



**Republic v Solicitor General; Havi (Ex parte Applicant)  
 (Judicial Review Miscellaneous Application E140 of 2024)  
 [2025] KEHC 15064 (KLR) (Judicial Review) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15064 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 JUDICIAL REVIEW  
 JUDICIAL REVIEW MISCELLANEOUS APPLICATION E140 OF 2024  
 JM CHIGITI, J  
 OCTOBER 24, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE SOLICITOR GENERAL ..... RESPONDENT**

**AND**

**NELSON HAVI ..... EX PARTE APPLICANT**

**JUDGMENT**

**Brief background;**

1. The applicant filed Petition in HC Pet E273 of 2021; Nelson Havi vs The Director of Public Prosecution & 2 others seeking declaratory orders for violation of his constitutional rights.
2. The Court award The Applicant the sum of Kshs. 5,000,000 in damages to be borne by the Directorate of Criminal Investigation and the Attorney General.
3. The applicant extracted decree issued on 19<sup>th</sup> March 2024 and a Certificate of Order against the Government dated 17<sup>th</sup> April 2024. The Certificate of Costs directed that sums payable to the applicant was Decretal sum of Kshs. 5,000,000 plus interest at 14% p.a totaling to Kshs. 237, 808.22.
4. The amount remains due and outstanding precipitating the filing of the application dated 4<sup>th</sup> November 2024 is before this the court for determination wherein the applicant is seeking orders of;



- a. Mandamus to Compel the Respondent to pay the Exparte Applicant a decretal sum plus accrued interest of Five Million Two Hundred and Thirty-Seven Thousand Eight Hundred and Eight and twenty-two cents (5, 237, 808.22).
  - b. The Cost of the Application to be borne by the Respondent.
5. The application is opposed.

### **The Applicant's Case;**

6. It is Nelson Andayi Havi's case that on 13<sup>th</sup> July 2021, he instructed his advocates, to file Petition in HC Pet E273 of 2021; Nelson Havi vs The Director of Public Prosecutions & 2 Others that culminated in the following Orders:
- a. A declaration be and is hereby issued that the investigations undertaken by the 2<sup>nd</sup> Respondent herein against the Petitioner in respect to the alleged assault of Mercy Kalondu Wambua, violated Articles 10 and 24(4)(c) of *the Constitution* and Section 6(1) of the *National Police Service Act*. As such, the investigations are unconstitutional, unlawful, null and void ab initio. They are hereby quashed;
  - b. A declaration be and is hereby issued that the arrest and confinement of the Petitioner by the 2<sup>nd</sup> Respondent on 13<sup>th</sup> July 2021 to the time of his release violated the Petitioner's constitutional right as set out under Articles 27, 28, 29(a), 31, 47, 49(1)(a)(i) and (c) of *the Constitution*;
  - c. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be and are hereby directed to pay the Petitioner damages in the sum of Kenya Shillings Five Million (Kshs. for the violation of. the Petitioner's rights and fundamental freedom in respect to the Petitioner's arrest, intimidation, hindrance, harassment and improper interference with the Petitioner's performance OL his professional functions as an Advocate of the High Court of Kenya and the President the Law Society of Kenya in accordance with recognized professional duties, standards and ethics
  - d. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents shall also bear the costs of the Petition;
  - e. The rest of the prayers in the Petition are hereby disallowed;
  - f. Orders accordingly.
7. Subsequently the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed an Application seeking to have the Court review its judgment of 15<sup>th</sup> December 2023. It was dismissed the Application with costs. His Advocates wrote the Hon. Attorney General on 20<sup>th</sup> March 2024 requesting them to pay the sum.
8. The Applicant extracted a Decree on 19<sup>th</sup> March 2024 and a Certificate of Order Against Government dated 17<sup>th</sup> April 2024.
9. His Advocates the wrote further letters dated 14<sup>th</sup> October 2024 and 22<sup>nd</sup> October 2024 requesting the Respondent to settle the decretal sum of Kshs. 5,237,808.22/= to no avail.
10. This is demonstrated by the court process server's Affidavit of service dated 23<sup>rd</sup> October 2024 which has satisfied the court that the Decree and Certificate of Order were served.
11. The Respondent, despite being aware of the sums due and owing to the Applicant, has to date failed and/or refused to settle the decretal sums.
12. The Respondent is the accounting officer in the office of the Hon. Attorney General and therefore is in charge of settling decretal sums.



