

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELCEP JR E001 OF 2025

REPUBLIC.....
APPLICANT

VERSUS

THE CHIEF EXECUTIVE OFFICER.....1ST
RESPONDENT

THE DIRECTOR OF FINANCE.....2ND
RESPONDENT

THE NATIONAL LAND COMMISSION.....3RD
RESPONDENT

AND

THOMAS SHIBULE

T/A THOMAS SHIBULE TRADERS.....EX-PARTE
APPLICANT

JUDGMENT

1. Vide a notice of motion dated 13.05.2025 filed pursuant to the leave of court granted on 31.04.2025, *Order 53 rules 1(1), (2) and (4) of the Civil Procedure Rules 2010, Sections 1A, 1B, 3A and 63 (e) of the Civil Procedure Act (Cap 21) Articles 47, 48, 48, 50 and 159 the Constitution of Kenya 2010 of Constitution of Kenya 2010, Section 113 of the Land Act 2012, and any other relevant enabling provisions by the laws of Kenya, the ex-parte applicant (the*

applicant) sought an order of mandamus to compel the respondents to pay the decretal amount of Kshs. 24,523,214/= awarded in his favour in Mombasa CMCC No.1000 of 2021 - Thomas Shibule vs National Land Commission. The applicant also sought costs of the application and interest on the decretal amount.

2. The application was based on the grounds set out in the motion and supported by the supporting affidavit sworn by the applicant on 13.05.2025. It was the applicant's case that despite obtaining a judgment against the 3rd respondent on 02.08.2023 the latter failed to satisfy decretal amount without any lawful justification or excuse. The applicant exhibited copies of the relevant decree, certificate of stated costs, a notice to show cause, and demand letters addressed to the 1st respondent and its officers.
3. When the application was listed for directions on 26.05.2025 the advocate for the respondents sought and obtained leave to file and serve a response thereto within 21 days. The record, however, shows that by the time the matter came up for mention on 26.06.2025 the respondents had not filed any response to the application.

4. The record shows that directions were given for the application for judicial review to be canvassed through written submissions. The parties were consequently granted 14 days each to file and serve their respective submissions. The record shows that the applicant filed his submissions dated 09.07.2025 but the respondents' submissions were not on record by the time of preparation of the judgment.
5. It is evident that the applicant in this matter has a decree in his favour dated 03.09.2023 and that the same remains unsatisfied to date. The respondents have not filed any response to the application or offered any lawful justification or excuse for non-payment. There is no indication on record to show the pendency of an appeal against the decree passed by the trial court.
6. The court is thus satisfied that the applicant is entitled to be paid the decretal amount and that he has no viable means of realizing the fruits of his judgment other than through the judicial review proceedings. The court is of the view that the applicant has made out a case for the grant of the judicial review order of mandamus sought. However, the court is of the view that the order of mandamus can only lie against the accounting officer of the

National Land Commission who is the 1st respondent in the application.

7. On the issue of costs of the application the court takes the view that the general principles on the award of costs shall apply. The successful party ought to be awarded costs of the action unless there is a good reason to deprive him of the costs. The court finds no good reason to depart from the general rule. Accordingly, the applicant shall be awarded costs of the application.
8. The upshot of the foregoing is that the court finds merit in the applicant's motion for judicial review dated 13.05.2025. As a result, the court makes the following orders for disposal thereof;

a. An order of mandamus is hereby issued to compel the 1st respondent, the CEO of the National Land Commission, to pay the ex parte applicant the decretal amount of Kshs. 21,523,214/= passed in Mombasa CMCC NO. 1000 of 2021 together with interest at 12% p.a. as per the terms of the decree.

b. The ex-parte applicant is hereby awarded costs of the application.

Orders accordingly

JUDGMENT dated and signed at Mombasa and delivered virtually via Microsoft Teams on this 30th day of October 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Ms. Kyalo for the ex parte applicant

No appearance for the 1st, 2nd and 3rd respondents

ORIGINAL