



**Republic v Chief Officer Finance, County Government of Kiambu; Mulwa (Ex parte Applicant)
(Suing as the Legal Representative of the Estate of Mulwa Syanda) (Judicial Review Application
E122 of 2025) [2025] KEHC 15194 (KLR) (Judicial Review) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15194 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E122 OF 2025
RE ABURILI, J
OCTOBER 28, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF
KIAMBU RESPONDENT**

AND

**AGNES MUTETHYA MULWA EX PARTE APPLICANT
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MULWA
SYANDA**

JUDGMENT

1. Pursuant to leave granted by the court on 25th April 2025, in JR Misc. Application No. E097 of 2025, the ex parte applicant filed the substantive notice of motion application on 9th May 2025.
2. The application is brought pursuant to Order 53 Rule 3 of the Civil Procedure Rules and Section 8 and 9 of the *Law Reform Act*. It seeks an order of mandamus compelling the Respondent to pay to the ex parte applicant the sum of Kenya Shillings Three Million Three Hundred and Four Thousand Two Hundred and Sixty-One and sixty cents (Kshs.3,304,261.60) together with the accrued interest being the outstanding decretal amount in Milimani Commercial Courts Civil Suit No.416 of 2015.
3. The application also seeks for the court to issue summons to the respondent to appear before it to explain the non-payment and, an order for the respondent to be committed to civil jail and/or detained for a term of six (6) months or such other term as this honourable court may deem fit.



4. The application is supported by a statement of facts dated 9th May 2025, and an affidavit sworn on even date by Agnes Mutethya Mulwa.
5. The brief facts of the matter before this court is that the Court in Millimani Commercial Court Civil Suit No.416 of 2015 entered judgment in favour of the ex parte applicant for the sum of Kshs.1,765,280/- , and the same assessed at Kshs.3,036,281.00 vide a decree dated 1st April 2022.
6. The applicant's case is that on 29th March 2023 a Certificate of Order Against the Government was issued certifying the amount payable by the respondent as Kshs. 3,304,261.60.
7. According to the applicant the Certificate of Order Against Government was served upon the County Attorney on 30th March 2023, accompanied by a letter setting out the decretal sum and calling for payment of Kshs.3,304,261.60 being the judgment sum aforementioned, and further interest as directed from 4th March 2022. The respondent is said to have failed and/or refused to pay the decretal sum or any part thereof.
8. In response, the respondent filed a replying affidavit sworn by Waithira Waiyaki who introduces herself as the County's Legal Advisor on 10th July 2025.
9. In his response the respondent urges that the prayers sought by the applicant are not only drastic but also premature. He further argues that it is not in dispute that a judgment and decree was issued on 4th March 2022 and that a Certificate of Order Against Government was extracted and served upon him.
10. However, that the failure to honour the judgment and decree of the court has not been deliberate or in disregard of the court's orders but that it is due to budgetary constraints, and statutory financial procedures that govern county finances under the [Public Finance Management Act, 2012](#).
11. That satisfying such a decree is subject to the mandatory procedures laid out under Section 21 of the [Government Proceedings Act](#), which Act is said to require that payments of monies decreed against the Government be made only after the due process involving budgeting, appropriation, and disbursement through the Treasury is followed.
12. The respondent's case is further that such decrees must follow due budgetary process, including approvals, budgeting and appropriation by the County Assembly, which are annual processes, and beyond the immediate unilateral control of the respondent. He further urges that the said decree had not been budgeted for in the financial year 2024/2025, and can only be budgeted for in the next financial year.
13. That requiring the County to pay immediately would undermine the financial procedures under Articles 201 and 206 of [the Constitution](#), and the Public Management Act which require proper authorization and appropriations of public funds.
14. The respondent also urges that he does not have the unilateral capacity to satisfy court decrees outside the established legal framework. That, the threats to summon and commit him to jail are unwarranted, vindictive, and against the principles of natural justice as there is no evidence of wilful disobedience or contempt of court.
15. The application was canvassed by way of oral submissions with only counsel for the applicant present despite service having been effected upon the respondent as evidenced by the return of service sworn on 26th September 2025.



16. During the oral submissions counsel for the applicant Mr. Uvyu submitted that judgment was entered in 2022 and, that the respondent concedes this. He further urged that the applicant is a widow who needs the money, and that budgetary constraints is not a defence.
17. Mr. Uvyu also submitted that the respondent defended the suit in the lower court, and they have had all the time to settle the matter.

Analysis and Determination

18. I have considered the ex parte applicant's notice of motion, the supporting documents, statutory statement and verifying affidavit. I have also considered the respondent's replying affidavit, and the oral submissions by counsel for the applicant. The issue for determination is whether the orders sought are available to the ex parte applicant.
19. The law prohibits execution by way of attachment of any government property. Section 25 of the [Government Proceedings Act](#) provides that:
 25. Exclusion of proceedings in rem against the Government
 - (1) Nothing in this Act shall authorise proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of any Government ship or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on any such ship, aircraft, cargo or other property.
20. Section 21 of the [Government Proceedings Act](#) provides:
 21. Satisfaction of orders against the Government
 - (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: Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or



otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.