13. In his further Affidavit the applicant argued that it is trite law that where a decree is issued against the Attorney General in his representative capacity, the Attorney General is duty bound to advise his client and if the particular State Organ refuses to pay, then the Attorney General is responsible on behalf of his agent.
14. Reliance is placed in the case of Prof. Peter Anyang' Nyong'o and 10 others vs Attorney General & others EACJ Reference No. 1 of 2006 [20071 IEA 5; [20071 2 EA 5; [20081 31<LR (El)) 397 as cited in Republic v Commissioner of Police & 3 others Ex-parte Paul Makau [2018] eKLR the court rightly stated that, "No doubt the decree is against the Attorney General but in his representative capacity. As stated earlier the Attorney General was representing one arm of the Government and if any costs or liability accrues from his representation, he is obliged to pay the costs Clearly, it is the duty and the function of the Attorney General to advise his client and if a particular organ refuse to pay he will be responsible on behalf of his agent. In that regard the Solicitor General being the accounting officer of the Attorney General was rightly sued by applicants. In my mind the applicants clearly and correctly sued the Solicitor General and are entitled to the orders sought.
15. This Application is further predicated upon the representations made before this Honorable Court by Counsel for the Attorney General, who was the 3<sup>rd</sup> Respondent in the Petition, wherein it was intimated on multiple occasions that the Attorney General was actively processing the requisite payments and that the same had reached the final stages.
16. From the proceedings in HC PET E273 of 2021: Nelson Havi -vs- The Director Public Prosecutions & 3 Others it is evident that on 11<sup>th</sup> March 2025 Counsel for the Respondents stated that the file had been taken to the Ministry of Interior for processing of payment.
17. When the matter came up for mention on 7<sup>th</sup> April 2025, Counsel for the Petitioner/ Applicant informed the court that Counsel for the Attorney General had informed her that the Attorney General was on the final process of finalizing payment.
18. The Respondent herein being the Accounting Officer of the Attorney General bears the obligation to effect settlement of the decretal sum.

### **The Applicant's Submissions;**

19. 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.
20. It is meant to compel a person or body of persons who has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.
21. Section 21(4) of the *Government Proceedings Act* Cap 40 bars the Applicant from executing a decree against the Government and hence the present Application seeking Orders of Mandamus.
22. Reliance is placed in the case of Dragan vs. Canada (Minister of Citizenship and Immigration) as cited in Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR. The eight factors that must be present for mandamus to issue are: -
  - a. There must be a public legal duty to act;
  - b. The duty must be owed to the Applicants;
  - c. There must be a clear right to the performance of that duty, meaning that:
    - i. The Applicants have satisfied all conditions precedent; and



- ii. There must have been:
    - a. A prior demand for performance;
    - b. A reasonable time to comply with the demand, unless there was outright refusal; and
    - c. An express refusal, or an implied refusal through unreasonable delay;
  - iii. No other adequate remedy is available to the Applicants;
  - iv. The Order sought must be of some practical value or effect;
23. It is submitted that the Applicant has indeed met all the above highlighted factors. One; there is a public legal duty by the Respondent herein to act. The Respondent herein is the accounting officer at the Office of the General, and is therefore in charge of settling decretal sums. In *Peter Anyang' Nyongo & 10 Others vs. Solicitor General* [2011] eKLR, Warsame J. expressed himself as follows:
- “No doubt the decree is against the Attorney General but in his representative capacity. As stated earlier the Attorney General toas representing one arm of the Government and If any costs or liability accrues from his representation, he is obliged to pay the costs. It is for the Attorney General to advise his clients to pay the costs (011ich attracted his representation on behalf of the said client. Being a constitutional representative and being the principal legal advisor to the three arms of the Government, he is required to direct any arm of Government he represented to pay the costs of any suit to which he acted on its behalf. Clearly, it is the duty and the function of the Attorney General to advise his client and if a particular organ refuse to pay, he will be responsible on behalf of his agent.”
24. The Court granted the Applicant herein damages to the tune of Kshs. in its Judgment dated 15<sup>th</sup> December 2023 which the Court directed the Director of Criminal Investigations together with the Attorney General to settle. The Court further issued a Certificate of Order on 17<sup>th</sup> April 2024.
25. It follows therefore that the Respondent has a legal duty to the Applicant, which duty is to ensure that the sums owed to the Applicant are settled. Clearly, there is a public duty on the part of the Respondent to act and this duty is owed to the Exparte Applicant by the Respondent in his capacity as the accounting officer.
26. The Court in *Republic v County Secretary, Nairobi City County & 3 others; Koceyo & Co. Advocates (Ex Parte)* [2020] eKLR held that:
- “Execution proceedings against a government or public authority under the *Government Proceedings Act* can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body. (Kindly refer to page 32 of the Applicant's list of authorities)
27. Further, Section 21(3) of the *Government Proceedings Act* imposes a statutory duty on the Respondents to satisfy the decretal sums due to the Applicant upon compliance with the procedure set out therein.
28. It follows therefore that the respondent is under a duty to settle the outstanding decretal sums by virtue of his roles and functions.
29. Three; the Applicant herein submits that a prior demand has been sent to the Respondent with reasonable time to comply but the Respondent has expressly refused to comply. The Applicant served the Respondent with two demand letters dated 14<sup>th</sup> October 2024 and 22<sup>nd</sup> October 2024 together



