



**Republic v County Government of Kisii & another; Multiline Motors (Kenya) Limited (Exparte)  
(Judicial Review E004 of 2021) [2024] KEHC 12113 (KLR) (8 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12113 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
JUDICIAL REVIEW E004 OF 2021  
TA ODERA, J  
OCTOBER 8, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF KISII ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF OFFICER FINANCE & ECONOMIC PLANNING COUNTY  
GOVERNMENT OF KISII ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MULTILINE MOTORS (KENYA) LIMITED ..... EXPARTE**

**JUDGMENT**

1. The ex-parte applicant herein Multiline Motors (Kenya) Limited filed the Notice of motion dated 17.12.21 (Pursuant to leave granted on 17.11.21) seeking:
  1. The Honourable court be pleased to grant an order of mandamus compelling the Chief Officer Finance and Economic Planning County Government of Kisii to pay to the applicant the sum of Kshs. 3,003,376.10/= being interest accrued following payment of the principal sum and costs in terms of certificate of costs issued against County Government of Kisii.
  2. Cost of the application
  3. The application is based on the annexed affidavit of Hitesh Patel the Director of the Exparte application dated 17.12.21 and the grounds that:
    1. The Government has immunity against execution and attachment as set in Section 21 (4) of the [Government Proceedings Act](#) (CAP 40).



2. That the Government includes the County Government as established under Article 176 of *the Constitution* of Kenya 2010 and defined under section 2 of the County Government Act of 2012.
  3. Section 21(1) of the *Government Proceedings Act* (CAP 40) states where an order is made against the government, upon application the court will issue a certificate of order in respect of the applicant to be paid sum detailed in the order.
  4. Section 21 (3) of the *Government Proceedings Act* (CAP 40) states that once the government is served with the certificate of order the accounting officer shall pay the person entitled the amount appearing on the certificate of Order.
  5. That having been served with the certificate of order, which has been ignored by the Respondents the only way to enforce this statutory duty is by way of an order mandamus which is sought herein.
  6. That unless this step is taken the County Government of Machakos will continue to deny the Applicant its fruits of justice.
2. Mr. Patel deponed that he is a Director of the ex parte applicant and that he swore the affidavit with the knowledge and authority of his co -directors as per the authority -HP -1 Also that the Ex-parte applicant filed Kisii High Court Civil suit no. 15 of 2017 (Multiline Motors (Kenya) Limited versus Kisii County Government claiming general damages unpaid sums of monies specifically Kshs. 11,462,068.95/= accrued intertest on the principal in the sum of Kshs. 12,203,941/= as per the plaint-HP-2. On 10.12.2018, Judgment was entered in favour of the Ex-parte applicant against the County in the Sum of Ksh 11,462,068.95/= being accrued interest from 21.2.2017, until payment in full together with costs assessed at Kshs, 360,000/= as per copy of the judgment -HP3. The plaintiff paid Kshs 11,998,000/= on 24.4.19 being principal amount plus costs as per statement of accounts-HP4. The 1<sup>st</sup> respondent refused and or ignored to pay the accrued interest for the period 21.2.2017 to 24.4.2019 which stands at Kshs 3,003, 376.10/=.
  3. He further deponed that the decree was issued on 27.2.2019 and served upon the 1<sup>st</sup> respondent on the 5<sup>th</sup> March, 2019 as per the copy of the decree which bears the receiving stamp of 1<sup>st</sup> respondent - HP 5. The applicant was later issued with certificate of order which was also served- HP 5. He deponed that he seeks orders to compel the 2<sup>nd</sup> respondent to perform his statutory duty under Section 21 (3) of *Government Proceedings Act*.
  4. The 1<sup>st</sup> and 2<sup>nd</sup> respondents entered appearance though the office of the Kisii County Attorney and they also filed grounds of opposition to wit:
    - a. The application is misconceived and unmeritorious at this moment and time.
    - b. The application does not meet the threshold warranting issuance of an order of mandamus,
    - c. The application seeks to contradict a clear provision of the law, separation of powers principal and is as such an abuse of the court process.
    - d. The application offends the provisions of the *Government Proceedings Act* against the respondents and thus the reliefs cannot issue.

The exparte applicant submitted that the issues for determination are;

    - i. whether the applicant entitled to the interest sought.



- ii. whether the applicant has adhered to the procedure under the [Government Proceedings Act](#).

on whether the applicants are entitled to the accrued interest claimed, the applicant submitted that it is entitled to the same since the principal was paid as per the decree leaving the accrued interest from 21.2.17 to 24.4.19 when the principal sum was paid. The case of republic vs County Secretary County Government of Meru and 2 others Exparte Andrew Wachira (2021) eKLR, Republic vs County Secretary Migori County government and another (2019) eKLR were cited.