21. In *Kisya Investments Ltd vs Attorney General & Another* [2005] 1 KLR 74 the High Court comprising Ibrahim and Visram JJ(as they were then) held that:

“History and rationale of government’s immunity from execution arises from the following...

Firstly, there has been a policy in respect of Parliamentary control over revenue and this is threefold and is exercised in respect of (i) The raising of revenue (by taxation or borrowing); (ii) Its expenditure; and (iii) The audit of public accounts. The satisfaction of decrees or judgments is deemed to be an expenditure by Parliament and as a result of this must be justified in law and provided for in the Government’s expenditure. It is for this reason that Section 32 of the *Government Proceedings Act* provides that any expenditure incurred by or on behalf of the Government by reason of this Act shall be defrayed out of the monies provided by Parliament. Parliamentary control over expenditure is based upon the principle that all expenditure must rest upon legislative authority and no payment out of public funds is legal unless it is authorized by statute, and any unauthorized payment may be recovered. As a result of the foregoing, which was borrowed from the Crown Proceedings Act, 1947 (Section 37) of England, this is a warning that any payment by Government must be covered by some appropriation. It is said that parliament is very jealous of its control over the expenditure and this is as it should be. No ministry or Department has any ready funds at all times to satisfy decrees or judgments- while existence of claims and decrees may be known to the ministries and departments, they have to notify the Ministry of Finance and Treasury of the same so that payment is arranged for or provisions made in the government expenditure. The second situation, which arises from the above, is that once a decree or judgment is obtained against the government, it would require some reasonable time to have it forwarded to the Ministry of Finance, Treasury, Controller and Auditor General etc for scrutiny and approvals for it to be paid from the consolidated fund. The Ministries and Departments do not have their “own” funds to settle such decrees or payments and considering the nature of the government structure, procedures, red tape and large number of claims, this could take a long time. If execution and or attachment against the government were allowed, there is no doubt that the government will not be able to pay immediately upon passing of decrees and judgments and will be inundated with executions and attachments of its assets day in day out. Its buildings will be attached and its plans and equipment will be attached, its vehicles, aircraft, ships and boats will be attached. There will be no end to the list of likely assets to be attached and auctioned by the auctioneer’s hammer.

No government can possibly survive such an onslaught. The government and therefore the state operations will ground to a halt and paralyzed and soon the government will not only be bankrupt but its constitutional and statutory duties will not be capable of performance



and this will lead to chaos, anarchy and the breakdown of the Rule of Law. This is the rationale or the objective of the law that prohibits execution against and attachment of the government assets and property.”

22. In view of the above position which I concur with, the Civil Procedure Rules do not permit execution against the Government including County Governments and therefore the only remedy available to the decree holders against the Government is the remedy of Judicial Review by way of an order of mandamus to compel the Government and more particularly the Accounting Officer of the relevant State Department to settle the decree of the court.

23. Order 29 Rule 2 of the Civil Procedure Rules provides that:

“No order against the Government may be made under—

- (a) Order 14, rule 4 (Impounding of documents);
- (b) Order 22 (Execution of decrees and orders);
- (c) Order 23 (Attachment of debts);
- (d) Order 40 (Injunctions); and
- (e) Order 41 (Appointment of receiver).

24. In Republic v Attorney General Exparte James Alfred Koroso JR 44/2012 Honourable Odunga J (as he then was) stated:

“...in the present case, the exparte applicant has no other option of realizing the fruits of this judgment since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgment that he has been awarded is realized. Unless something is done he will forever be left babysitting his barren decree. This state of affairs cannot be allowed to prevail under our current Cconstitutional dispensation in light of 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 road blocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered, are held in trust for the people of Kenya and public officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his or her lawful rights which have been decreed by a court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of *the Constitution*, executive authority derives from the people of Kenya and is to be exercised in accordance with *the Constitution* in a manner compatible with the principle of service to the people of Kenya, and for their well being and benefit...The institution of Judicial Review proceedings in the nature of mandamus cannot be equated with execution proceedings. In seeking an order of mandamus, the applicant is seeking, not relief against the Government, but to compel a government official to do what the government, through Parliament, has directed him to do. The relief sought is not “execution or attachment or process in the nature thereof”. It is not sought to make any person “individually liable for any order for any payment,” but merely to oblige a government officer to pay, out of the funds provided by Parliament, a debt held to be due by the High Court, in accordance with a duty cast upon him by Parliament. The fact that an Accounting Officer is not distinct from the state of which he is a servant does not



necessarily mean that he cannot owe a duty to a subject as well as to the government which he serves. Whereas it is true that he represents the Government, it does not follow that his duty is therefore confined to his Government employer. In mandamus cases it is recognized that when statutory duty is cast upon a public officer in his official capacity and the duty is owed not to the state but to the public, any person having a sufficient legal interest in the performance of the duty may apply to the courts for an order of mandamus to enforce it.

