



**Republic v County Executive Committee Member, Finance & 2 others;
Mwangemi (Ex parte) (Miscellaneous Application E005 of 2024)
[2025] KEHC 14954 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E005 OF 2024
J NGAAH, J
OCTOBER 24, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE 1ST RESPONDENT
COUNTY SECRETARY, COUNTY GOVERNMENT OF TAITA
TAVETA 2ND RESPONDENT
COUNTY OFFICER OF FINANCE, COUNTY GOVERNMENT OF TAITA
TAVETA 3RD RESPONDENT**

AND

DR. FRANK JOSEPH MWANGEMI EX PARTE

JUDGMENT

1. The applicant’s application is a motion dated 17 March 2024 seeking an order for mandamus whose prayer has been couched as follows:

“That an order for mandamus issue against the three Respondents, compelling them to immediately and without further delay perform their duty by ensuring that the ex-parte Applicant is paid the entire decretal sum of Kshs 2,864,264.37, together with interest thereon from 13.7.2023, out of the revenue of the County Government of Taita Taveta.”

2. The applicant seeks that the money be released through his firm of advocates named as E.M. Mvoi & Company Advocates. He also wants costs of the suit. The application is expressed to be brought under



order 53 rule 1(1) of the Civil Procedure Rules. It is based on a statutory statement dated 17 July 2024 and an affidavit sworn on even date by Frank Joseph Mwangemi verifying the facts relied upon.

3. According to the statement, on 13 July 2023, the applicant obtained a judgment for the sum of Kshs. 2,864,264.37 against the County Government of Taita Taveta in Mombasa Employment and Labour Relations Court Case No. 32 of 2022.
4. The applicant taxed his costs and a certificate of costs for the sum of Kshs. 265,514.37 issued. The decree and the certificate of costs are said to have been served upon the respondents' advocates in 2023 but as at the time of filing the application, the respondents had ignored, neglected or refused to settle the decree, hence the instant application.
5. It is evident from the applicant's application that indeed he obtained a judgment against the County Government of Taita Taveta. Exhibited to the affidavit in support of the application are copies of the judgment, the decree and the certificate of costs. There is also a copy of a letter date 10 August 2023, from the applicant's advocates addressed to the respondents' advocates demanding payment of Kshs. 2,783,688.75.
6. Enforcement of orders or decrees against the government is provided for under section 21 of the [Government Proceedings Act](#), cap. 40, which reads as follows:

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.
7. Under section 21(1), an officer of the court whom the law describes as “the proper officer of the court” is enjoined to issue a certificate in a prescribed form containing particulars of an order by the court for payment of costs, among other orders that the court is enjoined to make. But the certificate will only be issued upon application by the party in favour of whom the order has been issued. To the extent that “the proper officer of the court” is enjoined to issue the certificate, it is a mandatory document. And since it can only be issued on application by a party in whose favour the order has been made, the application for the certificate is equally mandatory.
 8. According to section 21(2) service of the certificate on the Attorney General appears to be within the discretion of the party in whose favour the certificate has been issued. However, such a party would not go to great lengths applying for the certificate and, the proper officer of the court would not be enjoined by the law to issue the certificate for the sake it.
 9. The point is this: an application for and issue of the certificate are not futile exercises for, under section 21(3) of the Act, the certificate serves a specific purpose: it is on the basis of the certificate that the accounting officer for the Government department concerned makes the payment due to the person or party in the proceedings in whose favour the order was made and the certificate issued. This is what I understand to be the meaning of “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...”
 10. Apart from providing the particulars of the amount payable, the certificate, in a sense, authorises the accounting officer to make the payment due to the person that holds the order against the government.
 11. It follows that where one invokes section 21 of the *Government Proceedings Act* to enforce payment against the Government, a certificate of order against Government is mandatory and, for that reason, section 21(2) of the Act which appears to leave it to the holder of the certificate to either serve or not serve it to the Attorney General ought not to be read in isolation; it must be read together with section 21(3) in order to give meaning to section 21 (1), on the need for a certificate of order against Government.
 12. According to section 21(5) of the *Government Proceedings Act*, these provisions would apply to County Government Governments as much as they apply to the National Government.
 13. That said, there is no evidence and neither has it been suggested that the applicant ever attempted to apply for the issue of certificate of order against Government. It follows that the motion for mandamus was made prematurely because at the time it was filed, neither had the certificate of order against government been extracted nor had the accounting officer been served with the certificate. It is only upon service of the certificate that the accounting officer can make the payment.
 14. According to Halsbury's Laws of England/Judicial Review (volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction paragraph 689:

“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing



specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”

And in paragraph 706 of the same treatise, it is stated:

“

“706. Public duties by government officials.

If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA; *R v London Transport Executive, ex p GLC* [1983] QB 484, [1983] 2 All ER 262, DC.)”

15. Thus, the order of mandamus may be issued in circumstances where there is failure to perform a public duty or failure to exercise discretion or to exercise it according to legal principles. In the absence of the certificate of order against government, the accounting officer in the County Government cannot be said to have failed to perform a public duty with which he is charged and, therefore, susceptible to the order of mandamus when the certificate had not been brought to his attention in the first place.
16. For the reasons I have given, I hereby hold that the applicant’s application is incompetent and misconceived. It is hereby dismissed. Considering that the decree has not been settled, I make no order as to costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 24 OCTOBER 2024

NGAAH JAIRUS

JUDGE

