



Republic & another v Secretary/Chief Executive Officer, National Land Commission & another; Tom Ojienda & Associates (Ex parte) (Miscellaneous Civil Application 29B of 2016) [2025] KEHC 12816 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 29B OF 2016
JRA WANANDA, J
SEPTEMBER 19, 2025**

BETWEEN

REPUBLIC 1ST APPLICANT

PROF. TOM OJIENDA & ASSOCIATES 2ND APPLICANT

AND

SECRETARY/CHIEF EXECUTIVE OFFICER, NATIONAL LAND COMMISSION 1ST RESPONDENT

CHAIRPERSON, NATIONAL LAND COMMISSION 2ND RESPONDENT

AND

PROF TOM OJIENDA & ASSOCIATES EX PARTE

RULING

1. The Application before Court is the Ex Parte Applicants’ Notice of Motion dated 2/07/2025, brought under the provisions of Order 53 Rule 3 of the Civil Procedure Rules, and which seeks orders as follows:
 - i. That the Honourable Court be pleased to issue an order of Mandamus compelling the Respondents to pay to the Applicant forthwith and without delay, the decretal sum delineated hereunder together with the accrued interest until payment in full, that is to say;



As in decree [taxed costs]	Kshs. 220,735,840.85/=
Interest at 12% per annum from 29/9/16 to 30/5/22	Kshs. 176,564,482.47/=
Interest at 12% per annum from 31/5/22 to 19/12/23	Kshs. 39,732,451.36/=
TOTAL	Kshs. 437,032,774.68/=
Less amount paid	Kshs. 397,300,323.32/=
Grand Total	Kshs. 39,732,451.36/=

- ii. That the costs of this Application be provided for.
2. The Application is supported by the Affidavit sworn by Prof. Tom Ojienda, SC, the Managing Partner in the Applicant law firm. He deponed that the Applicant represented the Respondent in Petition No. 1 of 2013: Nathan Tirop & Others vs The Commissioner for Land & Others, that however, the Respondents failed to enumerate the Applicant for legal services rendered and this led to the Applicant filing an Advocate-Client Bill of Costs which was then taxed at Kshs 220,735,840/=. He deponed further that the Deputy Registrar also issued the Certificate of Order dated 20/09/2016, upon which the Court, on 21/06/2017, entered Judgment for the sum of Kshs 220,735,840/=:, together with interest, and subsequently on 15/06/2022, the Court issued a Certificate of Order directing the Respondent to pay the Applicant a total sum of Kshs 397,300,323.32. He then contended that the Respondents took deliberate steps to ensure that the Applicant did not enjoy the fruits of its Judgment, and the Applicant had to go to great miles by filing an Application seeking a Garnishee Order against the National Bank of Kenya and the Central Bank of Kenya, and that it was not until 19/12/2023 that the Respondent paid the Applicant a sum of Kshs 397,300,32.32.
 3. He observed that in the said amount, interest had only been tabulated for the period between 29/09/2016 to 30/05/2022 which therefore means that the amount paid ought to have been settled by the Respondent when it was served with the Certificate of Order dated 15/06/2022, yet the Respondent only settled the sum of Kshs 397,300,323.32 on 19/12/2023, more than 1 year after the Certificate of Order was served. He reiterated that the Certificate of Order did not therefore factor the period between 31/05/2022 to 18/12/2023, which time the interest continued accruing, and that this necessitated the request by the Applicant to the Court to issue an amended Certificate of Order for the sum of Kshs 39,732,451.36, which request was acted on and the Amended Certificate of Order dated 12/06/2025 issued for that sum. He urged that the same was then served upon the Respondent on 17/06/2025 but which the Respondent has to date failed or refused to settle. He urged further that the said sums have been due and owing for years now and the Applicant is left with no other recourse other than to seek refuge from this Court, hoping that it will be reimbursed for the legal services rendered.
 4. In response to the Application, the Respondents relied on the Grounds of Opposition dated 30/07/2025, and filed through Brian Ikol Advocate, described therein as the Director, Legal Affairs & Dispute Resolution at the National Land Commission.
 5. In the Grounds of Opposition, it is contended that the Court lacks jurisdiction to entertain or determine a stale claim for interest, the same being time-barred pursuant to the provisions of Section



