



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v County Government of Murang'a; Africert Limited (Exparte Applicant) (Judicial Review E005 of 2021) [2024] KEHC 14217 (KLR) (13 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14217 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
JUDICIAL REVIEW E005 OF 2021  
CW GITHUA, J  
NOVEMBER 13, 2024  
IN THE MATTER OF AN APPLICATION FOR LEAVE  
FOR JUDICIAL REVIEW ORDERS OF MANDAMUS  
IN THE MATTER OF THE CHIEF MAGISTRATES' COURT CIVIL SUIT NO. 302 OF 2016**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF MURANG'A ..... RESPONDENT**

**AND**

**AFRICERT LIMITED ..... EXPARTE APPLICANT**

**JUDGMENT**

1. Pursuant to leave granted by this court on 12<sup>th</sup> October 2021, the Ex-parte Applicant Africert Limited (hereinafter the Applicant) instituted Judicial review proceedings seeking an order of mandamus to compel the respondent, the County Government of Murang'a (hereinafter the respondent) to pay it Kshs 623,498 together with interest at court rates and assessed costs in satisfaction of the decree issued in its favour in Murang'a Chief Magistrate's Court Civil Suit No. 302 of 2016.
2. The applicant further prayed that once the order sought was issued, the respondent be ordered to comply with it within 14 days of service and in default, a Notice to show cause be issued against the County Secretary and County Chief Finance Officer/County Executive Committee member of the County Government to show cause why they should not be cited for contempt of court. The applicant also prayed that costs of the application be provided for.
3. The application is premised on the grounds stated on its face and the depositions made by Mr Anthony Nderitu, the Chief Executive of the applicant.



In sum, the applicant contends that it filed a civil suit against the respondent being Murang'a Civil Suit No. 302 of 2016 on 15<sup>th</sup> September 2016; that Judgment in the sum of Kshs 623,498 together with interest at court rates and assessed costs was entered in its favour against the respondent which remains unsatisfied to date; that no appeal has been filed against the Judgment and no orders staying execution of the decree had been issued.

4. The applicant further asserted that it served the decree and certificate of order against the respondent on 14<sup>th</sup> June 2021; that the respondent has a legal and public duty to satisfy the decree which it had refused or neglected to perform; that unless the respondent is compelled to satisfy the decree, the applicant will be denied the right of enjoying the fruits of its judgement.
5. The application was opposed through grounds of opposition dated 9<sup>th</sup> October, 2003. The respondent averred that the application was seeking too many orders at once and was thus defective; that the applicant had not demonstrated the true position of the matter since it had not disclosed that some payments had been made; that no decree had been attached. For the above reasons, the respondent invited this court to strike out the application.
6. The application was canvassed by way of written submissions which both parties duly filed and which I have duly considered. The applicant's submissions were filed on 20<sup>th</sup> March 2024 in response to those filed by the Respondent on 5<sup>th</sup> March 2024.
7. Having considered the application together with the affidavit sworn in support thereof and annexures thereto as well as the grounds of opposition filed by the respondents and the parties rival written submissions, I find that the only issue which emerges for my determination is whether or not the applicant had demonstrated that it was deserving of the order of mandamus as sought.
8. The circumstances under which the judicial review remedy of mandamus is issued were discussed by the Court of Appeal in the celebrated case of Republic V Kenya National Examination Council Ex-parte Gathenji & 8 others Civil Appeal No 234 of 1996 in which the Court of Appeal cited with approval, Haslibury's Law of England, 4<sup>th</sup> Edition Vol 7 paragraph 89 on page 111 and stated thus;

“The order of mandamus is of a most extensive remedial nature, and is, in form, 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.”

9. The [Government Proceedings Act](#) at Section 21 (4) prohibits execution and attachment of Government's property in execution of monetary decrees obtained by litigants against the Government or any of its Departments.

