



**Amaro v Kenya Revenue Authority (Application E115 of 2023)
[2024] KEHC 15738 (KLR) (Judicial Review) (15 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E115 OF 2023
J NGAAH, J
DECEMBER 15, 2024**

BETWEEN

HUSSEIN AILA AMARO APPLICANT

AND

THE KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The application before this Honourable Court is a motion application dated 20 April 2024 expressed to be brought under sections 8 & 9 of the *Law Reform Act*, cap. 26 and section 3A of the *Civil Procedure Act* cap. 21. The applicant has also invoked Order 51 Rule 1 and Order 53 Rule 3 of the Civil Procedure Rules, 2010. The applicant seeks the following orders:

- “1. The Honourable Court be pleased to certify this matter as urgent and service be dispensed with in the first instance.
2. That the Honourable court be pleased to grant the Applicant Judicial Review orders of mandamus to compel the Respondents to pay decretal sums of Kshs. 1,465,410 to the Applicant herein (4th Defendant in the former suit) High Court Civil suite (sic) No. 223 of 2011.
3. The Honourable Court be pleased to grant order of mandamus compelling the Respondent to pay the Applicant herein the sums of Kshs. 1,465,410 being the decretal sums in the HCCOM SUIT NO 223 OF 2011 without undue delay.



4. The cost of the Application for leave and this substantive Notice of Motion be provided for.”
2. The application is supported by a statutory statement dated 20 April 2023 and an affidavit verifying the facts relied upon sworn on even date by Hussein Aila Amaro.
3. According to the applicant, he purchased two motor vehicles described as “BMW 520 Diesel Chassis No. WBA NC32060CP72932” and “BMW Convertible Chassis No. WBANC320JR922 85” in a public auction conducted by the respondent at Nairobi Customs Stations, Jommo Kenyatta International Airport (JKIA) on 18 March 2014.
4. For reasons that are not quite apparent in the application, the applicant was unable to register the vehicles. The matter eventually ended in this Honourable Court, Commercial Division, as Civil, Suit No. 223 of 2011. A copy of the decree extracted from the judgment in that suit and exhibited to the applicant’s affidavit, shows that the plaintiff was one Bryan Yongo while Kenya Revenue Authority was named as the 1st defendant. There are two other defendants respectfully named as Ashraf Bayusuf and Salma Fernandes. That notwithstanding, the court decreed, among other things, that:
 - “ 3. That the 4th defendant shall recover the sums paid to the 1st defendant.”
5. It would, therefore, appear that although the title of the suit shows only three defendants, there were, in fact, four defendants including the applicant in the instant suit who, apparently, was the 4th defendant in the civil suit. It is that part of the decree entitling the applicant to recover certain sums from the respondent that the applicant seeks to enforce in this application.
6. Although the sum to be recovered by the applicant is not apparent on the face of the decree, the applicant states that the total sum due to him is Kshs. 1,496,410/=. As noted from the decree, this sum is to be recovered from the respondent. It is the applicant’s case that despite having been served with the decree and the certificate of order against government, the respondent has neglected, ignored or refused to settle the decree hence the instant application.
7. In a replying affidavit filed in response to the motion, the respondent does not appear to dispute the applicant’s claim. Mr. Ibrahim Mutua who has sworn the affidavit on behalf of the respondent deposes that he is an employee of the respondent and that vide a letter dated 16 August 2022, the respondent communicated its willingness to settle the amount of Kshs. 1,465,000/= being the purchase price of two (2) motor vehicles namely; BMW 520 Diesel Chassis No. WEA NC32060CP72932 and BMW Convertible Chassis No. WBANC320JR922.
8. No response was forthcoming from the applicant as a result of which the applicant made follow up emails dated 25 June, 2020 and 22 July, 2020 respectively. In the latest email, the respondent notified the applicant that the amount due to him could be forfeited to state if the applicant did not claim it within a reasonable time.
9. According to the respondent, the applicant ought to have filled and submitted a refund claim form known as “C34” to enable the respondent process the refund amount of Kshs. 1,465,000. The completed refund application together with the accompanying documents ought to have been presented at the station where the goods were cleared, and where auction took place.
10. The applicant was also required to accompany his application with a letter explaining why the refund is due and was also to attach a compliance certificate. According to Mr. Mutua, without these documents, the applicant cannot be refunded.



