



**Republic v County Secretary, Nairobi City County Government &
another; Kinyanjui (Ex parte Applicant) (Judicial Review E230 of 2024)
[2025] KEHC 12825 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW E230 OF 2024
JM CHIGITI, J
SEPTEMBER 18, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY, NAIROBI CITY COUNTY
GOVERNMENT 1ST RESPONDENT**

**THE CHIEF OFFICER FINANCE NAIROBI CITY COUNTY
GOVERNMENT 2ND RESPONDENT**

AND

MICHAEL THIONG’O KINYANJUI EX PARTE APPLICANT

JUDGMENT

1. What is before this court for determination is the Applicant’s Notice of Motion dated 14th October, 2024 brought under Order 53 Rules 3 and 4 of the Civil Procedure Rules Section 8(2) and 9 (1) (b) of the Law Reform Act, Cap 26 of the Laws of Kenya and all enabling provisions of the Law.
2. He seeks the following orders:
 - i. An Order of Mandamus to issue against the Respondent herein namely, the County Secretary, Nairobi City County Government and the Chief Officer Finance, Nairobi City County Government to compel them to pay out the decretal sum of KSh.8,894,267.14 being the decretal amount, costs and interest in Milimani Chief Magistrate's Court CMCC No. 7781 Of 2018: *Michael Thiong’o Kinyanjui -versus- Nairobi City County Government & 4 Others*, whose judgment was delivered on 4.6.2019; and the decretal amounts thereof itcontinue to attract interest at court rates.



- ii. Such further consequential orders as the Honourable court may deem just.
- iii. Costs of this Application be borne by the Respondents.
3. The Application is supported by a statutory statement and Verifying Affidavit by Michael Thiong'o Kinyanjui sworn on 9th October, 2024.
4. It is the Applicant's case that he is the decree holder in Milimani CMCC No. 7781 of 2018 *Michael Thiong'o Kimani v. Nairobi City County Government & 4 Others*, where a decree was issued in his favour on 11th September 2019.
5. Following the issuance of the decree, the Applicant, through his Advocates, transmitted the same to the Respondents vide a letter dated 2nd October 2019. Additionally, a Certificate of Order against the Government was issued on 4th September 2024 and duly served upon the Respondents on 5th September 2024.
6. The Respondents, through their letter dated 23rd October 2019, acknowledged receipt of the decree and requested a copy of the judgment.
7. The Applicant, through further correspondence dated 19th June 2023, issued a reminder to the Respondents, which was again not heeded. As a result, the decree remains wholly unsatisfied to date.
8. The Applicant contends that he has been denied the fruits of his judgment for over five (5) years, thereby suffering prejudice, inconvenience, and hardship due to the Respondents' inaction. He is apprehensive that without the intervention of the court, the Respondents will continue to frustrate him.
9. The Applicant canvassed his Application by way of written submissions dated 27th November, 2024 and Supplementary submissions dated 17th April, 2025.
10. The Applicant submitted that the issuance of an order of mandamus is governed by Section 21 of the *Government Proceedings Act* (Cap 40) and Order 29 of the *Civil Procedure Rules*. He argued that he has met the legal threshold by demonstrating the existence of a valid decree issued on 11th September 2019, the issuance of a Certificate of Order against the Government on 4th September 2024, and service of both the decree and certificate upon the Respondents.
11. The Applicant contended that under Section 21(5) of the *Act*, Nairobi City County qualifies as a government entity for purposes of execution, and its accounting officers including the County Secretary and Chief Officer of Finance bear statutory responsibility to satisfy the decree.
12. He relies on authorities including *Republic v. County Secretary Migori County & another ex parte Linet Magambo* and *Republic v. County Secretary Nairobi City County & others ex parte Kocoyo Advocate*, which affirmed this legal position.
13. In response to the Respondents' claim of lack of budgetary allocation, the Applicant submitted that such an excuse is legally untenable. He cited *Republic v. Permanent Secretary, Ministry of Internal Security ex parte Fredrick Manoah Egunza*, where it was held that Section 21(3) imposes a mandatory duty on government accounting officers to pay decrees regardless of budgetary constraints.
14. In conclusion, the Applicant submits that he has complied with all legal requirements and that the Respondents have failed to offer any lawful justification for non-payment.
15. On the issue of costs, he submits that costs should follow the event, emphasizing that they serve as a remedy to address grievances arising from litigation.



The Respondents' Case;

