



Kokwo Multi-Purpose Co-operative Society v Principal Secretary Ministry of Land, Housing and Urban Development & another (Environment and Land Judicial Review Case 1B of 2024) [2025] KEELC 4674 (KLR) (18 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4674 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1B OF 2024**

CK NZILI, J

JUNE 18, 2025

BETWEEN

**KOKWO MULTI-PURPOSE CO-OPERATIVE SOCIETY EXPARTE
APPLICANT**

AND

**THE PRINCIPAL SECRETARY MINISTRY OF LAND, HOUSING AND URBAN
DEVELOPMENT 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT**

JUDGMENT

1. Through a Notice of Motion dated 5/2/2025, the court is asked to grant an order of mandamus, compelling the respondents to settle the decree of the court directing the respondents to pay Kshs.7,896,644/=, with interest at 14% per annum with effect from May 2006, as issued in Kitale High Court Petition No. 14 of 2013. The application is supported by grounds of opposition on its face, the statutory statement of facts dated 14/11/2023, and a verifying affidavit sworn by Francis Kotii on 14/11/2023.
2. The application is also supported by a further affidavit sworn on 20/3/2025 and filed on 7/4/2025, attaching several documents. The same was filed without leave of court. It shall, therefore, not be considered in this judgment.
3. The exparte applicant states on ground C.20 of the statutory statement of facts that after the petition dated 5/9/2013 was allowed on 1/10/2015, the respondents failed to honor the decree for the refund of Kshs. 7,896,644/= with interest at 14% with effect from May 2006. Further, the exparte applicant states that a decree was extracted and served on 29/10/2015 and 18/11/2015 upon the 1st and 2nd respondents, in which the former acknowledged receipt by a letter dated 20/11/2015.



4. Accordingly, the exparte applicant states that a certificate of order dated 25/8/2023 was served upon the respondents on 31/8/2023 and 11/9/2023. Despite service upon the respondents for both the decree and the certificate of order, the exparte applicant states that the respondents have neglected or ignored to satisfy the decree, hence this application.
5. Further, the exparte applicant through the supporting affidavit has annexed a copy of the petition, memorandum of appearance by the respondents, replying affidavit, submissions, judgment, decree, forwarding letter dated 21/10/2015 for the decree, letter dated 20/11/2025, certificate of order dated 25/8/2023, warrants of attachment issued on 21/3/2023 for Kshs.26,397,205/= as annexures marked FK-(1)-(11), respectively.
6. The notice of motion is opposed by the respondents through grounds of opposition dated 30/10/2024. It is alleged that there is no evidence to support the applicant's allegation that the respondents are unwilling or have refused to satisfy the certificate of order of costs.
7. The exparte applicant relies on written submissions dated 26/3/2025. On jurisdiction, the exparte applicant submits that this court can grant prerogative reliefs under Section 13(7) of the *Environment and Land Court Act*. Reliance is placed on Republic -vs- County Government of Nairobi & Other; Exparte Kingpost Ltd [2021] eKLR and Kenya National Examination Council -vs- Republic; Exparte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR). The exparte applicant submits that annexures EL1-(12) shows all efforts have been made to serve the respondents with the decree and the certificate of order which they have not satisfied, despite having been aware or participated in the earlier petition. The exparte applicant submits that the decree has a lifespan of 12 years and that Alternative Dispute Resolution has not helped to settle the matter.
8. On delay to file the application, the exparte applicant submits that it has not been inordinate, going by the extra efforts made to implore the respondents to settle the decree. Reliance is placed on Joseph Muriithi Nyaga -vs- Embu County Government [2021] eKLR, Mirigo & Others -vs- Ministry of Lands & 4 Others Civil Appeal 277 of 2011[2014] KECA 881 [KLR]. The exparte applicant submits that they have complied with Section 21(1) and (2) of the *Government Proceedings Act*, hence the only option remaining was to apply to this court. Reliance is placed on Republic -vs- Attorney General & Another; *Exparte James Alfred Koroso Nairobi HC JR Misc. Application No. 44 of 2012*.
9. Section 21(1) of the *Government Proceedings Act* lays down the procedure for the execution of any decree against the government. It provides that a certificate of order be served upon the accounting officer for the government department concerned. In Republic -vs- Permanent Secretary Office Of The President Ministry Of Internal Security & another; Ex-Parte Nassir Mwandihhi [2014] KEHC 6027 (KLR), the court said that an application for mandamus seeking to compel the government to satisfy a decree is an elaborate procedure such that before such an order is issued there must be proof that Section 21 of the *Government Proceedings Act* has been complied with, concerning the issuance of a certificate of costs and a certificate of order against the government, so that there is adequate notice to the government to make arrangements to meet its statutory obligations to satisfy court decrees or orders.
10. In Republic -vs- Permanent Secretary Ministry of State for Provincial Administration & Internal Security exparte Fredrick Manoah Egunza, Nairobi HC Misc. Appl. No. 13 of 2012, the court observed that only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is in, Section 21(3) thereof imposes a statutory duty on the accounting officer concerned to pay the sum specified in the said order to the person entitled or his advocate together with any interest lawfully accrued thereon.



11. Without the service, the court said that the duty does not accrue or crystallize. In *Otinga -vs- Cabinet Secretary Ministry of Education & Others (Civil Appeal E525 of 2023)* [2025] KECA 460 [KLR] (7th March 2025) (Judgment), the court cited *Republic -vs- KNEC exparte Gathenji* (supra), that an order of mandamus will issue to compel the performance of a duty imposed on a person by a statute where such person has failed to perform a duty to the detriment of a party who has the legal right to expect the duty to be performed.
12. In this application, there is no dispute that a judgment was issued by this court on 1/10/2015, and an order was made for a refund of Kshs.7,896,644/= with interest at 14% per annum, with effect in 2006. A decree dated 19/10/2015 was issued in favor of the exparte applicant. There is no evidence from the respondents that the said decree or judgment has been reviewed, set aside, or vacated. Annexures marked FK-(8) and (9), show that the respondents received the decree on 20/10/2015.
13. A certificate of order against the government pursuant to Order 29 Rule 3 of the Civil Procedure Rules, was issued on 25/8/2023 and was received by the Principal Secretary Ministry of Lands, Public Works Housing and National Planning on 31/8/2023 as per annexure marked FK-(10).
14. In this application, the respondents have not told the court why a lawful decree in which they were the judgment debtors has not been honored for the last 10 years. It is trite law that a decree or order may expire by effluxion of time that is 12 years. In my considered view, therefore, I find that the reliefs sought are merited. Once the certificate of order was served upon the Permanent Secretary of the 1st respondent, a statutory obligation was invoked to settle the decree or order that it has failed to do.
15. The upshot is, I issue an order compelling the Accounting Officer of the 1st respondent to satisfy the decree or certificate of order within 30 days, from the date hereof. In default of which a warrant of arrest to issue. Costs to the exparte applicant.
16. Orders accordingly.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF JUNE, 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Olili for the applicant present

Kutei for Odeyo for Attorney General present

