



Republic v Ministry of Lands & Physical Planning; Khaemba (Exparte Applicant) (Judicial Review Miscellaneous Application 41 of 2023) [2024] KEHC 8218 (KLR) (Judicial Review) (20 June 2024) (Judgment)

Neutral citation: [2024] KEHC 8218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 41 OF 2023**

**JM CHIGITI, J
JUNE 20, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

MINISTRY OF LANDS & PHYSICAL PLANNING RESPONDENT

AND

PETRONILLA NAFUNA KHAEMBA EXPARTE APPLICANT

JUDGMENT

1. The applicant through the Application dated 20th April, 2023 seeks;
 1. An Order of Mandamus directed at the Respondent compelling him to pay to the Applicant the sum of decretal sum of Kshs. 3,114,000/= and interest thereon plus the costs of suit (taxed and assessed at Kshs. 1,256,078/=) all totaling to Kshs. 4,370,078/= as per a Certificate of Order against the Government dated 5th October, 2020 being the Decretal amount in ELC CASE NO. 927 OF 2015 Milimani and which decretal sum now stands at Kshs. 5,790,394/= inclusive of interest accrued on the principal decretal sum from 10th June, 2019 to 31st March, 2023.
 2. That the costs of this Application be provided for.

The Applicant’s case:

2. In a Judgment dated 10th June 2019, the Honourable Judge B.M Eboso found in favour of the Plaintiff in the following terms;



- a. That the transfer of Nairobi/Block 111/409 from Petronillah Nafuna Khaemba to Elias Kagwa Kubania was fraudulent and therefore null and void.
 - b. That the said transfer and all subsequent entries are nullified and ownership of the suit property is restored to the plaintiff, Petronilla Nafuna Khaemba.
 - c. The 3rd and 7th defendants shall jointly and severally pay the Plaintiff damages assessed at Kshs. 3,114,000/= together with interest from the date of this judgement
 - d. The 3rd and 7th Defendants shall bear costs of this suit.
3. The Ex-parte Applicant extracted the decree dated 21st June, 2019 and a Certificate of Taxation on 1st February, 2021. Consequently, the Ex-parte Applicant obtained a Certificate of Order dated 5th October, 2020 certifying that the principal sum of Kshs. 3,114,000/= and the further sum in respect of costs of Kshs. 1,256,078/= as due from the Respondent.
 4. Despite persistent demands, the Respondent has neglected and/ or failed to settle the same thus prompting the Ex-parte Applicant to seek the prerogative orders in the present Application.
 5. The application is not opposed.

Analysis and Determination:

6. Upon considering the arguments advanced by the Applicant herein, I find the issue for determination is whether the Applicant has made out a case for the grant of the orders sought.
7. In the case of 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 Edn. Vol. 7 p. 111 para 89 thus:

“The order of mandamus is of 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.”...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.”

8. In Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR while dealing with the said provisions expressed herself as follows:

“...Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the



Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

9. The effect of these provisions is that whereas execution proceedings as are known to law are not available against the Government, the accounting officer for the Government department concerned is nevertheless under a statutory duty to satisfy a judgment made by the Court against that department.
10. It is my finding, and I so hold that the applicant has proven that she complied with Section 21 of the government proceedings act.
11. Judgement was delivered on 10th June, 2019, a Decree issued on 21st June, 2019 against the Respondent, the Ex-parte Applicant extracted a Certificate of Order Against the Government dated 5th October, 2020 and a Certificate of Taxation dated 1st February, 2021 was also issued. The full decretal sum stood at Kshs. 5,790,394/= as at 31st March, 2023 and the principal sum continues to accrue interest at court rates.
12. The judgement was entered jointly and severally against the respondents as a result of which the applicant can elect who to pursue out of the Respondents.

Costs:

13. Costs follow the event as was in Petition No. 4 of 2012 Jasbir Singh Rai & 3 others Tarlochan Singh Rai & 4 others; [2014] eKLR where the Supreme Court stated:

“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs.”

14. The applicant is entitled to costs and I so hold.

Disposition:

15. The applicant has proven her case.

Order:

1. An Order of Mandamus is hereby issued directed at the Respondent compelling him to pay to the Applicant the sum of decretal sum of Kshs. 3,114,000/= and interest thereon plus the costs of suit (taxed and assessed at Kshs. 1,256,078/=) all totalling to Kshs. 4,370,078/= as per a Certificate of Order against the Government dated 5th October, 2020 being the Decretal amount in ELC CASE NO.



927 OF 2015 Milimani and which decretal sum now stands at Kshs. 5,790,394/= inclusive of interest accrued on the principal decretal sum from 10th June, 2019 to 31st March, 2023 is hereby issued.

2. Costs to the applicant.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2024

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J. CHIGITI (SC)

JUDGE

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