with the Certificate of Order dated 17<sup>th</sup> April 2024 requiring the Respondent to settle the said decretal sum. To date, the Respondent is yet to respond to the said letters or settle the decretal sums due.

30. Four; It is submitted that the Certificate of Order can only be enforced by way of a Mandamus Order compelling the Respondent to settle the sum of Kshs. 5,237,808.22/=. This is due to the fact that the Government Proceedings Act bars execution against Government in the form of attachment of Government properties. The Court in *Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex- parte Fredrick Manoah Egunza* (20121 eKLR stated thus;

“Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21 (1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of the prescribed days after the judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21 (3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.” (Kindly refer to page 39 of the Applicant's list of authorities)

31. It is submitted that the only way to recover the costs is by way of an Order of Mandamus compelling the Respondent to settle the decretal sums.
32. In the case of *Shah vs. Attorney General* (No. 3) Kampala HCCM No. 31 of 1969 [19701 EA 543 Goudie, J expressed himself, inter alia, as follows:

Whereas mandamus may be refused where there is another appropriate remedy, there is no discretion to withhold mandamus if no other remedy remains. When there is no specific remedy, the court will grant a mandamus that justice may be done. The construction of that sentence is this: where there is no specific remedy and the reason of the want of a specific remedy is that justice cannot be done unless a mandamus is granted, then mandamus will go... In the present case it is conceded that if mandamus was refused, there was no other legal remedy available to the applicant.

33. Similarly, in *High Court Judicial Review Miscellaneous Application No. 44 of 2012 Republic vs. The Attorney General & Another ex parte James Alfred Koroso*, the Court expressed itself as hereunder:

“...in the present case, the Ex parte Applicant has no other option of realizing the fruits of his 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 Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to



ensure access to justice for all persons... " (Kindly refer to page 52 of the Applicant's list of authorities)

34. It is submitted that since judgment had already been entered in favour of the Ex Parte Applicant and a Decree together a Certificate of Order having been issued by the Court for the sum of Kshs. 5,237,808.22/=, that is outstanding and further, that the Applicant followed the procedure laid down under Section 21 of the *Government Proceedings Act* and has also met all the conditions required for an order of mandamus to issue, there is no other remedy available to the Applicant, save for this Court to grant a mandamus order compelling the Respondents to pay the outstanding sums. It is only fair and just that this Honourable Court grants an order of mandamus compelling the Respondent to pay the outstanding sum of Kshs. 5,237,808.22/=, due and payable to the Ex Parte Applicant.

#### **Applicant's Further Submissions;**

35. It is further submitted that it is trite law that where a decree is issued against the Attorney General in his representative capacity the Attorney General is duty bound to advise his client and if the particular State Organ refuses to pay, then the Attorney General is responsible on behalf of his agent.
36. Reliance is placed on the case of Prof. Peter Anyang' Nyong'o and 10 others vs Attorney General & others EACJ Reference No. 1 of 2006 [20071 IEA 5; [20071 2 EA 5; [20081 3KLR (EP) 397 as cited in Republic v Commissioner of Police & 3 others Ex-parte Paul Makau [20181 eKLR where the court rightly stated that;

“No doubt the decree is against the Attorney General but in his representative capacity. As stated earlier the Attorney General was representing one arm of the Government and if any costs or liability accrues from his representation, he is obliged to pay the costs.