- 4(1)(4) of the Limitations of Actions Act, which requires that actions to recover arrears of interest be commenced within 6 years from the date of interest fell due.
6. It was also contended that the claim offends the doctrine of estoppel as the Respondents settled the sum of Kshs 397,300,323.32 on 19/12/2023, being the full amount certified under the Certificate of Order dated 15/06/2022 in satisfaction of the taxed costs and interest accrued up to 30/06/2022, and as specifically demanded by the Applicant. It was urged that by accepting the said sum without objection, the Applicant waived any entitlement to claim further sums and is now estopped from asserting that additional interest remains due. It was further contended that the Respondent, having acted upon the Applicant's full acceptance, reasonably believed that no amount remained outstanding.
 7. The Applicant then filed the written Submissions dated 28/07/2025. As for the Respondents, I had not come across any Submissions filed by or on their behalf by the time I concluded writing this Judgment, and the Judiciary Case Tracking System (CTS) online portal does not reflect any. This was despite granting the Respondents 10 days to file their Submissions, pursuant to a request made on 31/07/2025 by Ms. Wangui, Counsel who stated that she was holding brief for Mr. Kamunde Advocate.
 8. In his Submissions, Counsel for the Applicant basically reiterated the matters stated in the Application and its Supporting Affidavit. He then cited the provisions of Section 21(4) of the Government Proceedings Act, Cap. 40, which bars execution against the Government, and also cited several authorities addressing the Court's powers to issue the writ of Mandamus under the provisions of Order 53 Rule 3 of the Civil Procedure Act, against public authorities for failing to execute their duty to settle Judgment owing from such authorities.

Determination

9. The one broad issue for determination in this matter is "whether this Court should issue an order of mandamus compelling the Respondents to settle the additional interest accrued on the principal sum."
10. It is the case that in Kenya, execution of money decrees against the Government or Governmental bodies or County Governments in the ordinary manner of instructing Auctioneers to proclaim and attach assets is prohibited. Decree-holders have therefore had to always proceed under the provisions of the Government Proceedings Act, Cap. 40 which was enacted to provide, among others, the "the law relating to the civil liabilities and rights of the Government and to civil proceedings by and against the Government". The Act is the one that regulates conduct of civil proceedings against the Government, including County Governments. I am however aware of a few recent High Court decisions which have advanced the view that this prohibition on execution is unconstitutional.
11. Be that as it may, Section 21 of the Government Proceedings Act, Cap. 40 provides the procedure which a decree holder is required to invoke and follow as a means of executing a decree against the Government or County Governments. The Judicial Review proceedings herein has therefore been instituted pursuant to that provision of the law. Section 21 of the Government Proceedings Act aforesaid is premised as follows:
 - "21. Satisfaction of orders against the Government
 - (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:

.....

- (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:

.....

- 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.

.....”

12. The logic for shielding the Government from the ordinary manner of execution was also well explained by D. Kemei J in the case of Republic v Maiyu & 2 others; Lumbasi (Exparte Applicant); Principal Secretary Ministry of Interior & Coordination of the National Government (Interested Party) (Judicial Review E003 of 2022) [2022] KEHC 13484 (KLR) (19 July 2022) (Ruling) as follows:

“ 16. The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the court. The rationale for the immunity against normal execution proceedings and by extension the said elaborate procedure was explained by Visram and Ibrahim, JJ (as they were) in *Kisya Investments Ltd v Attorney General & Another* [2005] 1 KLR 74, as follows

.....

17. It is therefore clear that apart from the fact of the existence of a judgement against the Government, the law recognizes that due to the special role played and the central position held by the Government in the management of the affairs of the country, there is a necessity for further proceedings to be undertaken before the judgement can be implemented.



13. An order of Mandamus is therefore issued when an officer is by law required to perform a duty, and in a case such as the one herein, is to be issued as against the Accounting officer or Chief Officer of the governmental body in issue, who is the one under a statutory duty to satisfy a judgment made by the Court against that body.
14. In this case, the Respondents have not denied that indeed they are the Officers within the National Land Commission with the statutory obligation or power to pay the Applicant the sum due as per the Certificate of Order the subject hereof, and neither have they denied service thereof. All the factual basis laid by the Applicant has also not been challenged. The opposition raised is that the claim for additional interest is statute-barred under the Law of Limitations Act, and secondly, that the Applicant is now estopped from claiming any additional interest, the earlier interest demanded having been paid in full and received without any protest.
15. Section 4 (4) of the [Limitation of Actions Act](#) aforesaid provides that:

