



Republic v Principal Secretaryy Ministry of Interior and Coordination Of National Government & another; Wang’ombe (Exparte) (Application E112 of 2023) [2024] KEHC 4336 (KLR) (Judicial Review) (19 April 2024) (Judgment)

Neutral citation: [2024] KEHC 4336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**JUDICIAL REVIEW
APPLICATION E112 OF 2023**

**J NGAAH, J
APRIL 19, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND COORDINATION
OF NATIONAL GOVERNMENT 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

AND

JOHN KIBWANG’A WANG’OMBE EXPARTE

JUDGMENT

1. Before court a motion dated 25 October 2023 in which the applicant seeks an order for mandamus to compel the 1st respondent to settle a certificate of order against government arising out of a decree obtained against the 2nd respondent on 24 October 2016, in the Nairobi Chief Magistrates Court Civil Case No. 1619 of 2012. The prayer for the order of mandamus is couched as follows:

“1. That the applicant be granted an order of mandamus against the 1st respondent compelling them (sic) to pay the applicant, John Kibwanga Mwang’ombe, the sum of Kenya shillings Three Hundred and Sixty Eight Thousand, Four Hundred and Fourty Nine (Kshs. 368,449.00) due and owing as the decretal sum and costs of the suit as at 24th October, 2016 on account of judgement



entered on the 24th October, 2016 in a Civil Case No. 1619 of 2012 together with further interest now accruing on the judgement debt.”

2. The application is supported by the affidavit of John Kibwanga Mwang’ombe.

According to Mr Mwang’ombe, the certificate of order against government was issued on 9 August 2019 and served on the 1st respondent on 21 August 2019. Despite repeated reminders, the 1st respondent has neglected, failed or refused to settle the decree. It is for this reason that the applicant seeks that the 1st respondent be compelled to settle the decree and make the payments.

3. Neither of the respondents responded to the applicant’s application.

Section 21 of the *Government Proceedings Act*, cap. 40, generally deals with the manner and procedure of enforcement of orders and decrees against Government. This section reads 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:

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.



- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.
4. There is sufficient evidence on record, and there is no suggestion to the contrary, that Attorney General was served with the certificate of order against the Government. Service of the certificate upon the Attorney General is a requirement of section 21(2) of the *Government Proceedings Act*.
 5. Under Article 156 (4) (b) of *the Constitution*, the Attorney General represents the National Government in court or in any other proceedings in which the National Government is a party other than criminal proceedings. The presumption is that it is incumbent upon the Attorney General to liaise with his client and bring to his attention the certificate of order against the government once he has been served with the certificate.
 6. In the absence of any reason or any valid reason why the applicant's decree cannot be settled, there is every reason to compel the respondent, by way of mandatory or mandamus order, to pay.
 7. One of the ways through which decrees or orders are enforced is, of course, execution or attachment. However, the Government is protected from such process of execution or other similar process in enforcement of decrees or orders by section 21(4) of the *Government Proceedings Act*.
 8. In the face of this protection from execution or attachment, the only available route open to the applicant is to compel the 1st respondent to perform his statutory duty under section 21(3) of the Act and pay what has been decreed as due and owing to the applicant. In other words, only the order of mandamus would be the appropriate order under the circumstances.
 9. According to Halsbury's Laws of England/Judicial Review (volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction Paragraph 689:

A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”//
 10. This is reiterated in paragraph 703 which states:

A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”//
 11. And with particular reference to public officers who, like in the instant case, fail to perform their duty, paragraph 706 is clear that a mandamus order may be issued to compel them to carry out the duty. It reads as follows:

706. Public duties by government officials.

If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty



(See R v Metropolitan Police Comr, ex p Blackburn (No 3) [1973] QB 241, [1973] 1 All ER 324, CA; R v London Transport Executive, ex p GLC [1983] QB 484, [1983] 2 All ER 262, DC.)”

12. The applicant has demonstrated, and it is not in dispute, that he duly extracted a certificate of order against government and that the same was duly served upon the Attorney General. More importantly, there is no suggestion that the applicant has defaulted in any step prescribed under section 21 of the Act as to disentitle him to the order of mandamus.
13. A demand for payment having been made, and the respondent having failed to pay, no other evidence is required to demonstrate that the respondent has failed to perform a public duty with which he is charged under section 21(3) of the [Government Proceedings Act](#). A mandamus order would properly issue in such circumstances.
14. Accordingly, I hereby allow the applicant’s motion dated 25 October 2023 to the extent that an order of mandamus is hereby granted in terms of prayer 1 of the motion. Considering that the application is not opposed, I make no order as to costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 19 APRIL 2024.

NGAAH JAIRUS

JUDGE

