



Republic v Attorney General; Reeksting (Exparte Applicant) (Judicial Review E001 of 2023) [2024] KEHC 4476 (KLR) (11 April 2024) (Judgment)

Neutral citation: [2024] KEHC 4476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
JUDICIAL REVIEW E001 OF 2023
GL NZIOKA, J
APRIL 11, 2024**

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, CAP 40 LAWS OF KENYA

AND

IN THE MATTER OF THE CIVIL PROCEDURE RULES, 2010

AND

**IN THE MATTER OF CERTIFICATE OF ORDER
AGAINST THE GOVERNMENT DATED 10TH**

**SEPTEMBER 2021 IN NAIVASHA HCCC NO. 8 OF 2019, EUGENE
REEKSTING VS ATTORNEY GENERAL & JOHNSON NZWILI**

AND

**IN THE MATTER OF CERTIFICATE OF TAX DATED 15TH SEPTEMBER
2022 IN NAIVASHA HCCC MISCELLANEOUS APPLICATION NO.
E020 OF 2012, EUGENE REEKSTING VS ATTORNEY GENERAL**

AND

**IN THE MATTER OF AN APPLICATION BY EUGENE REEKSTING FOR JUDICIAL
REVIEW ORDERS OF MANDAMUS AGAINST THE ATTORNEY GENERAL**

BETWEEN

REPUBLIC APPLICANT

AND

THE HON. THE ATTORNEY GENERAL RESPONDENT

AND

EUGENE REEKSTING EXPARTE APPLICANT



JUDGMENT

1. By a notice of motion application dated, June 26, 2023, the applicant is seeking for the following orders:
 - a. An order of *mandamus* against the Attorney General compelling them to satisfy the Certificate of Order against the Government in favour of the applicant amounting to Four Million Five Hundred and Ninety-Seven Thousand Five Hundred and Eighty-Nine Shillings and Seven Cents (Kshs. 4,597,589.07);
 - b. An order of *mandamus* against the Attorney General compelling them to satisfy the taxed Bill of Costs in favour of the applicant amounting to Two Hundred and Fifty Eight Thousand Seven Hundred and Twenty Five Kenyan Shillings (Kshs. 258,725);
 - c. In default, Notice To Show Cause do issue against the Attorney General for them to show cause why they should not be cited for contempt of Court;
 - d. The costs of this application be provided for in favour of the applicant; and
 - e. Any other orders and directions as this honourable Court may consider appropriate.
2. The application is based on the ground thereto and an affidavit sworn by the applicant. The applicant avers that, a suit being; High Court Civil Case No. 8 of 2019; *Eugene Reeksting versus the Attorney General & Johnson Nzwili* was heard and determined on July 26, 2021.
3. That a Decree and Certificate of Order both dated September 10, 2021 against the the Attorney General was drawn and issued in favour of the applicant in the sum of Kshs 3,598,707.64 and Kshs 4,597,589.07 respectively.
4. Further on March 7, 2022, a Notice of Taxation was issued to the Attorney General but no response was filed and the Bill of Costs was taxed in the sum of Kshs 258,725, and emailed to the Attorney General.
5. The applicant avers that, he is yet to be compensated for the loss and damage incurred as a result of the road accident on March 4, 2010, which gave rise to the suit HCCC No. 8 of 2019, hence the prayers herein.
6. It suffices to note that the notice of motion application was filed after leave was granted vide a chamber summons application dated, February 23, 2023. That upon considering the motion application the court directed that the same be served for a response.
7. On July 20, 2023, the court was informed that the respondent was served with the motion but they had not filed any response. The matter was stood over to October 2, 2023 for hearing. However, it was not cause listed on that date, but heard on October 3, 2023 and the hearing rescheduled to October 16, 2023. Once again the respondent did not appear for the hearing. The matter was therefore heard *ex parte*.



8. I have considered the application in the light of the materials placed before the court and I note that, the application herein is premised on the provision of, section 21(1) and (2) of the [Government Proceedings Act](#), which states: -

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.

9. In the instant matter, the applicant has annexed to the affidavit in support of the application the following documents to support his claim: -

- a. A decree in his favour in the sum of Kshs 4,498,384. 55 issued in HCCC No. 8 of 2019 issued on September 10, 2021;
- b. Certificate of Order against the Government in the sum of Kshs 3,598,707.64 issued on July 26, 2021; and
- c. A Certificate of Taxation dated September 18, 2022 in the sum of Kshs 258,725.

10. In that regard, the applicant has generally complied with the afore provisions, However, the question is; how does the decree holder enforce the decree against the government? The applicant has sought for an order of mandamus.

11. The order of *mandamus* is derived from the latin word “*Mandare*” meaning to command. It is a judicial remedy in the form of an order from a court to any government, subordinate court, corporation, or public authority, to do some specific act which that body is obliged under law to do, and which is in the nature of public duty, and in certain cases one of a statutory duty, where a public body or official has unlawfully refused, declined or otherwise failed to undertake the duty.

12. In that regard the Court of Appeal in the case of; [Kenya National Examination Council v Republic, Ex-Parte Geoffrey Gathenji Njoroge & 9 Others](#) [1997] eKLR stated as follows:

“The next issue we must deal with is this: What is the scope and efficacy of an Order of *mandamus*? Once again we turn to [Halsbury’s Law of England](#), 4th Edition Volume 1 at page 111 from paragraph 89. That learned treatise says: -



“The order of *mandamus* is of a most extensive remedial nature, and is, in form, 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.”

13. It therefore follows that pursuant to the subject provisions afore of section 21(1) and (2) of the *Government Proceedings Act*, the only remedy available to a decree holder is to apply for *mandamus* against the Chief Officer of the Government, since no execution can be levied against the property of a Government and/or a County Government in settlement of a decree without the same.
14. It is also evident that, the respondent herein has not settled the decretal sum and associated costs despite demand thereof several years down the line.
15. The upshot is that; it is in the interest of justice that the application be allowed and I allow it as prayed.
16. It is so ordered

DATED, DELIVERED AND SIGNED THIS 11TH DAY OF APRIL, 2024

GRACE L. NZIOKA

JUDGE

In the presence of:

N/A for the Respondent

Mr. Wairegi Exparte Applicant

Ms Ogutu- Court assistant

