



Mwangi v Attorney General & another (Judicial Review Miscellaneous Application E020 of 2022) [2024] KEHC 1189 (KLR) (Judicial Review) (8 February 2024) (Judgment)

Neutral citation: [2024] KEHC 1189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E020 OF 2022
JM CHIGITI, J
FEBRUARY 8, 2024**

BETWEEN

JOHN MAKUMI MWANGI APPLICANT

AND

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

**THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & CO-
ORDINATION OF NATIONAL GOVERNMENT 2ND RESPONDENT**

JUDGMENT

1. Before this court is a Notice of Motion Application dated 15th February, 2022 and filed on 15th October, 2023 pursuant to this court's ruling delivered on 28th September, 2023. The Application is said to be brought under Order 53, Rule 3 of the [Civil Procedure Rules](#). The Applicants seeks:
 - a. That the Order of *Mandamus* be directed to the Respondents. To pay the Ex-Parte Applicant the sum of Ksh. 1,425,913.20 together with interests at 12% per annum and costs being the total decretal amount awarded by the Honorable Court in CMCC No. 859 of 2006 *John Makumi Mwangi vs. The Honorable Attorney General* together with costs and accrued interests.
 - b. That in default, Notice to Show Cause do issue against the Respondents for them to show cause why they should not be cited for contempt of court.
 - c. That the cost of this Application be awarded to the Applicant.
2. The Application is supported by the grounds on the face of it, on the Statutory Statement, and in the Verifying Affidavit deponed by the Applicant herein – both evenly dated.



3. The Applicant's case is that by a Judgment entered on 24th March, 2015 the Applicant was awarded Kes. 1,425, 913.20/= together with interests at Court rates, and cost of the suit – against the Respondent.
4. The Decree and Certificate of Costs dated 24th March 2015 issued on 14th August 2019 in favor of the Applicant in CMCC No. 859 of 2006 John Makumi Mwangi vs the Honorable Attorney General for Kes. 1,425,913.20/= being the total decretal sum with the interests and costs.
5. That by a Certificate of Order against the Government issued on 2nd March, 2021 the Respondents were ordered to pay the Applicant a total sum of Ksh. 1,425,913.20/= which remains unpaid to date.
6. That despite demands and several reminders, the Respondents has failed, neglected, and/or refused to carry out their public duty to make the said payment to the Applicant in satisfying the decretal sum.
7. To the Applicant, there is no other lawful means by which he can obtain the sums of money from the Respondent; as direct execution against the government is prohibited under Order 29 Rule 2 of the [Civil Procedure Rules, 2010](#) - hence the Court has Jurisdiction to issue an order of *Mandamus*.
8. The Respondents did not file any document in response.
9. In advancing his case, the Applicant filed written submissions dated 19th October, 2023. It is submitted that the respondents are under a duty to settle the decretal sum. That an order of *Mandamus* is desirable in this instant as the decree remains unsatisfied and the same is issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed. Relied on [Republic vs Kenya National Examinations Council ex parte Gathenji and 9 Others](#), [1997] eKLR case.
10. The Applicant contends that the Respondent have deliberately refused to satisfy the decree and cost, thus amounting to an abuse of the power, unreasonableness, and unjustifiable. Therefore, that an order of *Mandamus* against the Respondents should be issued. Reliance was placed on the case of [Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another](#) [2018] eKLR that elaborated the requirements of *Mandamus* to issue; and on the case of [Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security](#) (2012).
11. From the materials on record, the issue for determination is whether the orders of *Mandamus* should issue as prayed by the Applicant?

Analysis and Determination

12. It is settled law that before an order of *Mandamus* is issued, an Applicant must abide by the procedure in Section 21 of [Government Proceedings Act](#) which 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.”

13. Section 21 (3) of the said Act on the other hand provides:

“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.”

14. The circumstances under which judicial review order of *Mandamus* are issued were discussed in the case Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996, where the Court of Appeal cited with approval, Halsbury’s Law of England, 4th Edition. Vol. 7 p. 111 para 89 thus:

“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 any 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. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.” ...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.”

15. In the instant matter, the Applicant moved this Court to compel the satisfaction of a judgment already decreed, in his favour by a competent Court of law.

16. From the record filed in the court, there is evidence that Certificate of Order against the Government dated 2nd March, 2021 was obtained. Additionally, the Applicant maintained that he served the Respondents with all the necessary documents: Certificate of Order against the Government, Decree, and the Judgment.

17. From the foregoing, it is clear that the Applicant fully complied with Section 21 of Government Proceedings Act. In the premises, I am satisfied that the Applicant has made a case for the grant of an order of *Mandamus* which I hereby grant the same as prayed in the Notice of Motion dated 15th February, 2022. Costs to the Applicant.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2024.

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J. CHIGITI (SC)

JUDGE

