



Republic v Principal Secretary in the Ministry of Interior and Co-ordination of National Government; Jilo (Exparte Applicant) (Judicial Review Miscellaneous Application E001 of 2022) [2023] KEHC 1862 (KLR) (16 March 2023) (Judgment)

Neutral citation: [2023] KEHC 1862 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

JUDICIAL REVIEW MISCELLANEOUS APPLICATION E001 OF 2022

EM MURIITHI, J

MARCH 16, 2023

IN THE MATTER OF ORDER 53 RULES 1 AND 2 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW IN THE NATURE OF MANDAMUS

BETWEEN

REPUBLIC APPLICANT

AND

PRINCIPAL SECRETARY IN THE MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT RESPONDENT

AND

ADAN GUYO JILO EXPARTE APPLICANT

JUDGMENT

1. The *ex parte* applicant has moved this court through a notice of motion filed on February 21, 2022 seeking, an order of Mandamus to compel the respondent to honour the judgment, decree and satisfaction of orders against the Government issued by the Honorable Court in Meru CMCC No 86 of 2016, and costs of the application.
2. The application is grounded on the fact that despite the notice in writing being served to the Honorable Attorney General on behalf of the respondent, the respondent has failed, ignored and/or refused to



honour the court orders. The application is further supported by the *ex parte* chambers summons together with the supporting affidavit dated 22/4/2021, copy of demand notice dated 8/6/2020, certificate of costs and decree, certificate of satisfaction of orders against the Government and the judgment delivered on 6/4/2017.

3. The *ex parte* applicant was awarded Ksh 750,000 as general damages, special damages of Ksh 6,111.20 and costs which were assessed at Ksh 158,436.20 by the trial court's judgment of 6/4/2017 in Meru CMCC No 86 of 2016. The certificate of costs, the decree and the certificate of satisfaction of Orders against the Government, were subsequently issued. On 8/6/2020, the *ex parte* applicant wrote a demand letter to the respondent demanding settlement of the decree, which the respondent has refused, ignored or neglected to satisfy to date, despite the *ex parte* applicant having complied fully with all the requirements and provisions of the [Government Proceedings Act](#). He is therefore seeking an order of *mandamus* to compel the respondent to fulfill the said decree.
4. The respondent's counsel opposed the application vide his grounds of opposition dated 7/6/2022 that, "The application herein is unmerited, misconceived, vexatious, bad in law and therefore an abuse of the process of the court; the decree sought to be obtained against is irregular as the Respondent was not served with the application for entry of judgment; this application is bad in law by dint of Order 5 rule 9 of the [Civil Procedure Rules](#) which outlines the mode of service on the Government; the application is misconceived and a non-starter; the Applicant has not demonstrated sufficient cause for grounds upon which the court can grant the orders sought; and in the circumstances and based on the foregoing reasons, the Notice of Motion Application dated February 21, 2022 is therefore devoid of any merit and the orders sought should not be granted."
5. The parties filed their respective submissions on 20/6/2022 and 12/7/2022.
6. The *ex parte* applicant submitted that despite being served with the certificate of costs, decree, certificate of Order against the Government and the demand notice, the respondent has not taken any steps towards paying the decretal sum, leaving him with no other means of execution but applying for an order of *mandamus*, and cites [Republic v Meru County Government & 2 others Ex parte Nice Rice Millers Limited](#) (2019) eKLR.
7. The respondent's counsel urges that service upon the respondent was not done in accordance with the provisions of Order 5 Rule 9 of the [Civil Procedure Rules](#). He urges that the decree sought to be obtained against is irregular because the respondent was not served with the application for entry of judgment, as required by section 21 of the [Government Proceedings Act](#). He urges the court to dismiss the application with costs, and cites [Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza](#) (2012) eKLR, [Republic v County Secretary Migori County Government & Another](#) (2019) eKLR and [Stephen Somek Takwenyi & Another v David Mbuthia Githare & Others](#) Nairobi (Milimani) HCCC No 363 of 2009 to fortify his submissions.

Analysis and Determination

8. Having critically analyzed the arguments and submissions made by the parties herein, the only issue for determination is whether the orders sought by the applicant should issue.
9. The applicant here specifically seeks an order of *mandamus* to compel the respondent to satisfy his decree. That decree was lawfully obtained in Meru CMCC No 86 of 2016 and it has not been challenged in any way. Therefore, the applicant is well within his rights to enforce payment of his legally obtained decree.



10. The difficulty in realizing payments for decretal sum from the government was admirably highlighted in *Republic v Attorney General & another Ex parte James Alfred Koroso* [2013] eKLR, by the court (Odunga J, as he then was) thus:

“In the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit.”

11. Section 21 of the *Government Proceedings Act* provides:

“(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.”

12. The applicant has exhibited the Certificate of satisfaction of orders against the Government in compliance with the provisions of section 21 of the *Government Proceedings Act*. The certificate of costs and the subsequent decree have also been availed.
13. Whilst the respondent contests the manner in which service in this matter was done, the applicant has exhibited a demand letter dated 8/6/2020, and duly received by the respondent’s counsel on 9/6/2020 showing that his counsel and that of the respondent were in constant communication ever since the judgment was entered. It is evident from that letter that the respondent’s counsel was aware of the existence of the decree herein and the need to settle the same.
14. The court finds that the applicant has proved that the respondent, who was under a statutory duty to fulfill the decree herein, blatantly failed to do so. Consequently, this court finds the applicant’s Notice of Motion dated February 21, 2022 to be merited, and it shall be allowed.

Orders

15. Accordingly, for the reasons set out above, the Court makes the following in orders:
 1. An order of Mandamus is hereby issued compelling the Respondent to pay to the Ex-parte applicant the entire decretal amount of Ksh 1,007,520 as set out in the Certificate for Satisfaction of Orders against the Government issued in Meru CMCCC No 86 of 2016.
 2. The Respondent shall pay to the *ex parte* applicant the costs of this application.
- 16 Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF MARCH, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S A. S. Riungu & Co. Advocates for the Applicant.

M/S Njeru Mugambi, Litigation Counsel for the Attorney General.