16. In opposition to the Application, the Respondents filed their Replying Affidavit by Asha Abdi sworn on 10th February, 2025.
17. The Respondents, through the affidavit of the Chief Officer Finance of Nairobi City County Government contended that the Nairobi City County Government prepares its annual budget in strict compliance with the [Public Finance Management Act](#), 2012 and the County Government Act, 2012.
18. It is their case that the budgeting process involves the preparation and approval of a Budget Policy Statement, followed by departmental budget estimates, which are then consolidated and submitted to the County Assembly for approval before the start of the financial year on 1st July.
19. They argue that the budget for the current financial year has already been approved and allocated, and no funds are currently available to settle the Applicant's decree. The Respondents asserted that funds can only be disbursed within the limits of the approved budget and cannot be reallocated arbitrarily outside the established legal framework.
20. However, the Respondents acknowledged the existence of the decree in favour of the Applicant and indicated that it may be included as a pending bill in the formulation of the next financial year's budget, pursuant to Section 15 of the [Public Finance Management Act](#). Accordingly, the Respondents maintained that the Applicant's claim would be considered for payment in the subsequent financial year, upon allocation of the requisite funds.
21. The Respondents filed their written submissions dated 11th March, 2025.
22. The Respondents submitted that the financial operations and budgetary allocations of the Nairobi City County Government are strictly governed by the [Public Finance Management Act](#), 2012 and the [County Governments Act](#), 2012. They emphasized that the County must operate within an approved annual budget, which is prepared in accordance with statutory timelines and procedures, and once passed by the County Assembly, cannot be altered unilaterally.
23. It was the Respondents' position that the Applicant's decree was brought to their attention after the current financial year's budget had already been approved and allocated, leaving no legal basis or available funds for its immediate settlement. They argued that payment can only be considered in the subsequent financial year, subject to its inclusion as a pending bill in accordance with Section 15 of the [Public Finance Management Act](#).
24. Relying on [Abdi Kadir Salat Gedi — v- Principal Registrar of Persons & Another](#) (2014) eKLR, as quoted in the case of [Republic v Nairobi City County & 3 others; Ndirangu t/a Mooreland Merchantile Co Ltd \(Exparte\)](#) (Miscellaneous Application E054 of 2022) [2024] KEHC 2354 (KLR) (Judicial Review) (1 March 2024) (Judgment), the Respondents contended that an order of mandamus cannot issue against public officers who have no legal power or duty to perform the act sought in this case, to allocate or disburse funds outside of the approved budget. They further submitted that doing so would contravene Sections 196 and 197 of the [Public Finance Management Act](#), which prohibit unauthorized expenditure of public funds.
25. The Respondents argued that they lack the legal mandate to satisfy the Applicant's decree within the current financial year and urged the Court to dismiss the Application with costs as misconceived, premature, and contrary to statutory budgetary processes.

Analysis and determination;



Upon looking at the Application, the replying affidavit and the rival submission as filed by parties, I find the following to be the issues for determination;

- i. Whether the Application has merit.
- ii. Who should be the costs.

Whether the Application has merit.

26. It is not in dispute that a decree issued on 11.9.2019.
27. There is a certificate of order against the government issued on 4.9.2024.
28. The decree and the certificate of order were served upon the Respondents.
29. The Respondents argue that the Applicant's claim, was only brought to the attention of the county after the financial year began, and it cannot be paid under the current year's budgetary allocation.
30. The Respondents in their defense argue that the *Exparte* Applicant has no claim against it and that it is not able to satisfy the decree at the moment due to insufficient budgetary allocation is not tenable.
31. The court in the case of *Republic v Principal Secretary, Ministry of Defence Exparte George Kariuki Waitbaka* [2019] EKLK held as follows on the issue of budgetary allocation;

“The defence of non-allocation of funds by Parliament was also raised by the Respondent in the present Application in his replying affidavit. Odunga J. in his ruling of 12th February 2018 extensively dealt with the defence as follows:

“As regards lack of budgetary allocation, Githua, J in *Republic v. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza* [2012] eKLR expressed herself as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree 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*. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the



successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine].

26. I associate with the said decision and it is therefore my view that settlement of decretal sum by the Government whether National or County does not necessarily depend on the availability of funds. This position was appreciated by this Court in *Wachira Nderitu, Ngugi & Co. Advocates v. The Town Clerk, City Council of Nairobi* Miscellaneous Application No. 354 of 2012 in which this Court pronounced itself as follows:

“I have however considered the other issues raised by the Respondent with respect to its debt portfolio as against its financial resources. It is neither in the interest of this Court nor that of the ex parte Applicant that the Respondent should be brought to its knees. The Court appreciates and it is a matter of judicial notice that most of the local authorities are reeling under the weight of the debts accrued by their predecessors and that they are trying to find their footing in the current governmental set up. Accordingly, I am satisfied based on the material on record that the Respondent ought to be given some breathing space to arrange its finances and settle the sum due herein.”

27. In my view a party facing financial constraints is at liberty to move the Court for appropriate orders which would enable it to settle its obligations while staying afloat. That however, is not a reason for one to evade its responsibility to settle such obligations. In other words, financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree but is not a basis for declining to compel the Respondent to settle a sum decreed by the Court to be due from it. That objection therefore fails.”



48. Non-allocation of funds by Parliament is not an acceptable defence or justifiable excuse for non-payment of decretal sums ordered to be paid by Government officials, in the absence of any evidence of any attempts made by the responsible Government official to commence the process of such allocation. In the present case, this is particularly relevant given that the present contempt of Court proceedings commenced in April 2017, and the Respondent did not indicate what steps if any, have been taken since then to effect payment of the monies due to the Applicant.”

32. According to De Smith, Woolf & Jowell, “*Judicial Review of Administrative Action*” 6thEdn. Sweet & Maxwell page 609:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”

33. When the Applicant secured a judgement, extracted a Decree, a Certificate of Order and a Certificate of Costs and the time for lodging an appeal lapsed, then the Applicant obtained a legitimate expectation that the Respondents would settle the claim during its next budgetary cycle at the minimum. Many years have come and gone.

34. The Respondents have no doubt had ample time to settle the claim. The Respondent’s argument that it lacks budgetary allocation is not a valid reason for failing to comply with this court’s orders.

Costs:

35. In determining the issue of costs, this court is guided by the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR [13] where it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, *Judicial Hints on Civil Procedure*, 2nd ed. (Nairobi: Law Africa, 2011), p. 94:

“Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise: *Chamilabs v. LaljiBhimji and Shamji Jinabbai Patel*, High Court of Kenya, Civil Case No. 1062 of 1973.”

36. Costs shall follow the event. The Respondents shall shoulder the costs of this suit.

Disposition:

37. The Applicant has proven its case.

Order:

The Application is allowed with costs.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

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J. CHIGITI (SC)

JUDGE

