



**Republic v Nairobi City County Government (Formerly City Council of Nairobi); Norkan Investments Limited (Exparte Applicant) (Environment and Land Case Judicial Review Application E003 of 2025) [2025] KEELC 4646 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4646 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E003 OF 2025**

**JG KEMEI, J**

**JUNE 19, 2025**

**IN THE MATTER OF AN APPLICATION BY NORKAN INVESTMENTS LIMITED FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010; ARTICLES 23, 47(1), (2) & 48**

**AND**

**IN THE MATTER OF THE JUDGMENT AND DECREE ISSUED BY THE ENVIRONMENT & LAND COURT OF KENYA AT NAIROBI IN ELC NO 270 OF 2009 – NORKAN INVESTMENTS LIMITED VS NAIROBI CITY COUNTY GOVERNMENT & DAVID MBERIA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT (FORMERLY CITY COUNCIL OF NAIROBI) ..... RESPONDENT**

**AND**

**NORKAN INVESTMENTS LIMITED ..... EXPARTE APPLICANT**

**JUDGMENT**

1. Pursuant to the leave of the Court issued on the 3/9/2024 Norkan Investment Limited herein described as the Exparte Applicant or simply the Applicant moved this Court by way of Judicial Review application and sought the following orders;



- a. An order of Judicial review in the nature of a mandamus to compel the Respondent's County Executive -Finance & Economic Planning as well as the Respondent's Chief Officer , Finance & Economic Planning to pay the Applicant the sum of Kshs 13,175,090/- being the taxed and certified costs awarded to the Applicant against the Respondent in ELC NO 270 of 2009 – Norkan Investments Limited Vs City Council of Nairobi & Anor together with interests at Court rates from the date of taxation until payment in full.
  - b. In default of thereof, a notice to show cause do issue against the Respondent's County Executive - Finance & Economic Planning as well as the Respondent's Chief Officer Finance, to show cause why they should not be cited for contempt.
  - c. The costs of and incidental to this application be borne by the Respondent.
2. The application is based on the grounds set out in the application together with the Verifying affidavit sworn on 29/8/24 by Trevor Kanja as well as the statutory statement of even date and all the annexures thereto.
  3. It was averred by the Applicant that the Respondent is a Government at the County Level established under Article 6, 176 and the first schedule of the Constitution and is the successor of the defunct City Council of Nairobi.
  4. That this Court entered judgement in ELC 270 OF 2009 against the Respondent restraining it from trespassing upon the applicant's property in addition to an award of costs in favour of the Applicant. Subsequently the Court taxed the applicant's party and party bill of costs at Ksh.13,175090.75/- and issued a certificate of taxation to the Applicant on 22/7/22. A certificate of order of costs against the Government was obtained on 11/9/23 certifying the total sums payable by the Respondent. Copies of the decrees, certificate of taxation and the certificate of order of costs were duly served upon the Respondents, its Advocates, County Attorney, its Chief Officer as well as the Hon Attorney General. Despite notice to pay and being acutely aware of its primary obligation to pay, the Applicant avers that the Respondent has failed, refused and or neglected to make the payment.
  5. It was further stated that the decree and the certificate of taxation have never been varied, set aside or suspended and the Respondent has never made any attempt to challenge their contents whether by way of an appeal, reference, review or otherwise. That as a result, the Applicant has suffered and continues to suffer economic loss occasioned by long and costly prosecution of the suit in ELC 270 of 2009. That the writ of mandamus is the only remedy available to the Applicant in respect to the issue of costs. That unless the Respondent is compelled with an order of this Honourable Court, the Respondent will continue in its defiance to satisfy the decree and the order for costs thus putting the court and its orders into ridicule. The Applicant was categorical that the Respondent's conduct in the circumstances is illegal, unjustifiable and an affront to the constitutional rights of the Applicant as far as access to justice is concerned.
  6. In response to the said motion, the Respondent vide the Replying affidavit sworn by Asha Abdi, the Chief Officer, Finance in the Respondents office averred that the Respondent is a public institution governed by the provisions of the Public Finance Management Act, 2012 (PFMA) in its mandate in the management of public finances and expenditure. That the said Act provides that any financial commitments or payments including settlement of Court decrees and debts by the Respondent must be subjected to the elaborate budgetary processes established by law, which steps she has set out in para 6 of her affidavit.
  7. That the non-payment of the decretal amount is not attributed to any wilful refusal or neglect on its part but rather the complexities and procedural requirements inherent in the public financial



