



Republic v Chief Officer Finance Kisumu County Government & 3 others; Masinde (Exparte Applicant) (Judicial Review Application 23 of 2022) [2024] KEHC 5776 (KLR) (15 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION 23 OF 2022**

RE ABURILI, J

MAY 15, 2024

IN THE MATTER OF AN APPLICATION BY LIVINGSTONE MALANGO MASINDE (SUING AS GUARDIAN AND NEXT FRIEND TO EILEEN ONDECHE MALANGO)

AND

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

AND

IN THE MATTER OF COUNTY GOVERNMENT OF KISUMU

AND

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

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF OFFICER FINANCE KISUMU COUNTY GOVERNMENT 1ST RESPONDENT

CHIEF OFFICER – MEDICAL SERVICES KISUMU COUNTY GOVERNMENT 2ND RESPONDENT

COUNTY SECRETARY KISUMU COUNTY GOVERNMENT 3RD RESPONDENT

HEALTH ADMINISTRATIVE OFFICER JARAMOGI OGINGA ODINGA TEACHING & REFERRAL HOSPITAL 4TH RESPONDENT

AND

LIVINGSTONE MALANGO MASINDE EXPARTE APPLICANT



JUDGMENT

1. The Notice of Motion dated 21st November 2022 seeks the following Judicial Review Orders:
 - i. That an order of Mandamus be and is hereby issued directed to the Respondents to pay to the Exparte Applicant the sum of Kshs. 1,000,000 being the decretal amount in Kisumu CMCC No. 217 of 2017.
 - ii. That costs of this application be provided for.
2. The Notice of Motion was filed pursuant to leave of court granted on 9th November 2022 vide JR Application No. E020 of 2022.
3. In the grounds, supporting affidavit and annexures thereto, the Exparte Applicant pleads and deposes that the primary suit being Kisumu CMCC No. 217 of 2017 was settled by consent entered into on 26th August 2019 and decree was issued.
4. Certificate of order against the Government was issued and served upon the Respondent on 1st September 2021 and duly acknowledged by rubber stamping by the office of the County Attorney.
5. There is a letter dated 27th August 2021 received by the Respondents County Attorney wherein the decree and certificate of order against the County Government was served.
6. Todate, no payment of the decreed sum together with costs has been made.
7. The law does not permit execution against the Government by way of attachment or Garnishee of Government assets.
8. Section 21 of the [Government Proceedings Act](#) provides that procedure for recovery or settlement of decrees against the Government where there is non-payment.
9. In [R v Attorney General & Another Exparte James Koroso](#) NRB JR Misc. No. 44 of 2012, the court stated that:-

“In the present case, the exparte applicant has no other option of realising the fruits of his judgment since he is barred from executing against the Government. Apart from Mandamus, he has no option of ensuring that the judgment that has been awarded is realised.

Unless something is done, he will forever be left baby sitting his barren decree.”
10. Section 21(4) of the [Government Proceedings Act](#) provides that:

“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.”



11. In this case, the Applicant has demonstrated that he complied with Section 21 of the Government Proceedings Act. Under the said Section 21(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.”

12. The Respondents have a public duty to satisfy the decree and in default, only Mandamus can compel them. See R v National Examination Council Exparte Gathenji & 8 Others [1997] eKLR where the Court of Appeal stated, citing Halsburys Laws of England 4th Edition Vol. 7 Page 111 Paragraph 89:

“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. The Applicant enjoined the Chief Officer, Finance of the County Government, who is the accounting officer for the County Government, equivalent of a Principal Secretary in the National Government Ministry or State Department.

14. The Respondents do not contest these proceedings as the judgment and decree was entered into by consent in favour of the Applicant.

15. Accordingly, I am satisfied that the orders sought are merited.

16. I allow the application dated 21st November 2022 and order that Judicial Review Order of Mandamus is hereby issued compelling the Respondents to settle decree in Kisumu CMCC No. 217 of 2017 amounting to Kshs.1,000,000 all inclusive as per certificate of order against the Government issued on 25th August 2021.

17. The Applicant shall have costs of this application assessed at Kshs.30,000.

18. Decree to issue and be served upon the Respondents with Penal Notice appended thereto.

19. The Respondents have 60 days of today to settle the decreed sum and in default, the exparte applicant is at liberty to apply.

20. Mention on 30th June 2024 to confirm settlement.

21. I so order.



DATED, SIGNED AND DELIVERED AT KISUMU THIS 15TH DAY OF MAY, 2024

R. E. ABURILI

JUDGE

