



**Republic v County Secretary, County Government of Tharaka Nithi & 3 others;  
Kingdom Developers Merchants Ltd (Exparte Applicant) (Judicial Review  
Application E001 of 2021) [2023] KEHC 2574 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2574 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
JUDICIAL REVIEW APPLICATION E001 OF 2021**

**LW GITARI, J**

**MARCH 23, 2023**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL  
REVIEW ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF: THE LAW REFORM ACT (CAP 26 OF  
THE LAWS OF KENYA)**

**AND**

**IN THE MATTER OF: THE COUNTY GOVERNMENT ACT**

**AND**

**IN THE MATTER OF: THE GOVERNMENT PROCEEDINGS  
ACT**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF THARAKA  
NITHI ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE MEMBER OF FINANCE, COUNTY GOVERNMENT OF  
THARAKA NITHI ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF THARAKA  
NITHI ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF OFFICER, ROADS, TRANSPORT & PUBLIC WORKS, COUNTY  
GOVERNMENT OF THARAKA NITHI ..... 4<sup>TH</sup> RESPONDENT**



**AND**  
**KINGDOM DEVELOPERS MERCHANTS LTD ..... EXPARTE APPLICANT**

**RULING**

1. Before this court is the notice of motion dated April 20, 2021 seeking for the following orders:
  - i. That an order of *mandamus* do issue against the respondents jointly and severally compelling the respondents to pat the judgment debt of Kshs 20,061,274.23 together with interest at the rate of 12% per annum from February 19, 2021 until payment in full which judgment debt arises from Chuka CMCC No 43 of 2019 Kingdom Developers Merchants Ltd v County Government of Tharaka Nithi & Anor.
  - ii. That the respondents be condemned to bear the costs of these proceedings.
2. The application is premised on the grounds on the face of it and supported by the affidavit sworn on March 16, 2021 by Mumbi Gitonga, a director of the *exparte* applicant herein. The said Mumbi Gitonga deposes that on or about May 9, 2016, the *exparte* applicant was awarded tender No TNG/39/RDS/2015-2016: Spot Improvement of Mugwe ward roads by the County Government of Tharaka Nithi for the sum of Kshs 20,652,872/=. That the *exparte* applicant successfully carried out the civil engineering works required under the said tender and was issued with a completion certificate. That after the successful completion of the said works, the County Government of Tharaka Nithi only settled Kshs 4,576,099.20 of the tender sums, leaving an outstanding sum of Kshs 16,131,323/=: which sums the County Government has failed/refused and/or declined to settle. Consequently, the *exparte* applicant filed Chuka CMCC No 43 of 2019 Kingdom Developers and Merchants Limited v County Government of Tharaka Nithi & Anor against the County Government of Tharaka Nithi and the 4<sup>th</sup> respondent herein. That the matter was heard and judgment was entered on September 23, 2020 in favour of the *exparte* applicant for Kshs 16,176,722.80 together with costs and interests at court rates. That the respondents have since failed to settle the said decretal sum hence the filing of the present application.
3. The application is not opposed.
4. I have considered the pleadings filed by the applicant. The main issue for determination is whether the order of mandamus sought against the respondents is available to the ex-parte applicant.
5. The principles that should guide this court in when dealing with the judicial review remedy of *mandamus*, which the ex-parte applicant is seeking was considered in the case of *Commission on Administrative Justice v Kenya Vision 2030 Delivery Board & 2 others* [2019] eKLR stated as follows:

“As observed by the judge and correctly so in our view, the principle that guides the High Court when dealing with the scope and efficacy of an order of mandamus was crystalized by the court in *Kenya National Examination Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 others* (supra) namely:

“The order of *mandamus* is of most extensive remedial nature and is in the 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 of 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 it may issue in cases where although there is an alternative remedy, yet the mode of redress is not convenient, beneficial and effectual.”

6. This position was reiterated in the English case of *R v Dudsbeath, ex parte, Meredith* [1950] 2 ALL ER 741 where it was stated as follows:

“It is important to remember that "*mandamus*" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it.”

7. It follows from the above authority that the remedy of mandamus will issue where there is a public duty to be performed by the respondents and where no other appropriate remedy is available to the applicant.

8. In this case, it is not in dispute that the ex-parte applicant filed a suit in Chuka CMCC No 43 of 2019 for recovery of sums due under the awarded tender No TNCG/39/RDS/2015-2016. The said suit proceeded and judgment was entered in favour of the ex-parte applicant for the sum of Kshs 20,061,274.23 which sum continues to attract interest at 12% p.a. from February 19, 2021 until payment in full. No appeal has been preferred against the said decision.

9. Section 21(1) of the *Government Proceedings Act* lays out the procedure for execution against the Government as follows:

“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.”

10. Section 21 (3) of the said Act goes further to state;

“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.”



11. From the above provision, it is clear that the execution of proceedings against a government or public authority should be done against the accounting officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the court against that body.
12. The ex-parte applicant has annexed copies of the notification of award, the completion certificate, the plaint, memorandum of appearance and defence, and the judgment arising in Chuka CMCC No 43 of 2019. The ex-parte applicant has also annexed a demand letter which constitutes sufficient evidence that the ex-parte applicant followed the laid down procedure in informing the respondents of the judgment of the court. There is therefore no reason why the respondents should not be ordered to settle the decretal amount.
13. The upshot of the foregoing, therefore, is that the ex-parte applicant has a judgment in its favour with respect to the decretal amount and costs. The ex-parte applicant has also followed the laid down procedure stated under section 21 of the Government Proceedings Act. As such, the respondents are duty bound to pay the debt already decreed by a competent court of law to be due and payable by them. Court orders are to be obeyed as no one is above the law. The respondents were given time to reach an agreement on how to pay the sum but there is no offer that has been forthcoming from them.
14. Accordingly, I find that the ex-parte applicant's notice of motion dated April 20, 2021 is merited. I allow the application and order that:-
  1. An order of *mandamus* shall issue against the respondents jointly and severally directing them to pay the *exparte* applicant Kshs 20,061,274.23 together with interests at 12% per annum from February 19, 2021 until payment in full. Costs to the applicant.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 23<sup>RD</sup> DAY OF MARCH 2023.**

**L.W. GITARI**

**JUDGE**

**23/3/2023**

Ruling has been read out in open court.

**L.W. GITARI**

**JUDGE**

**23/3/2023**