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”
16. In this case, it is not disputed that the costs of Kshs 220,735,840.00/- payable to the Applicant was taxed on 20/09/2016, upon which the Certificate of Costs of the same date was issued and thereafter, Judgment was entered on the said sum Kshs 220,735,840.00/- on 15/06/2017 vide the Ruling delivered by D.O. Ogembo J, together with interest thereon. The payment not being forthcoming, and other recovery efforts, including initiation of Garnishee proceedings, having come to nought, the Applicant applied for and obtained a Certificate of Order on 15/06/2022 directing the Respondent to pay the Applicant the total sum of Kshs 397,300,323.32, inclusive of the interest accrued up to that date. It was however not until 19/12/2023, about 1 ½ years later, that the Respondent eventually paid the said sum of Kshs 397,300.32. It is therefore not in dispute that the interest tabulated in the Certificate of Order dated 15/06/2022 was only for the period between 29/09/2016 to 30/05/2022.
17. According to the Respondents, because of the provisions of Section 4 (4) of the [Limitation of Actions Act](#) aforesaid, the Applicant cannot demand for additional interest that accrued from 30/05/2022. I am however not persuaded by this argument.
18. First, although the costs were taxed on 20/09/2016, and Judgment thereon entered on 15/06/2017, together with interest, since in law, the Applicant could not execute the Judgment in the usual manner of sending Auctioneers, and its only recourse was to take steps to commence Judicial Review proceedings against the Respondent as done herein. However, to commence the Judicial Review proceedings, the Applicant had, as a condition precedent, to first obtain the Certificate of Order in accordance with the provisions of Section 21 of the [Government Proceedings Act](#) cited above, and which Certificate was itself issued on 15/06/2022. Considering the circumstances of this case, as regards the Applicant’s entitlement therefore, this date of 15/06/2022, in my view, should, in the least, be the date when the entire amount, including interest, should be interpreted to have accrued for purposes of execution. Any contrary interpretation would clearly amount to an absurdity, and would also open an easy but unjust and dangerous window to public authorities to defeat or avoid payment of Court decrees simply by delaying payments. In view thereof, and considering the circumstances hereof, the



6 years limitation period cannot be said to have lapsed within the contemplation, meaning, and spirit of Section 21 aforesaid.

19. Since it is apparent, explicit and express from the Judgment, that apart from the taxed amount, interest thereon was also payable, and since it is not disputed that the Judgment, the Certificate of Costs and the Certificate of Order were all served upon the Respondents, it means that when settling the sum of Kshs 397,300,32.32, 1 ½ years after the Certificate of Order was served in December 2023, the Respondents were fully aware that further interest had obviously accrued for that 1 ½ years delay and was thus payable. They did not require the Applicant to come back and tell them so.
20. For the above reason, I also reject the further argument that the Applicant is estopped from demanding the additional interest amount simply because it accepted the sum of Kshs 397,300,323.32 without protest. The debtor being a public entity, the Respondents obviously required a formal order from the Court before effecting any payments, and this, the Applicant obtained vide the Amended Certificate of Order dated 12/06/2025, which there is no dispute, was also served almost immediately. Under these circumstances, with due respect to the Respondents, clearly the estoppel principle cannot apply.
21. Before I pen-off, one other issue I have noted in this matter and which I may comment on is the fact that these Judicial Review proceedings were commenced and conducted under the same substantive Cause in which the Miscellaneous Advocate-Client Costs Cause had been heard and determined. Ordinarily, a fresh Cause, separate from the initial action, is commenced specifically to deal with the Judicial Review Application. Since however, no objection was raised on this mode of procedure, and since the issue was never canvassed, I will say no more about it and will not make any attempt to determine whether the procedure adopted was proper, or flawed.

Final Orders

22. In the end, the Applicant's Notice of Motion dated 2/07/2025 hereby succeeds, and I allow it in the following terms:
 - i. An order of Mandamus is hereby issued compelling the Respondents to pay to the Applicant the amount particularized hereinbelow, together with the accrued interest until payment in full:

Taxed costs	Kshs. 220,735,840.85
Interest at 12% per annum from 29/9/16 to 30/5/22	Kshs. 176,564,482.47
Interest at 12% per annum from 31/5/22 to 19/12/23	Kshs. 39,732,451.36
Total	Kshs. 437,032,774.68
Less amount paid	Kshs. 397,300,323.32
Net	Kshs. 39,732,451.36

- ii. Costs of the Application herein are awarded to the Applicant.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF SEPTEMBER 2025



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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Ms. Msando h/b for Prof. Ojienda for the Applicant

Ms. Wangari h/b for Mr. Kamonde for the Respondents

Court Assistant: Brian Kimathi

