



**Republic v City Council of Nairobi now the County Government of Nairobi  
& 2 others; Mukunga (Exparte) (Judicial Review Miscellaneous Application  
E003 of 2023) [2023] KEHC 19026 (KLR) (Judicial Review) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19026 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E003 OF 2023**

**JM CHIGITI, J**

**JUNE 14, 2023**

**IN THE MATTER OF:**

**AN APPLICATION BY ANTHONY MBURU MUKUNGA FOR ORDER OF MANDAMUS**

**AND**

**ENFORCEMENT OF A DECREE OF THE CHIEF MAGISTRATES' COURT OF KENYA  
AT NAIROBI DATED THE 13TH JULY 2016 AND ISSUED BY THE HONOURABLE  
COURT ON THE 3RD OCTOBER, 2016 IN CIVIL SUIT NO. 6208 OF 2012 ANTONY  
MBURU MUKUNGA VERSUS NAIROBI CITY COUNTY AND THE CONSEQUENTIAL  
CERTIFICATE OF COSTS AGAINST THE COUNTY GOVERNMENT OF NAIROBI**

**AND**

**SECTIONS 8 AND 9 OF THE LAW REFORM ACT CHAPTER 26 OF THE LAWS OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CITY COUNCIL OF NAIROBI NOW THE COUNTY GOVERNMENT OF  
NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

**SECRETARY, COUNTY GOVERNMENT OF NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER, FINANCE/COUNTY TREASURER, NAIROBI CITY  
COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**ANTONY MBURU MUKUNGA ..... EXPARTE**



## RULING

### Brief background:

1. The ex-parte Applicant herein instituted Civil Suit No. 6208 of 2012 Antony Mburu Mukunga versus City Council of Nairobi, by way of Plaint against the 1st Respondent herein on the 17th October 2012 seeking special damages, general damages costs of suit and interest.
2. The Chief Magistrates Court at Nairobi delivered a judgment on the aforesaid suit on the 13th July, 2016 against the 1st Respondent in favour of the ex parte Applicant herein in the sum of Kshs. 1,225,500/= as special damages and Kshs. 700,000/= as general damages together with costs of the suit and interest at Court rates;
3. Thereafter, a decree and certificate of costs was issued by the Honourable Court on the 13<sup>th</sup> July, 2016 in the sum of Kshs. 2, 635,323.38/=-;
4. Pursuant thereto, the ex parte Applicant herein issued the Respondents with a notice of entry of judgment on the 15th July, 2016 and served the decree upon them on the 14th October, 2016. The Respondents have up to date never appealed against the said judgment and consequential decree and as such the same stands to date;
5. Despite numerous calls for settlement of the Decretal amount, the Respondents herein have up to date failed refused and/or neglected to honor the aforesaid judgment and pay the ex parte Applicant the Decretal sum together with costs and interests as ordered by the Honourable Court;

The foregoing has precipitated filing of the application before this Court is the Applicant's Notice of Motion dated 27<sup>th</sup> January 2023 brought under Order 53 Rules 3(1) of the Civil Procedure Rules of the Laws of Kenya.

6. The applicant seeks the following prayers;
  - i. That an Order Of Mandamus be issued to compel the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to pay to the Applicant the sum of Kshs. 1,925,500 plus costs of K.156,875.50 and interest totaling to. 2,478,455.88 /- in Civil Court Case No. 6208 of 2012 as set out in the Decree dated 13.7.2016.
  - ii. That the cost of this application be awarded to the Applicant.”
7. The Application is supported by a Verifying Affidavit of the Applicant sworn on even date. The Applicant did not file a Mandatory Statement of Facts.
8. The Court takes note that there is no response by the Respondents on record despite there being served.

### Analysis and determination:

9. Upon considered the evidence and the arguments advanced by the Ex parte Applicant herein I find that the issue for determination is whether the Applicant has satisfied the conditions precedent to warrant the orders of this court.
10. Section 21 of the [Government Proceedings Act](#) before receiving an Order of Mandamus. Section 21 of the 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.”

11. The Act under Section 21 (3) provides as follows;

“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 Court in the case of *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* [2012] eKLR held as follows;

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. 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.”

13. These statutory provisions have the effect of requiring the accounting officer for the appropriate government department to fulfill any judgments obtained against that agency even though the government is not subject to the typical legal mechanisms of enforcing judgments.

**Disposition:**

1. The Applicant has not complied with the requisite procedure under Section 21 of the Government Proceedings Act in that the Applicant did not file a Certificate of Order against the Government.
2. Further to this, The Applicant did not file a Statutory Statement of Fact as provided for under Order 53 or the Civil procedure rules.
3. These are not the kind of technicalities that can be cured by invoking Article 159 of The Constitution. The omissions are fatal.
4. In the circumstances, the Exparte Applicant has not proven his case.

**Order:**

The Application dated 27<sup>th</sup> January 2023 is hereby struck out with costs.

**DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF JUNE 2023**

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**J. CHIGITI (SC)**

**JUDGE**

