



**Republic v National Land Commission & another; Tom Ojienda
& Associates (Ex parte Applicant) (Miscellaneous Application
E008 of 2025) [2025] KEHC 12823 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E008 OF 2025
JRA WANANDA, J
SEPTEMBER 19, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

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

CHAIRPERSON, NATIONAL LAND COMMISSION 2ND RESPONDENT

AND

PROF TOM OJIENDA & ASSOCIATES EX PARTE APPLICANT

RULING

1. The Application before Court is the Ex Parte Applicants’ Notice of Motion dated 23/06/2025, brought under the provisions of Order 53 Rule 3 of the Civil Procedure Rules, and which seeks orders as follows:

i. That this 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;

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a)

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Decretal amount

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Kshs. 9,374,003.33/=

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b)

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Interest on Decretal Sum from 24th February 2024
to 14th April 2025 at 14 per cent per annum (416)

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Kshs. 1,492,135.87/=

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c)

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Refund of Taxation fees

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Kshs. 468,701.00/=

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c)

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Court collection fees

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Kshs. 1,500.00/=

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TOTAL

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Kshs. 11,336,340.20/=

- ii. That in default, Notice to Show Cause do issue against the Respondents to show cause why they should not be cited for being in contempt of Court orders.
- iii. That the costs of this Application be borne by the Respondents.



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 filed a Bill of Costs dated 17/10/2023 which Bill arose out of a Judgment in COA Civil Application No. E0247 of 2022; National Land Commission vs Prof. Tom Ojienda & Associates, in which the Court awarded the Applicant costs to be borne by the National Land Commission. He added that the Deputy Registrar taxed the Bill of Costs at Kshs 9,734,003.33 in a Ruling delivered on 28/03/2024 and also issued a Certificate of Taxation dated 27/12/2024. He deponed further that on 15/01/2024, the Applicant filed an Application for entry of Judgment under Section 51(2) of the *Advocates Act*, upon which Judgment was entered on 9/04/2025 for the payment of Kshs 9,374,003.33 as per the Certificate of Taxation, together with interest from 24/02/2024 till payment in full, and a refund of the taxation fees being Kshs 468,701. He urged further that the Decree dated 10/04/2025 was subsequently issued in respect whereof the Applicant extracted the Certificate of Order against Government dated 14/04/2025 which ordered that the amount payable to the Applicant is as tabulated above aggregating the sum of Kshs. 11,336,340.20. Counsel deponed further that the Applicant thereafter served the Respondents with the same and also reminders requiring settlement of the decretal sum and also filed an Affidavit of Service depicting proof of service but the Respondents have to date, failed and/or refused to settle the same. 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 to the Respondents, that the Applicant filed an Application seeking leave to file an Application for Mandamus, and which leave was granted.
3. The Applicant then filed the written Submissions dated 28/07/2025. As for the Respondents, I had not come across any Response or Submissions filed by or on their behalf, by the time I concluded writing this Judgment, and the Judiciary Case Tracking System (CTS) online portal also does not reflect any. This was despite granting the Respondents 10 days to such Response and/or 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.
4. 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

5. The issue for determination in this matter is “whether this Court should issue an of mandamus compelling the Respondents to settle the decretal sum computed in the Certificate of Order issued herein and dated 14/04/2024, including interest.”
6. 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 the *Government Proceedings Act*. Cap. 40 which was enacted, to provide, among other, 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.



7. 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.

.....”

8. 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 (Experte Applicant); Principal



“ 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.

9. 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.
10. 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.
11. It this case, it is not disputed that the Plaintiff's Bill of Costs was taxed on 28/03/2024 in Court of Appeal Civil Application No. E247 of 2022, at the sum of Kshs 9,374,003.33- payable to the Applicant, upon which the Certificate of Taxation dated 27/12/2024 was issued. It is further not in dispute that upon the Certificate of Taxation being filed in this Cause, Judgment was then entered herein on 9/04/2025 for the said sum Kshs 9,374,003.33 in favour of the Applicant, plus interest, and a refund for the Court fees for the Taxation at Kshs 468,701/- and Court Collection fees incurred by the Applicant. Accordingly, the Decree dated 9/04/2025, and the Certificate of Order Against Government dated 14/04/2025 were issued. The Respondents have also not denied being served with the said Certificate, as well as the other items referred to hereinabove, on 15/04/2025 requiring payment, as alleged by the Applicant.
12. Under the above circumstances, and the Application remaining unopposed, I have no reason to deny the same.
13. Before I pen-off however, 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 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 herein was proper, or whether it was flawed.



Final Orders

14. In the end, the Applicant's Notice of Motion dated 23/06/2025 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:

a)	Decretal amount	Kshs. 9,374,003.33/=
b)	Interest on Decretal Sum from 24 th February 2024 to 14 th April 2025 at 14 per cent per annum (416)	Kshs. 1,492,135.87/=
c)	Refund of Taxation fees	Kshs. 468,701.00/=
c)	Court collection fees	Kshs. 1,500.00/=
TOTAL		Kshs. 11,336,340.20/=

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

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

.....

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

Eldoret High Court Miscellaneous Civil Application No. E008 of 2025

