



**Republic of Kenya v Officer in Charge of the Nairobi City County Government
Treasury; Katiku & another (Exparte) (the Administrators of the Estate
of Florence Mbula Ndambuki - Deceased) (Judicial Review Application
E046 of 2020) [2023] KEHC 3702 (KLR) (Judicial Review) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E046 OF 2020**

JM CHIGITI, J

MAY 2, 2023

BETWEEN

THE REPUBLIC OF KENYA APPLICANT

AND

**THE OFFICER IN CHARGE OF THE NAIROBI CITY COUNTY
GOVERNMENT TREASURY RESPONDENT**

AND

PETER MUTUKU KATIKU EXPARTE

DOMINIC MULULU NDAMBUKI EXPARTE

**THE ADMINISTRATORS OF THE ESTATE OF FLORENCE MBULA
NDAMBUKI - DECEASED**

RULING

Brief background

1. The brief background of the matter before this court is that in its order of 30th March, 2021 this Honorable Court (Ngaah J) granted the *ex parte* Applicant herein leave to file an application for an Order of *Mandamus* directed at the Respondent herein.
2. The matter culminated in Judgment dated 3rd February 2022 where the Court directed the following; -
 - i. The *ex parte* applicant's application dated 6th April 2021 is struck out for failing to comply with section 21 of the [Government Proceedings Act](#).



- ii. That the *ex parte* Applicants are at liberty to file a fresh application if they so desire provided they abide by the provisions of the [Government Proceedings Act](#), Cap 40.
 - iii. No orders as to costs.
3. Arising from this order is this fresh substantive motion which is dated 27th June 2022 seeking the following orders;
 - i. That an order of mandamus be and is hereby issued directed to the Officer in charge of the Nairobi City Council Government Treasury to pay forthwith the decretal amount in Nairobi CMCC No.1730 of 2008 of Kshs. 3,338,808.69/= plus interest thereon at 12% from the said date of 3rd July 2019 until payment in full.
 - ii. Costs of this application be provided for.
 4. The Application was supported by the grounds on its face, a statement of facts dated 27th June, 2022 and verified by a supporting affidavit sworn by Dominic Mululu Ndambuki.
 5. In the affidavit Mr. Mululu swears that he was one of the plaintiffs in Milimani CMCC NO.1730 of 2008, which was a claim for general and special damages arising out of an accident where his daughter Florence Mbula lost her life due to negligence on the part of Nairobi City County Government (defendant) previously referred to as City Council of Nairobi.
 6. It was his disposition that judgment was entered in their favor and as at 16th June, 2022 the amount owing was Kshs. 3,947,695.68/=. He deponed that the Decree and Certificate of Order against Government were served upon the Respondent on 30th May 2022 asking for payment annexed and marked as D.M.N.1.
 7. He further depones that the Respondent as the accounting officer of the County Government has totally refused and ignored settle the decree, costs and interests.

Analysis and determination:

8. Before an Order of *Mandamus* can issue against the Government the provisions of Section 21 of the [Government Proceedings Act](#) must be complied with which includes serving the concerned party with the Judgement, Decree and Certificate of Order against Government.
9. The Affidavit of Service dated 30th May 2022 produced before this Court is evidence of service of a Certificate of Order against Government upon the Respondent. The Applicant has complied with the provisions of Section 21 of the [Government Proceedings Act](#).
10. Respondent has to date has not entered appearance nor filed any form of response to the *ex parte* Applicant's application. It is safe to assume that it is not in dispute that judgment was entered in favour of the *ex parte* Applicants in Nairobi CMCC No.1730 of 2008 and that the Respondent has a public legal duty to ensure that the decretal sum is paid to the *ex parte* Applicants as awarded by the court which duty it has failed and or refused to discharge.
11. In the case of *Republic v The Commissioner of Lands & Another Ex-Parte Kitbinji Murugu M'agere*, Nairobi High Court Misc. Application No. 395 of 2012 the court which I agree with held that *Mandamus* is employed to enforce the performance of a public duty which is imperative, not optional or discretionary, with the authority concerned. In addition, that mandamus may be issued to enforce mandatory duty which may not necessarily be a statutory duty, but which has "a public element" which may take any forms.



12. In the case of *Republic v The Attorney General & Another ex parte James Alfred Koroso* [2013] eKLR the court held as follows;

“...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 realized. 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 judgments 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 in-actions of public officers.”

13. I am satisfied that the Applicant has proven his case.

Orders:

14. The Notice of Motion dated 27th June, 2022 is hereby allowed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MAY, 2023

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J. CHIGITI (SC)

JUDGE