11. I opine that once it is admitted that the applicant is entitled to a refund of the amount he paid as a purchase price for the vehicles in what may appear to have been an aborted auction and, more importantly, in the wake of a decree from this Honourable Court entitling the applicant to recover the purchase price from the respondent, the respondent cannot subject the applicant to its own internal procedures before the refund is made. Doing so is tantamount to subjecting compliance of a valid decree from a court of competent jurisdiction to the respondent's own conditions. This is not permissible in law.
12. Be that as it may, there is evidence that the applicant complied with all the conditionalities set by the respondent. He has stated, and it is not controverted, that on 30 October 2023, he served the respondent with a duly filled request for refund form together with supporting documents which included receipts of payments, certificate of order against the government and the decree at the respondent's Legal Service Department located at Ushuru Pension Towers (formerly referred to as Corporate Business Centre), Block B, 4th floor on Elgon Road Upperhill, Nairobi next to Radisson Blu Hotel.
13. In a letter dated 16 November 2023, and delivered on the same day, the respondent claimed that the application for refund was incomplete and gave a full list of all the documents that were to be delivered. On 24 January 2023, the applicant delivered a complete application form for the refund together with all requisite documents at Customs Warehouse JKIA as advised by the respondent. The applicant states that he was asked to wait for processing by its Refund Section KRA at Times Towers.
14. Subsequently, on 31 January 2024 the applicant was informed by the respondent to amend the figures in order to reflect Kshs.1,465,660/= instead of the initial amount being Kshs.1,496,410/=. The applicant complied and amended the figures accordingly because he was informed that the difference was the processing fee which, according to the respondent, was not refundable.

Even after the applicant complied and amended the figures, the respondent has not settled the applicant's decree.
15. I am satisfied that, in these circumstances, the applicant has made out a case to compel the respondent, or its accounting officer, by an order of mandamus to pay the applicant. Considering that the judgment or decree and the certificate of order against the Government have neither been challenged nor stayed, the applicant is entitled to enforce payment of the sum due to him. A mandatory or mandamus order would be the proper order to issue in these circumstances.
16. The mandatory order is the appropriate order because although one of the ways through which decrees or orders are enforced is by execution or attachment, the Government is insulated from such process of execution or other similar process in enforcement of decrees or orders by section 21 of the [Government Proceedings Act](#), in particular, section 21(4) thereof. Section 21 of the Act reads as follows:
 21. Satisfaction of orders against the Government
 - (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.

- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
- (3) 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.
- (4) 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.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.

18. The respondent enjoys the same protection from execution given by this section by dint of section 3 (a) of the of The [Kenya Revenue Authority Act](#), cap. 469. This section reads as follows:

3. Establishment of Authority

The Authority shall be a body corporate with perpetual succession and common seal and shall, subject to this Act, be capable in its corporate name of—

- (a) suing and being sued:

Provided that any legal proceedings against the Authority arising from the performance of the functions or the exercise of any of the powers of the Authority under section 5 shall be deemed to be legal proceedings against the Government within the meaning of the [Government Proceedings Act](#) (Cap. 40);

18. In the face of this protection from execution or attachment, the only available route open to the applicant is to compel, by way of a mandamus order, the respondent's accounting officer to perform his statutory duty under section 21(3) of the Act and pay what has been decreed as due and owing to the applicant.



19. The order of mandamus is defined in Halsbury's Laws of England/JUDICIAL REVIEW (VOLUME 61 (2010) 5TH EDITION)/5. JUDICIAL REMEDIES/ (1) INTRODUCTION paragraph 689 as follows:

“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”

This is reiterated in paragraph 703 which states:

“A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”

18. And with particular reference to public officers who, like the respondent's accounting officer, fail to perform their duty, paragraph 706 is clear that a mandamus order may be issued to compel them to carry out the duty. It reads as follows:

“706. Public duties by government officials.

If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA; *R v London Transport Executive, ex p GLC* [1983] QB 484, [1983] 2 All ER 262, DC.)”

18. The applicant has demonstrated that he extracted a certificate of order against government and that the same was duly served upon the respondent. The respondent, as noted, has not denied having received the certificate of order against government. As matter of fact, the respondent admits owing the applicant the sum of Kshs. 1, 465, 000/= but the respondent's accounting officer has not discharged his obligation and paid the amount. A mandamus order would properly issue in such circumstances.
19. Accordingly, I allow the applicant's application to the extent that the order of mandamus is hereby granted compelling the respondent's accounting officer to pay the applicant the amount of Kshs. 1,465,000/= . The applicant will also have costs of the application and interest on the decretal sum at court rates. The interest will accrue from the date of judgment. It is so ordered.

SIGNED, DATED AND POSTED THE CTS ON 15 DECEMBER 2024

NGAAH JAIRUS

JUDGE