The applicant also cited Susan Wayua vs Attorney General & Another (2019) eKLR.

The respondents did not file any submissions in support of their grounds of opposition.

5. On whether the [Government Proceedings Act](#) has complied with, the Ex parte applicant submitted that the procedure laid down in Section 21 of the Act was duly followed.

6. I have carefully considered the application and the law and the cited cases.

The issues for determination are as follows;

- a. whether the applicant entitled to the interest sought.
- b. whether the applicant has adhered to the procedure under the [Government Proceedings Act](#).  
whether the applicant entitled to the interest sought.
- c. whether the applicant is entitled to the writ of mandamus sought.

On whether the applicant is entitled to the interest sought, the ex parte applicant seeks interest on the principal sum of Kshs. 11,468,068.95/=. I have seen the decree herein dated 27.2.19. the same shows that the decretal sum was the principal sum herein above. Section 26 of the [Civil Procedure Act](#) provides for interest on money decrees to wit;



26.	<p style="text-align: center;">Interests</p> <table border="1" style="width: 100%;"> <tr> <td data-bbox="858 271 1123 1368" style="width: 20%; vertical-align: top;">(1)</td> <td data-bbox="1123 271 1390 1368">Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.</td> </tr> </table>	(1)	Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
(1)	Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.		

7. The decree herein is a money decree and though the respondents pleaded that the orders would violate the principle of separation of powers no submissions were filed to support this assertion. There was no appeal against the said decree and this being a money decree the applicant is entitled to interest in the principal sum from 27.2.17 to 24.4.24 as his money which he would have invested elsewhere was held up in the county for the said period. I will allow interest on the principal sum at 14 % from 27.2.2017 to 24.4.24 as prayed.
8. On whether the Ex parte applicants adhered to the provisions of Government Proceedings Act, the respondent objected to the application on the ground that it offended the provisions of the Government Proceedings Act. The Ex parte applicant submitted that it complied with the provisions of the said Act.



9. Section 21 of *Government Proceedings Act* which 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.”

Section 21 (3) of the said Act on the other hand provides:

“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 .....

10. It is thus clear that a decree holder against the Government must comply with provisions of section 21 of the *Government Proceedings Act*. I have seen the decree herein dated 27.2.19, the certificate of order against the Government dated 10.2.2020 and the demand letter dated 1.3.2019 addressed to the CEC finance and planning Kisii County Government. I am satisfied that that ex parte applicant satisfied the conditions set out in Section 21 of the *Government Proceedings Act*.
11. On whether the ex parte applicant is entitled to the writ of mandamus, the applicant sought “1. The Honourable court be pleased to grant an order of mandamus compelling the Chief Officer Finance and Economic Planning County Government of Kisii to pay to the applicant the sum of Kshs. 3,003,376.10/=being interest accrued following payment of the principal sum and costs in terms of certificate of costs issued against County Government of Kisii”.
12. The ex- parte applicant submitted that it is satisfied the conditions for granting of mandamus. The respondent pleaded that the applicant did not satisfy the conditions for granting of mandamus.
13. In the case of Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996, where the Court of Appeal cited with approval, Halsbury’s Law of England, 4<sup>th</sup> Edition. Vol. 7 p. 111 para 89 thus:

“The order of mandamus is of most extensive remedial nature and is in 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 in 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 no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."...These principles mean that an order of mandamus compels 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."

In the case of Republic v The Attorney General & Another ex parte James Alfred Koroso (2013) eKLR it was held;

"...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 babysitting 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."

14. A writ of mandamus is an order directed to a public body or a public officer to compel it or him to perform a public duty which it has neglected to perform. The exparte applicant herein is entitled to enjoy the fruits of the judgment against the respondents which includes interest on the principal sum. I allow the notice of motion dated 17.12.21 and I proceed to direct the respondents to satisfy the decree in form of the interest in the sum of Kshs. 3,003,376.10 /= as prayed.
15. The same be paid within 30 days from today.
16. I also award the applicant costs of these proceedings in the sum of Kshs. 70,000/=.

**T.A ODERA**

**JUDGE**

**8.10.24**

**DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:**

Miss Kipruto holding brief for Mr. Waudo for the exparte applicants

Ann Githinji holding brief for Mr. Mosota -for the respondents

Court Assistant - Oigo

Kipruto: We seek typed copies of the judgment

Order: Same be supplied.

**T.A ODERA**

**JUDGE**

**8.10.24**

