



Republic v County Secretary, County Government of Kiambu & 2 others; Maina & another (Ex parte Applicants) (Judicial Review E011 of 2024) [2025] KEHC 12619 (KLR) (10 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12619 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

JUDICIAL REVIEW E011 OF 2024

FN MUCHEMI, J

SEPTEMBER 10, 2025

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF AN ORDER OF MANDAMUS

AND

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY SECRETARY, COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT

CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF KIAMBU 2ND RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, COUNTY GOVERNMENT OF KIAMBU 3RD RESPONDENT

AND

MANDO KENNETH MAINA EX PARTE APPLICANT

JOHN KURIA KAMAU EX PARTE APPLICANT



RULING

Brief facts

1. Coming up for determination is the respondents' Notice of Preliminary Objection dated 4th June 2025 based on grounds that the application dated 10th February 2025 is contrary to the underlying provisions of Section 21 of the [Government Proceedings Act](#), Cap 40 Laws of Kenya.
2. Parties put in written submissions.

The Respondents' Submissions

3. The respondents rely on Section 21 of the [Government Proceedings Act](#) and Order 29 of the Civil Procedure Rules and submits that the application dated 10th February 2025 was filed without obtaining prior consent from the Attorney General and the applicants have not been issued with a Certificate of Order. To support their contentions, the respondents refer to the case of Republic vs County Secretary Migori County & Another ex parte Linet Magambo [2020] eKLR.

The Applicant's Submissions

4. The applicant submits that the judgment which the application seeks to enforce was delivered in the year 2018. The decree was later drawn and served upon the respondents and their advocate as required by the law. The applicant says that the respondents are relying on Section 21 of the [Government Proceedings Act](#) to protect them from paying the decretal amount. The applicant argues that the [Government Proceedings Act](#) defines proceedings against the government to include a claim by way of set off or counterclaim raised in proceedings against the government but the act does not protect county governments. The applicant further argues that Article 159(d) of [the Constitution](#) provides that justice will be administered without undue regard to technicalities and the respondents are using technicalities to protect them from paying the decretal amount as ordered by the court.

The Law

Whether the preliminary objection is sustainable

5. The case of Mukisa Biscuits Manufacturing Ltd vs West End Distributors (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection. The court observed thus:-

.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

6. Sir Charles Newbold P. stated:-

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.



7. Similarly the Supreme Court in the case of Hassan Ali Joho & Another vs Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR held that:-

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

8. Further in the case of Hassan Nyanje Charo vs Khatib Mwashetani & 3 Others, [2014] eKLR the court held that:-

Thus a preliminary objection may only be raised on a 'pure question of law.' To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.

9. Evidently, a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law.

10. The respondents argue that the application dated 10th February 2025 is fatally defective as the applicant did not obtain prior consent from the Attorney General and a certificate of order contrary to Section 21 of the [Government Proceedings Act](#).

11. Section 21 of the [Government Proceedings Act](#). It provides:-

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;

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;

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.

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. I have perused the record and noted that the ex parte applicants have not adhered to Section 21 of the *Government Proceedings Act* in that it is a requirement of the law that a certificate of the orders and taxed costs be obtained from the court that passed the decree and be served on the Attorney General or the Chief Executive officer of the County Government as the case may be. The judgment of the court and the relevant certificate have not been annexed to the application. In my considered view this is evidence of non-compliance with the law.
13. Consequently, I find the preliminary objection merited and hereby uphold it accordingly.
14. The application dated 17th 2024 is hereby struck out with costs to the respondent.
15. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