In other words, mandamus is a remedy through which a public officer is compelled to do a duty imposed upon him by the law. It is in fact the state, the Republic, on whose behalf he undertakes his duties, that is compelling him, a servant, to do what he is under a duty, obliged to perform. Where therefore a public officer declines to perform the duty after the issuance of an order of mandamus, his/her action amounts to insubordination and contempt of court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but are meant to show the court's displeasure at the failure by a servant of the state to comply with the directive of the court given at the instance of the Republic employer of the concerned public officer and to uphold the dignity and authority of the court.”

25. From the above statutory provisions and judicial pronouncements, it is clear that the only remedy available to a decree holder against the Government or government entity is judicial review remedy of mandamus to compel the Accounting Officer of the relevant Government Ministry or State Department to settle the material decree.
26. In the instant case, the respondent does not dispute the costs as taxed. He, in fact, acknowledges the indebtedness in terms of the certificate of order of costs against the government which is unsettled due to budgetary constraints.
27. It therefore follows that the ex parte applicant who is the decree holder has rights which have crystallized, to enjoy the fruits of his lawful judgment by way of costs awarded to him as a successful litigant and therefore those proprietary rights must not be curtailed. That right must be safeguarded, and enforced by the court as espoused under Article 159(2) (a) and (b) of *the Constitution* which pronounces that justice shall be administered without undue delay and the applicant's right to access Justice under Article 48 of *the Constitution* promoted and protected.
28. Furthermore, there is proprietary interest in a monetary decree or certificate of costs or order for costs issued by a court of competent jurisdiction, and therefore where such decree or order is not settled, then, no doubt, the right to protection of property under Article 40 of *the Constitution* is violated. There can be no better property lawfully acquired than that acquired through court process in an overt manner and due process having been followed.
29. The respondent is the Accounting Officer of the County Government of Kiambu against whom the costs were awarded and is therefore under a public statutory duty to settle the decree or order of the court issued in favour of the ex parte applicant, in order that justice may at the end of the day be served because there is no other remedy available to the ex parte applicant.
30. Since the certificate of order for costs against the government was served upon the County Government of Kiambu on 3rd April 2023, there has been no payment received.
31. In view of the foregoing, the respondent cannot be heard to say that they have no money to settle the certificate of order against the government. They ought to have followed the procedure that was set out in the decision that I have cited above and budgeted for the money, and sought approval to pay during the 2023/2024 or 2024/2025 financial year.



32. Public officers are bound to adhere to the statutory and judicial pronouncements.
33. In light of the above, the order that commends itself in these Judicial Review proceedings is a Judicial Review order of mandamus compelling the respondent to pay the sum of Kshs. 3,304,261.60 as provided in the certificate of order of costs against the Government dated 4th March 2022.
34. In the end, I find this application for Judicial Review to be merited. I proceed to issue the order of Mandamus compelling Chief Officer responsible for Finance, County Government of Kiambu, who is the Accounting Officer Kiambu County Government formerly Kiambu County Council to settle Certificate of Order against the Government dated 4th March, 2022 amounting to Kshs 3,304,261.60, as soon as is practicably possible, having regard to the age of the decree subject of these proceedings. In default of such settlement, the ex parte applicant is at liberty to apply for appropriate orders to enforce the Mandamus decree.
35. Besides the prayer for mandamus, the ex parte applicant has also asked this court to issue summons to the respondent to appear before it to explain non-payment, and another order seeking for the respondent to be committed to civil jail and/or detained for a term of six(6) months for being in contempt of the court's orders.
36. This court in its ruling dated 25th April 2025 at paragraph 6 stated as follows;

“However, I observe that the applicant is also seeking for an order to summon the Respondents to appear to explain non payment of the decretal sum. That prayer is premature. I decline it.”
37. It therefore does not make sense why the ex parte applicant would still include the same prayer in the substantive motion. In Republic V Attorney General Ex parte James Alfred Koroso JR 44/2012 supra, the Court reiterated that it is only after a public officer declines to perform his public duty after issuance of an order of mandamus, which non-compliance amounts to insubordination, and contempt of court, that an action may perfectly be commenced to have him cited for such. Consequently, the applicant's prayers for the respondent to be summoned to appear before the court to explain non-payment, or for him to be committed to civil jail are premature.
38. On the issue of costs, from the proceedings, the respondents have conducted themselves in a manner suggestive that they won't pay, they can't pay the decretal sum because there is no money. It is very unfortunate that the respondents all along knew of the existence of the decree but they chose to sit back and see what the applicant would do. The applicant did not have to approach this court for mandamus had the respondents settled the decree in time. I therefore order that the applicant shall have costs of these judicial review proceedings, to be taxed by the Deputy Registrar.
39. Decree for Mandamus to issue.
40. Mention on 26th November, 2025 before the Deputy Registrar to confirm the filing of the bill of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF OCTOBER, 2025

R.E. ABURILI

JUDGE

