



**BM Mung'ata & Company Advocates v County Government of  
Machakos (Judicial Review Miscellaneous Application E020 of 2024)  
[2025] KEHC 13606 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13606 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E020 OF 2024  
RC RUTTO, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**BM MUNG'ATA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF MACHAKOS ..... RESPONDENT**

**JUDGMENT**

1. Before this Court for determination is a Notice of Motion dated 24<sup>th</sup> December 2024, brought pursuant to leave earlier granted by the Court on 5<sup>th</sup> February 2025. The application is anchored on Sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules.
2. The ex parte applicant, B.M. Mung'ata & Company Advocates, seeks an order of mandamus compelling the Respondent to satisfy the decretal amounts in the following matters:
  - a. Kshs.3,091,891/= being the outstanding decretal sum in Machakos High Court Misc. Application No. 125 of 2020, arising from Machakos High Court Constitutional Petition No. 19 of 2018;
  - b. Kshs.1,357,258/= being the outstanding decretal sum in Machakos High Court Misc. Application No. 112 of 2020, arising from Machakos High Court Constitutional Petition No. 19 of 2019;
  - c. Kshs.682,176.67/= being the outstanding decretal sum in Machakos High Court Misc. Application No. 108 of 2020, arising from Machakos High Court Constitutional Petition No. 15 of 2017;



- d. Kshs.484,760/= being the outstanding decretal sum in Machakos High Court Misc. Application No. 121 of 2020, arising from Machakos High Court Constitutional Petition No. 12 of 2017; and
- e. Kshs.422,950/= being the outstanding decretal sum in Machakos High Court Misc. Application No. 5 of 2020, arising from Machakos High Court Judicial Review Application No. 69 of 2019.

**The Applicant also prays for costs of this application.**

3. The factual background is not in dispute. The decrees were issued in the respective matters on various dates between November 2022 and March 2024 as follows; In Machakos High Court Misc. Application No. 125 of 2020, the decretal sum as per the decree dated 7<sup>th</sup> November 2022 against the Respondent is Kshs.3,091,891/=. In Machakos Misc. Application No. 112 of 2020, the decretal sum as per the decree dated 5<sup>th</sup> March 2024 is Kshs.1,357,258/=. In Machakos Misc. Application No. 108 of 2020, the decretal sum as per the decree dated 22<sup>nd</sup> March 2023 is Kshs.682,176.67. In Machakos Misc. Application No. 121 of 2020, the decretal sum as per the decree dated 7<sup>th</sup> November 2022 is Kshs.484,760/=. Lastly, in Machakos Misc. Application No. 5 of 2020, the decretal sum as per the decree dated 16<sup>th</sup> March 2023 is Kshs.422,950/=.
4. The Applicant contends that, despite service of the decrees and repeated demands for payment, the Respondent has declined and/or neglected to settle the amounts due.
5. The Applicant urges this Court to grant the orders sought.
6. It is noteworthy that this matter was mentioned severally. However, the Respondent despite attending court and being granted leave to file their response failed to do so. The matter was eventually fixed for hearing by consent. When the application came up for hearing on 16<sup>th</sup> June 2025, the Respondent had still not filed any response. As such the application proceeded as unopposed.

**Analysis and Determination**

7. Having considered the application, the supporting affidavit, annexures, and applicable law, the sole issue for determination is whether the Applicant is entitled to the relief sought.
8. The law governing the grant of the order of mandamus is well settled. In *Republic v Attorney General & Another Ex parte James Alfred Koroso* [2013] eKLR, the Court held that where a judgment has been obtained against the Government, and the Government fails to pay the decretal sum, an aggrieved party is entitled to seek an order of mandamus to compel the accounting officer to pay. The government cannot evade its legal obligations under the guise of internal financial constraints. The Court in that case further emphasized as follows;
 

“It is the respondents’ public duty to satisfy the applicant’s decree and failure to do so attracts the court’s discretion to issue an order of mandamus commanding them to do so....”
9. Similarly, in *Republic v Kenya National Examinations Council ex parte Gathengi & 8 Others* Civil Appeal No 234 of 1996. The Court of Appeal cited, with approval, Halsbury’s Law of England, 4th Edn. Vol. 7 p. 111 para 89 which defines mandamus as:

“The order of mandamus is of 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."

10. The requirements for an order of mandamus were further explained in *Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR as follows:

"Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. vs. Canada (Attorney General)*, and, was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*. The eight factors that must be present for the writ to issue are:-

- (i) There must be a public legal duty to act;
- (ii) The duty must be owed to the Applicants;
- (iii) There must be a clear right to the performance of that duty, meaning that:
  - a. The Applicants have satisfied all conditions precedent; and
  - b. There must have been:
    - i. A prior demand for performance;
    - ii. A reasonable time to comply with the demand, unless there was outright refusal; and
    - iii. An express refusal, or an implied refusal through unreasonable delay;
    - iv. No other adequate remedy is available to the Applicants;
    - v. The Order sought must be of some practical value or effect;
    - vi. There is no equitable bar to the relief sought;
    - vii. On a balance of convenience, mandamus should lie

10. In the instant case, the applicant has satisfied all conditions precedent to the grant of the order:

- a. A valid decree has been obtained against the County Government which has been annexed to the application.
- b. They were served upon the Respondent
- d. There is a demand letter 2<sup>nd</sup> May 2023 demanding settlement of the monies in the several decrees and a reminder letter dated 12<sup>th</sup> February 2024. There is consensus that the money remains unpaid.

10. In the circumstances and having considered all relevant material in the application, I find no reason why I should decline to enter judgment in favour of the Applicant herein as prayed. The Respondent has failed to discharge its public duty to satisfy the decrees, and the Applicant has no other adequate remedy.



11. Accordingly, I hereby allow the application by the ex parte applicant and grant the orders sought in the substantive application dated 24<sup>th</sup> December 2024. I award the applicant costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....for Applicant

.....for Respondent

Selina Court Assistant

