

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC JR. NO. E006 OF 2025**

**IN THE MATTER OF: AN APPLICATION BY CHRIS**  
**EKUTAN ERUKUDI TO APPLY FOR JUDICIAL REVIEW**  
**BY WAY OF AN ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF: SECTION 21 OF THE**  
**GOVERNMENT PROCEEDINGS ACT (CHAPTER 40 OF**  
**THE LAWS OF KENYA)**

**AND**

**IN THE MATTER OF: ORDER 52 OF THE CIVIL**  
**PROCEDURE RULES 2010, CIVIL PROCEDURE ACT**  
**CHAPTER 21 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE LAW**  
**REFORM ACT CAP 26, LAWS OF KENYA**

**AND**

**IN THE MATTER OF: ENFORCEMENT AND**  
**REALIZATION OF THE CERTIFICATE OF ORDER FOR**  
**COSTS AND CERTIFICATE OF ORDER AGAINST**  
**COUNTY GOVERNMENT OF TURKANA**

**BETWEEN**

**REPUBLIC-----**

**-----APPLICANT**

**VERSUS**

**THE CHIEF FINANCE OFFICER**

**COUNTY GOVERNMENT OF TURKANA-----1<sup>ST</sup>  
RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE  
MEMBER FOR FINANCE  
COUNTY GOVERNMENT OF TURKANA-----2<sup>ND</sup>  
RESPONDENT**

**COUNTY SECRETARY  
COUNTY GOVERNMENT OF TURKANA-----3<sup>RD</sup>  
RESPONDENT**

**AND  
EX-PARTE APPLICANT-----CHRIS  
EKUTAN ERUKUDI**

## **JUDGMENT**

- 1.** Before the court is a notice of motion dated **19/6/2025**. It seeks an order of mandamus directed at the respondents, compelling them to comply with the decree in Kitale **ELC No. 123 of 2017, Chris Ekutan Erukudi -vs- County Government of Turkana.**
- 2.** The application is supported by grounds on its face, a statutory statement of facts filed on **18/6/2025** and a supporting affidavit, attaching the judgment, decree, certificate of order for costs, and certificate of order against the County Government of Turkana,

which the judgment debtor has refused, failed, or neglected to satisfy.

3. The exparte applicant avers that execution against the judgment debtor under the Government Proceedings Act cannot occur directly. The exparte applicant deposes that the respondents are under a statutory and constitutional duty to settle all lawful debts once decreed by the court.
4. Further, the exparte applicant deposes that it is in the interest of justice and good governance that the respondents be compelled to comply with the court's decision and settle the decretal amount without further delay.
5. The application is opposed by the respondents, through a replying affidavit sworn by Chris Locheria on **29/8/2025**. He avers that the exparte applicant is trying to execute his judgment against the 3<sup>rd</sup> respondent, unprocedurally, since execution against the government is governed by the Government Proceedings Act.
6. The respondents aver that they are not to blame for the delay in settling the judgment debt since the judgment was entered on **30/7/2019** and the decree holder has failed to execute the same according to

the laid down procedure, **6** years down the line. Again, the respondents aver that the ex parte applicant failed to serve the requisite documents on their counsel on record.

- 7.** Further, the respondents aver that the suit is premature and contrary to **Section 21** of the Government Proceedings Act and **Order 29 Rule 1** of the Civil Procedure Amendment Rules **2020**.
- 8.** In written submissions dated **18/8/2025**, the ex parte applicant submits that the respondents are public officers within the meaning of **Article 260** of the Constitution and are responsible for the management and expenditure of county funds under **Sections 103, 104, 148, and 149** of the Public Finance Management Act and **Section 21(3) and (4)** of the Government Proceedings Act. They are also under a statutory duty to settle lawful debts of the county government once decreed by a court and certified by the issuance of a certificate of Order. Reliance is placed on **Republic -vs- County Secretary Nairobi City County and 3 others ex parte Koceyo Advocate (2020), Republic -vs- County Secretary, Trans Nzoia County Government & Another, Ex Parte Veteran Pharmaceuticals**

**Limited (2019) eKLR eKLR** and **Soloh Worldwide Inter-Enterprises -vs- County Secretary Nairobi County & another (2016) eKLR** on who the proper accounting officers are.