For clarity, Section 21 (4) of the [Government Proceedings Act](#) provides as follows:

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by



the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

10. Given the above provision, the only remedy that a litigant who has obtained a monetary decree against the Government has in order to realise fruits of his or her judgment is an order of mandamus. I fully associate myself with the sentiments expressed by Odunga J (as he then was) in Republic V The Hon. Attorney General & Another Exparte James Alfred Koroso (2023) eKLR when he expressed himself 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 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.....”

11. In this case, the respondent claimed in its grounds of opposition that the application was defective and ought to be struck out as the applicant failed to disclose the law on which it was anchored. With due respect, I do not find any substance in this claim since the application clearly states on its face that it was filed pursuant to leave granted by this court on 13<sup>th</sup> October 2021 though the date stated is erroneous as annexure marked “AN- 4” shows that the said leave was obtained on 12<sup>th</sup> October 2021. The statutory statement filed with the application for leave annexed as Exhibit AN-3 shows clearly that leave was sought under Order 53 Rule 2 of the Civil Procedure Rules. The leave granted directed the applicant to file the substantive motion which is the motion under consideration within 21 days of that date which was done.

There was therefore no need for the applicant to specifically cite on the face of the motion the law under which it was filed. Citing leave allowing it to file the motion was sufficient. I do not therefore find any merit in the respondent’s claim and the same is dismissed.

12. Turning to the merits of the application, it is not disputed that the applicant obtained a decree on 30<sup>th</sup> March 2021 against the respondent for a total sum of Kshs. 637,777 in the aforesaid Civil suit. And although the respondent claimed that it had made some payments towards liquidating the amount, no replying affidavit was filed on its behalf annexing evidence of the alleged payments.

13. There is evidence that the respondent was served with a certificate of order against the Government (read County Government) dated 2<sup>nd</sup> June 2021 which is annexed as Exhibit AN- 2. The certificate clearly tabulated the principal sum, interest accrued on it and costs awarded to the applicant.

The applicant has insisted that despite the aforesaid service, the respondent has failed to settle the decretal sum and in the absence of any evidence to prove that the respondent made any payments towards liquidation of the sum owing, I find as a fact that no payment has been made in partial satisfaction of the decree.

14. The respondent through its responsible officers disclosed as the County Secretary and County Chief Finance Officer had a statutory and public duty to satisfy decrees issued against the respondent. The respondent being a public entity was duty bound to comply with orders issued by a court of competent jurisdiction or if aggrieved, file an application for review to have the orders set aside or file an appeal to a higher court.



It is not contested that since the decree was issued in favour of the applicant in June 2021, no appeal has to date been filed to challenge the same.

15. From the material placed before me, I am satisfied that the applicant has demonstrated that the respondent through its responsible officers has failed to perform its public duty of satisfying the decree issued in its favour to its detriment. In the premises, I find that the respondent has effectively violated the applicant's constitutional right of access to justice which is guaranteed under Article 48 of the Constitution.
16. I once again concur with Odunga J ( as he then was ) in his holding in Republic V The Hon. Attorney General & Another Ex parte James Alfred Koroso ( Supra) in which he stated as follows;

“....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.

17. In view of all the foregoing reasons, I have come to the conclusion that the applicant has established that it was deserving of the order of mandamus as sought. Consequently, I allow the substantive motion and issue an order of mandamus compelling the respondent through its Accounting Officer to pay the applicant the sum of Kshs 637,777 with interest at court rates from 14<sup>th</sup> June 2021 when the decree was issued.

The payment to be made within the next 90 days and in default, unless there is an order to the contrary, a notice to show cause to issue against the Accounting Officer in the Department concerned to show cause why he or she should not be cited for contempt of court.

The applicant is also awarded costs of this application.

18. It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 13<sup>th</sup> day of November 2024.**

**HON. C.W. GITHUA**

**JUDGE**

**In the presence of:**

Mr. Ochieng for the Ex Parte Applicant

Mr. Kimwere for the respondent

Ms. Susan Waiganjo, Court Assistant