Clearly, it is the duty and the function of the Attorney General to advise his client and if a particular organ refuse to pay he will be responsible on behalf of his agent.

In that regard the Solicitor General being the accounting officer of the Attorney General was rightly sued by applicants. In my mind the applicants clearly and correctly sued the Solicitor General and are entitled to the orders sought...”

37. This is further buttressed in the case of Republic v. Attorney General ex parte Kahugu Karebe [20121 eKLR where it was held that;

“If the Attorney General was of the view that he was not the proper party to be held liable or acts of negligence attributed to the police officer whose negligence caused personal injuries to the Applicant, he ought to have had himself struck out from the suit as the defendant so that in his place the proper party would have been brought on board as the defendant in his place. The fact that this was not done and judgment was eventually entered for the plaintiff against the Attorney General as the defendant means that the final decree was issued against the Attorney General and the Attorney General is duty bound to satisfy that decree.”

#### **The Respondent's Case;**

38. The Respondents filed grounds of opposition arguing that:
1. That the Solicitor General is not the accounting officer of the Ministry of Interior and National Administration as guided in the Republic v Attorney General Ex parte Miriam Wairimu Wambugu & another [2021] eKLR).



2. That there is no legal/statutory duty against the Solicitor General.
3. That the Applicant is enforcing the Judgment against the wrong party.
4. That the Application be struck out with costs.

### **The Respondents Submissions;**

39. It is submitted that the Constitutional Petition No. E273 of 2021 was filed against the Director or Public Prosecution, The Director of Criminal Investigations and the Hon. Attorney General.
40. Section 21 (3) of the *Government Proceedings Act* provides as follows;

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.

41. An Accounting Officer is provided for under Section 2 of the *Public Finance Management Act* which further provides under Section 67(2) of who an accounting officer is with regards to the national institution or government entity. It provides that;

“Except as otherwise stated in other legislation, the person responsible for the administration of a Constitutional Commission or institution or Independent Office shall be the accounting officer responsible for managing the finances of that Commission, institution or Independent Office.”

42. The 1<sup>st</sup> Respondent in Constitutional Petition E273 of 2021 was the office of the Director of Public Prosecution. ODPP is established under Article 157 of *the Constitution* of Kenya 2010.
43. It is an independent institution and going as per Section 67(2) of the *Public Finance management Act*, the person responsible for administration of the Office of Director of Public Prosecution is the Director of Public Prosecution and as such he/she is the accounting officer of the ODPP.
44. The 2<sup>nd</sup> Respondent, The Directorate of Criminal Investigations (DCI) in Kenya is under the National Police Service (NPS), which in turn falls under the Ministry of Interior and National Administration.
45. The DCI is responsible for investigating serious criminal cases as guided by law, and its mandate is derived from *the Constitution* of Kenya and the *National Police Service Act*, 2011.
46. It is further submitted that the person responsible for the Administration of the Ministry of Interior and National Administration is the Principal Secretary concerned. Therefore, going by the Government Proceedings and *Public Finance Management Act*, the Principal Secretary should be the accounting officer.
47. They submit that therefore, that the Solicitor General is not the accounting officer of the Ministry of interior and National Administration.



48. Reliance is placed in Republic v Attorney General & another Ex parte Orbit Chemicals Limited [2017] eKLR it was held that:

“

“22. The question is who is then under a legal obligation to satisfy such a judgement after the same has been given? Section 21(1) of the Government Proceedings Act provides:

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.

49. Section 21 (3) of the said Act on the other hand provides:

“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.”

50. They submit that the effect of these provisions is that whereas execution proceedings as are known to law are not available against the Government, the accounting officer for the Government department concerned is nevertheless under a statutory duty to satisfy a judgement made by the Court against that department.

