mandamus cannot issue and the application herein ought to be dismissed with costs.
 14. I have considered the application, the reply by the respondents together with submissions by the parties. Of importance to note are the supporting documents annexed to the verifying affidavit as “AH – 3 a, b and c being copies of the letter dated 05.08.2024, Decree issued on 23.08.2022 a Certificate of Order against County Government of Garissa and Certificate of Order for Cost and a copy of an affidavit of service sworn on 12.07.2024.
 15. It is not in dispute that a judgement was delivered in favour of the ex-parte applicant and the court awarded a total of Kes. 72,340,820/= being the decretal sum together with interest and costs.
 16. The ex-parte applicant is simply seeking an order of mandamus to compel the respondents to perform their public duty and satisfy the decree which they have failed to do to its detriment. In the case of *Republic vs Attorney General & Another ex-parte Ongata Works Limited*[2016] eKLR Odunga J. referred to the case of *R (Regina) vs Dudsheath, Ex Parte, Meredith*[1950] 2 ALL E.R. 741, AT 743 , where Lord Goddard C. J. held as follows:

“It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy... ”



17. Before an order of Mandamus can issue, the ex-parte applicant must comply with Section 21 of the Government Proceedings Act. In *Kisya Investments Ltd vs The A. G.* (2005) 1KLR 74, the Court explained why the strict and elaborate procedure under that section has to be followed, that is to allow the Government time to enable it to make arrangements to satisfy the decree. In this case, as already noted above, the ex-parte applicant satisfied the above requirements yet the respondents have still neglected and/or refused to settle the debt.
18. I have noted that the respondents herein do not deny the existence of the debt only that they claim that the same had not been budgeted for by the 1st respondent in its current budget and that the auditor General has not verified the claim. Surely, it beats logic for the respondents to raise such an explanation yet the debt herein had previously been partly paid. In my considered view therefore, it is only fair that the respondents make good the whole debt. Verification of contracts by the auditor is an internal institutional problem which does not concern the creditor in possession of a valid judgment. That is not sufficient explanation to withhold the payment.
19. There is a judgment which is not disputed nor honoured. Since 2021, the ex-parte applicant has been more than patient. The alleged verification of the claim is not a ground to ignore or dispute the claim whose judgment is still outstanding. No allegation of fraud in obtaining the judgment in question has been raised. It is trite that a litigant is entitled to the fruits of his judgment. See *Isaac Muteti Kisua v Felix Mwangi Ndegwa*(2016) KEHC6915(KLR) where the court held;
- “A party to litigation should not be denied the fruits of litigation through delay or any other unjustified reason”.
20. Having found that the ex-parte applicant is fully compliant and that there is no valid explanation for withholding payment, it is my finding the ex-parte applicant is deserving of an order of Mandamus which I do hereby grant together with costs as hereunder;
- a. That an order of mandamus to remove into this Honourable Court compelling the respondents jointly and severally to pay the ex parte applicant decretal award of Kes. 72,340,820.63 together with interest and cost as per the judgment entered on 14.07.2021 and decree issued in Civil Suit No. 2 of 2021 – *Possible Limited vs County Government of Garissa* be and is hereby issued.
- b. That Costs of this application be and is hereby awarded to the ex-parte applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF SEPTEMBER 2025

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J.N.ONYIEGO
JUDGE