management system. That despite the respondents' genuine intentions to settle the decretal amount the multiplicity of stakeholders' government departments and statutory requirements has caused delays in the payment process as it is the norm that public funds can only be expended in accordance with the law and the approved budgetary framework. That in any event steps have been initiated to include the applicants decretal sum in the respondents upcoming budgetary cycle. She added that the process required time and must adhere to statutory timelines and frameworks. She urged the Court to grant the Respondent sufficient time to comply with the decree noting that it is committed to satisfy the debt. The Court was further urged to consider public interest and statutory constraints under which the Respondent operates.

8. In his further affidavit sworn on the 9/5/25, Mr. Trevor Kanja noted that the Respondent acknowledges being indebted to the Applicant but purports to seek more time to settle the decretal amounts citing complexities of the procedures in making the payment. That said, the deponent sees no justification as to why the sum is not payable in the current financial (2024-2025) cycle given that the Respondent has all along been aware of its obligation to pay even before the costs were taxed in 2021. That the Respondent has had sufficient time to settle the decretal amount at least in the current financial year. That no evidence has been adduced to show the complexities faced by the Respondent in settling the sum due to the Applicant and the Respondent is only keen to evade its obligations to pay the applicant. That the PFMA Act and the County budgetary processes are to be complied by the Respondent for purposes of transparency and proper utilisation of funds and not a means to evade its debt obligations.
9. On 30/4/25 parties elected to canvass the motion by way of written submissions which I have read and considered. The Respondent failed to comply with the said directions of the court.
10. On whether the motion is meritorious, Counsel for the Applicant submitted that there is no other remedy available to the Applicant. The Applicant has complied with the elaborate procedure for grant of the prerogative orders of mandamus. That compliance with the certificate order for costs against the Respondent is not conditional on budgetary processes and the delay in the respondent's budgetary processes should not be visited upon the applicant.
11. The Applicant reiterated that the Government Proceedings Act expressly prohibits the Applicant from executing and attaching the assets of the Respondent in satisfaction of the order for costs against it. The case of Republic Vs Attorney General & Anor Exparte James Alfred Koroso ( 2013) eKLR which cited the English case of R vs Dudsheath, exparte Meredith (1950) 2 ALL ER 741 was referred to where the Court held as follows;

“In the present case the exparte Applicant has no other option of realizing 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 realized. Unless something is done he will be left babysitting his barren decree. The 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 judgments have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgment due to roadblocks placed on their paths by actions or inactions of public officer.”

12. Counsel further submitted that the Applicant has complied with the provisions of the Government Proceedings Act and urged the court to grant the orders in its favour. In addition, the Applicant submitted that compliance with the certificate of order for costs is not conditional to budgetary



processes of the Respondent. See the case of Republic Vs County Secretary Kericho County Government *ex parte* Gideon Waithaka Ngoko (2021) eKLR. That it has not been shown how compliance with the orders of costs prevents the Respondent from complying with the law and its budgetary processes. The Court was urged to allow the motion.

### **Analysis and Determination**

13. Having considered the application, the respondent's response and the written submissions the key issue for determination is whether the motion is merited.
14. Perhaps it is important to scope the constitutional and statutory underpinnings of the orders of judicial review with specific emphasis to the order of mandamus as sought in this motion. Under Article 47 of *the Constitution* of Kenya every person has the right to administrative action that is expeditious efficient lawful reasonable and procedurally fair. This Court is empowered under Article 23 of *the Constitution* of Kenya to grant reliefs including an order of judicial review. The Court is further guided by the provisions of Section 7 - 11 of the Fair Administrative Actions Act.
15. In the case of Kenya National Examination Council Vs Republic *Ex parte* Geoffrey Gathenji Njoroge & 9 Others (1997)eKLR the Court stated that;

“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.”