51. It is therefore clear according to them that in applications for mandamus seeking to compel the satisfaction of a decree, it is the accounting officer of the relevant government department that is obliged to satisfy the decree notwithstanding the fact that the said officer was not a party to the trial proceedings and that in fact the only defendant therein was the Attorney General. Therefore, whereas I agree with the position i

52. In Peter Anyang’ Nyong’o & 10 Others vs. Solicitor General [2011] eKLR that;

“It is for the Attorney General to advise his clients to pay the costs which attracted his representation on behalf of the said client and that being a constitutional representative and being the principal legal advisor to the three arms of the Government, he is required to direct any arm of Government he represented to pay the costs of any suit which he acted



on its behalf; I however do not subscribe to the view that if any costs or liability accrues from his representation, he is obliged to pay the same and that if a particular organ refuses to pay he will be responsible on behalf of his agent.....53. I therefore associate myself with the views expressed by Githua, J in Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza(supra) that once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.....”

53. Relying on the case of Republic V Attorney General Exparte Mirriam Wambugu & Another (2021) eKLR it was held by Judge Nyamweya that, Execution proceedings against a government or public authority under the Government Proceedings Act can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body.
54. The Respondents submit that the Court in the impugned Judgement found the conduct of the police wanting and the criminal process was employed to otherwise settle ulterior motives.
55. It is submitted that the National Police Service is under the Ministry of Interior and in the event the Applicant ought to have sought settling of the decretal sum by the Public Secretary of the Concerned ministry.
56. It is submitted that The Solicitor General who is the accounting officer of the Office of the Attorney General cannot be held liable for acts or omissions related to the execution of a court order by a different Ministry, unless it involves a legal advisory or representational role.
57. The Government Proceedings Act provides that once a certificate of costs is issued a copy of the same may be served by the person in whose favor the order is made, 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.
58. It is submitted that the application defective and the same should be dismissed/struck out.
59. On costs it submits that it is a well-established principle that costs follow the event. In the case of Party of Independent Candidate of Kenya vs Mutula Kilonzo & 2 Others, the court held as follows:

“...it is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial judge is given discretion... But this is a judicial discretion and must be exercised upon grounds of which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party is a rule that should not be departed from without the exercise of good grounds of doing so.”

### **Analysis and determination;**

60. The court is invited to determine whether the applicant's case has merit.
61. The circumstances under which judicial review order of mandamus are issued were set out in Republic v 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> Edn. Vol. 7 p. 111 para 89 thus:

“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.”...These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

62. In applications like the one before the court, other than fulfilling the principles as set out in the case of *Republic v Kenya National Examinations Council ex parte Gathenji & 8 Others Civil Appeal No 234 of 1996 (Supra)*, before an order of mandamus is issued, an Applicant must also abide by the procedure as set out in Section 21 of *Government Proceedings Act* which provides:

“

“(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.”

63. Section 21 (3) of the said Act on the other hand provides:

“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.”



64. In Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR while dealing with the said provisions expressed herself as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

65. In the instant case, the applicant filed Petition in HC Pet E273 of 2021; Nelson Havi vs The Director of Public Prosecution & 2 others seeking declaratory orders for violation of his constitutional rights.
66. The Court proceeded to award damages to a tune of Kshs. 5,000,000 to be borne by the Directorate of Criminal Investigation and the Attorney General.
67. The applicant extracted decree issued on 19<sup>th</sup> March 2024 and a Certificate of Order against the Government dated 17<sup>th</sup> April 2024.
68. The Certificate of Costs directed that sums payable to the applicant was Decretal sum of Kshs. 5,000,000 plus interest at 14% p.a totaling to Kshs. 237, 808.22.
69. The Respondent has failed and/or refused to settle the decretal sum.
70. In Republic v The Attorney General & Another ex parte James Alfred Koroso (supra) further held as hereunder:

“...in the present case the ex parte applicant has no other option of realizing the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realized. Unless something is done he will forever be left baby-sitting his barren decree. This



state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the 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 judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks 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/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 for 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 the 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 recognised 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, the employer of the concerned public officer and to uphold the dignity and authority of the court.”

71. The Respondents have not given tangible reasons as to why the decree has not been settled.
72. The court is satisfied that the Applicant has complied with the requisite procedure under Section 21 of the *Government Proceedings Act*.
73. If the Court were to decline to grant mandamus, the Applicant would be left without an effective remedy despite holding a decree and I so hold.

**On costs;**

74. Costs ordinarily follow the events in this case the applicant is successful in his application as a result of which it shall be awarded costs.



**Determination;**

75. The court is satisfied that the applicant has made out a case for the grant of the orders sought which I hereby allow.

Order;

The application is allowed as prayed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....

**J. CHIGITI (SC)**

**JUDGE**