9. The ex parte applicant further submits that **Section 21 (4)** of the Government Proceedings Act expressly bars execution against government property, leaving *mandamus* as the only available legal avenue to enforce the valid and unsatisfied judgment and taxed costs in **Kitale ELC No. 123 of 2017**. He relies on **Republic -vs- Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another (2018) eKLR** and **Republic -vs- Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996**, where the Court of Appeal cited with approval, *Halsbury's Law of England, 4<sup>th</sup> Edition. Vol. 7 pg. 111 para 89*, on the circumstances under which judicial review orders of *mandamus* are issued.
10. Further, the ex parte applicant submits that the judgment in **Kitale ELC No. 123 of 2017** is valid, unvaried, and enforceable, and the respondents' continued failure, neglect, or refusal to pay the decretal sum and taxed costs amounts to a clear

breach of their statutory duty. The continued non-compliance by the respondents prejudices the exparte applicant's right to enjoy the fruits of his judgment, necessitating the intervention of this court through an order of mandamus. Reliance is placed on **Republic -vs- Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another (2018) eKLR and Republic -vs- Town Clerk of Webuye County Council & another (2014) eKLR.**

- 11.** On the other hand, the respondents rely on written submissions dated **29/8/2025**. They submit that execution proceedings against the Government should satisfy the statutory proceedings under **Section 21** of the Government Proceedings Act, 2022, and **Order 23 Rule 1** as read with **Order 29 Rule (2) (c)** of the Civil Procedure (Amendment) Rules, 2020, that execution under the Civil Procedure Rules is barred in so far as the Government is concerned.
- 12.** Further, the respondents relying on **Five Star Agencies Limited & another -vs- National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023 (Consolidated)) 120241 KECA 439**

**(KLR)** submit that the exparte applicant failed, refused and/or neglected to comply with the mandatory procedure of execution against the 3<sup>rd</sup> respondent, contrary to the dictates of the Government Proceedings Act by serving the 3<sup>rd</sup> respondent with the decree and the **21** days' notice as required, before filing the instant suit.

- 13.** What the exparte applicant seeks is an order of *mandamus* to compel the respondents to satisfy a certificate of costs and an order issued on **14/1/2020 and 15/11/2022**, which they have violated to satisfy. **Section 21** of the Government Proceedings Act, **Cap 40** Laws of Kenya, provides that the judgment debtors are statutorily required to obey all orders of this court.
- 14.** The exparte applicant in his affidavit has exhibited various documents, among them the judgment, decree, certificate of order, and stated costs as annexures thereto.
- 15.** An order of *mandamus* is issued to compel performance of a public duty or a duty imposed by statute when there has been a failure to perform such a duty to the detriment of an aggrieved party.

- 16.** In **Republic -vs- Town Clerk Kisumu Municipality Ex parte A. African Engineering Consultants [2007] 2 EA 441**, the court observed that an order of *mandamus* may issue to enable a local authority to honour their debt, obligation as a matter of statutory duty.
- 17.** In **Shah -vs- Attorney General [1970] EA 543**, the court said that *mandamus* is a prerogative order issued to compel performance of a duty when an obligation arises out of the official duties affecting the rights of an individual.
- 18.** In **Republic -vs- Attorney General & Another Ex parte James Alfred Kosoro (2013) eKLR**, the court said that the order of *mandamus* was applicable to enable the ex parte applicant to realise the fruits of his judgment since he was barred from executing against the government. The court said that under **Article 48** of the Constitution, access to justice cannot be said to have been ensured if those persons in whose favour judgments have been decreed by competent courts cannot enjoy the fruits of their judgment, due to roadblocks placed on their paths by actions or inactions of public officers.

**19.** The exparte applicant has a lawful judgment and decree which has not been set aside or appealed against. He is now seeking relief to compel the officials of the County Government of Turkana, who are the accounting officers, to do what the court has directed them to do.

**20.** The court finds no justification for the respondents' failure to execute their statutory duty as required of them under the County Government Act and the Public Finance Management Act.

**21.** The upshot is I grant the following order:

**1)An order of mandamus is hereby issued directed at the County Executive Member for Finance, the Chief Officer for Finance and the County Secretary of the County Government of Turkana, compelling them to pay the exparte applicant forthwith in the sum of Kshs. 6,236,222/= being the decretal amount, the costs of the suit and subsequent costs incurred in Kitale ELC No. 123 of 2017.**

**2)Costs to the exparte applicant.**

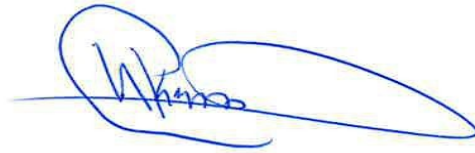
**22.** Orders accordingly.

**Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 8<sup>th</sup> day of October 2025.**

**In the presence of:**

Court Assistant - Dennis

Nafula for Exparte applicant present  
Chetambe for Omiti for respondent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

ORIGINAL