16. In simple terms, a writ of mandamus is a Court order directing a public official or entity to perform a mandatory duty. It's a "we command" order, essentially compelling an official or body to fulfill a legal obligation that they have neglected or refused to perform. To succeed in seeking orders of mandamus an Applicant has to demonstrate that; That you have a clear right to relief; That there is an undisputed duty on the Respondent to comply; That there is no adequate remedy at law to satisfy the applicant; That you asked the Respondent to act first and that they have refused failed and or neglected to do so.
17. It is trite that the order of mandamus will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. See the case of Republic vs. Attorney General & Another *ex parte* Ongata Works Limited [2016] eKLR.
18. In the case of Republic Vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security *Ex parte* Fredrick Manoah Egunza [2012] eKLR the Court stated 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.”

19. In this case it is not been disputed that the judgment in ELC 270 of 2009 was entered in favour of the Applicant. The costs were taxed at Kshs 13,175,090/49/- and a certificate of costs against the Government was obtained and thereafter the same was served upon the Respondent. The Court is satisfied that the Respondent is aware of the demand and the same remains unsatisfied and due from the Respondent.

20. The Respondent is the County Government of Nairobi created under the provisions of Article 176 of *the Constitution* of Kenya which provides as follows;

176.

- (1) There shall be a county government for each county, consisting of a county assembly and a county executive. (2) Every county government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so.

21. Section 21 of the *Government Proceedings Act* which states as follows:

- (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.”

22. In the case of *Republic Vs Permanent Secretary office of the President Ministry Internal Security & Another Exparte Nassir Mwandihhi (2014) eKLR*, the Court while dealing with a similar case stated as follows;

“It must be remembered that an application for an order of mandamus seeking an order compelling the Government to satisfy a decree is a very elaborate procedure. Before the Court issues such an order, there must be proof that the provisions of the *Government Proceedings Act* have been complied with respect to issuance of certificate of costs and certificate of order against the Government. After the issuance of the aforesaid documents, just like in any application for mandamus, there must be a demand for payment made by or on behalf of the decree holder to the relevant department seeking payment since in an application for an order of mandamus, the law as a general rule requires a demand by the applicant for action and refusal as a prerequisite to the granting of an order, though there are exceptions to the rule. The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court”.

22. I have perused the pleadings of the Applicant and the Court is satisfied that the necessary notices under Section 21 of the *Government Proceedings Act* have been complied with by the Applicant.
23. The Respondent has given a myriad of reasons why the debt has not been satisfied, some of which are that the Respondent is governed by the PFMA Act, elaborate budgetary processes, and the need to comply with the law. While it is the prudent thing to comply with the PFMA Act and budgetary procedures of the Respondent, all in all, the Respondent does not deny either being served with the certificate of costs nor that the sum is due and payable. The conclusion therefore is that the certificate of costs is not opposed.
24. The provisions of Section 21 of the *Government Proceedings Act* states that once the certificate against the Respondent has been served upon the Honourable Attorney General, the Act 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 interest lawfully accruing thereon.
25. It must be noted that the above provisions are not subject to the budgetary process or complexities in the respondent’s financial systems.
26. I therefore find that the motion is merited. I enter judgement as follows;
- a. An order of Judicial review in the nature of a mandamus to compel the Respondent’s County Executive Finance & Economic Planning as well as the Respondent’s Chief Officer , Finance & Economic Planning to pay the Applicant the sum of Kshs 13,175,090/- being the taxed and certified costs awarded to the Applicant against the Respondent in ELC NO 270 of 2009 – *Norkan Investments Limited Vs City Council of Nairobi & Anor* together with interests at Court rates from the date of taxation until payment in full be and is hereby granted.
  - b. In default of (a) thereof, a notice to show cause do issue against the respondent’s County Executive Finance & Economic Planning as well as the respondent’s Chief Officer Finance, to show cause why they should not be cited for contempt.



c. The costs of and incidental to this application be borne by the Respondent.

22. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF JUNE, 2025  
VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the Presence of;

Mr. Orwenyo for the Exparte Applicant

Mr. Odour for the Respondent

C/A – Ms. Yvette Njoroge

