



**Republic v Secretary Garissa County & another; Ganuni Construction Limited (Exparte Applicant) (Judicial Review Miscellaneous Application E008 of 2022) [2023] KEHC 22629 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22629 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E008 OF 2022  
JN ONYIEGO, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE SECRETARY GARISSA COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**GARISSA COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GANUNI CONSTRUCTION LIMITED ..... EXPARTE APPLICANT**

**RULING**

1. The ex parte applicant herein, instituted these judicial review proceedings by way of a Notice of Motion dated June 14, 2022 seeking judicial review orders of *Mandamus* compelling the respondents to implement the judgment awarded in Garissa High Court Civil Case No. 2 of 2017 by payment of Kes. 13,208,570/- being the decretal amount awarded. The applicant also sought for the costs of the application to be borne by the respondent.
2. The application in a nutshell is premised on the fact that the applicant sued the 2<sup>nd</sup> respondent in Garissa High Court Civil Case No. 2 of 2017 which matter was concluded in his favour and that he is currently owed a total of Kes. 13,208,570/- being the award in the judgment, interest and costs as per the decree attached. That the respondents having participated in the proceedings in the lower court, knowledge of the court award, having been served with the decree and all other requisite documents, have refused to make good the ex-parte applicant's claim by implementing the judgment. He further averred that despite the respondents filing a notice to appeal against the said judgment, the same has not been prosecuted hence the application herein.



3. That the respondents have a legal duty to comply with the said judgment by settling the applicant's claim which duty they have abdicated and threaten to continue abdicating unless compelled by this court to comply.
4. The court directed parties to file their submissions to which Mr. Mugwe, learned counsel for the applicant submitted that save for the notice of appeal that the 2<sup>nd</sup> respondent allegedly filed, the same has not been prosecuted. That the amount demanded is due and payable by the 2<sup>nd</sup> respondent and the only way to remedy the same is by this court issuing the prayers sought herein. That the ex parte applicant having moved this court to compel the 2<sup>nd</sup> respondent to satisfy the judgment already decreed herein, it was in the best practice that this Honourable Court allows the said prayers. The ex parte applicant relied *inter alia* the holding in the case of *Republic v county Secretary, Machakos county government & another ex parte Veterans Pharmaceuticals Limited* (2019)eKLR and section 21 of the *Government Proceedings Act* which lays down the procedure of civil proceedings by or against the government or in proceedings in connection with any arbitration in which the government is a party.
5. The respondent on the other hand did not participate in the proceedings herein despite being served.
6. I have considered the application herein and the annexures thereto. It is clear that the applicant sought orders of mandamus against the 2<sup>nd</sup> respondent herein. It is trite that an order of mandamus is always issued so as to compel 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. (See *Republic v Kenya National Examinations Council exparte Gathenji and 9 others*, (1997) eKLR).
7. It is not in dispute that judgment was entered in favour of the applicant in Garissa High Court Civil Case No. 2 of 2017 and a decree issued which the respondents have failed to satisfy. As such, it is my view that the issue which this court ought to determine is whether the respondents are under a public duty and obligation to satisfy the said decree, and if so, whether the applicant is entitled to the reliefs sought.
8. The 2<sup>nd</sup> respondent, Garissa County Government, is one of the Counties established by article 6 of the *Constitution* and the First Schedule to the *Constitution*, and is constitutionally recognized as a distinct level of government by the said Article. [See *Republic v County Secretary, Nairobi City County & another Ex Parte Wachira Nderitu Ngugi & Co. Advocates* [2016] eKLR and *Josphat Gatheo Kibuchi v Kirinyaga County Council* [2015] eKLR]. Being a government, it therefore means that it has a duty to satisfy debts owed to people and which duty is public.
9. Section 44 of the County Government Act of 2012 establishes the office of the County Secretary who is secretary to the County Executive Committee, and is answerable for the operations of the County Executive, and whose functions include being head of the county public service. Section 103 of the *Public Finance Management Act* of 2012 also establishes the County Treasury comprising of the County Executive member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under the said section, the County Executive Committee Member for Finance is the head of Treasury hence responsible for finance matters in the County.
10. It is clear therefore that the respondents have a statutory and public duty to satisfy the decree issued by a competent court in favour of the ex parte applicant. They have a public and statutory duty bestowed on them by virtue of their roles and functions. Accordingly, they have a public duty to pay the decretal sum herein. However, they have failed to perform the said duty. There is no evidence of the decree subject of these proceedings having been satisfied or stayed. As such, the ex-parte applicant is entitled to execute the said decree. The government does not enjoy any special privileges.



11. The legal position is that, where decrees for the payment of money or costs has been issued against the Government in favour of a litigant, and the same remains unsatisfied, it 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](#). [See Republic –vs- Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) eKLR].
12. The only requirement which serves as a condition precedent to the satisfaction or enforcement of such decrees for money issued against the Government is found in Section 21(1) and (2) of the [Government Proceedings Act](#). Under the said provisions, the applicant is supposed to obtain a certificate of order from the court which issued the decree. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment or where 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. Once this requirement has been met and/ or complied with and the decree is not satisfied, the decree holder can then proceed to seek orders of mandamus.
13. I have perused the application herein and I note that indeed the applicant stated well all that is expected for this Honourable Court to issue the sought orders. In the same breadth, having perused the pleadings herein, I note that the applicant did not attach a certificate of order against the 2<sup>nd</sup> respondent for whatever reason.
14. In the obtaining circumstances, can this court satisfy itself that the applicant has complied with all the requirements as stated in section 21 of the [Government Proceedings Act](#) as already discussed above for this court to grant the orders sought? In my considered view, the answer is to the negative.
15. In view of the foregoing, it is my view that the applicant did not demonstrate that he is deserving of the relief sought in the notice of motion dated June 14, 2022.
16. As a consequence of the above, the only orders that are commendable to me are that the application dated June 14, 2022. is hereby struck out for want of merit with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2023**

.....

**J.N. ONYIEGO**

**JUDGE**

