

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISCELLANOUS APPLICATION NO. E002 OF 2024

THE REPUBLIC.....APPLICANT

VERSUS

**THE COUNTY SECRETARY MACHAKOS COUNTY
GOVERNMENT.....1ST
RESPONDENT**

**THE CHIEF OFFICER FINANCE MACHAKOS COUNTY
GOVERNMENT.....2ND
RESPONDENT**

AND

**AUTOXPRESS LIMITED.....EX-PARTE
APPLICANT**

RULING

1. This ruling relates to the Applicant's Notice of Motion dated 20th March, 2024. The motion seeks an order of mandamus to issue against the respondents to compel them to proceed and pay out of Kshs 600,141 being decretal sum, costs and interests as 27/6/2023 in Machakos CMCC N0. 226 of 2018 whose judgement was delivered on 30/9/2019 and continues to attract interest at court rate.
2. The application is supported by the affidavit of Scort Sala sworn on 20th March 2024. The gist of the application, as can be discerned from the grounds on its face thereof and in the

affidavit, being that the ex-parte applicant obtained a judgement dated 30th September 2019 against Machakos County Government in Machakos CMCC 226 of 2018 in which the decretal sum has never been paid. The Machakos County Government has deliberately refused and ignored to pay the same which prompted the ex-parte applicant to institute this proceedings against them.

3. The application was unopposed.
4. The ex-parte applicant submitted that the issue for determination is whether the application should be allowed.
5. Reliance was placed to the case of **Republic vs Kenya National Examination Council Ex parte Gathenji & 8 others Civil appeal no 234 of 1996, Republic vs the Attorney General & Another ex parte James Alfred Koroso [2013]eKLR, Republic v Principal Secretary Interior and National Coordination Exparte Fredrick Manoah Eguru [2012] eKLR.**
6. It was submitted that the ex-parte applicant will not be able to realize the award from the judgement as the respondent enjoys protection from the conventional process of execution. The court was urged to allow the application

Disposition

7. I have carefully considered the application, the grounds on its face, submission and the law. The only issue for determination is if this application is merited for the grant of the orders sought.
8. The ex-parte applicant herein is seeking an order of mandamus against the County Government of Machakos to compel them to proceed and pay out of Kshs 600,141 being decretal sum, costs and interests as 27/6/2023 in Machakos CMCC N0. 226 of 2018 whose judgement was delivered on 30/9/2019
9. In MUCIIMI MBAKA & CO. ADVOCATES V TOWN CLERK, CITY COUNCIL OF NAIROBI [2012] KEHC 1196 (KLR), Githua, J expressed herself as follows:

“An order of mandamus is issued to compel performance of a public duty or a duty imposed by statute where there has been failure to perform the said duty to the detriment of an aggrieved party. A local authority has a legal obligation and a public duty to satisfy decrees issued against it and the person entrusted with this task is the Clerk to the Local Authority who according to section 129(1) of the Local Government Act is the Chief Executive and Administrative Officer in-charge of coordinating the operations of a Local Authority...Section 263A of the Local Government Act requires the Clerk of a Local Authority to pay

without delay sums awarded in a judgement or order to the person entitled out of the revenue of the Local Authority. As the Respondent has failed or refused to pay the Applicant the monies decreed...it is evident that he is in blatant breach of the express duty imposed on him by statute to satisfy decrees issued against the City Council of Nairobi out of the revenue generated by the Council. I do not see any reason why the respondent should not be compelled to pay the Applicant without delay, the decretal sums due out of the revenue of the City Council of Nairobi”.

- 10. In *REPUBLIC v TOWN CLERK, KISUMU MUNICIPALITY Ex-parte EAST AFRICAN ENGINEERING CONSULSTANTS [2007] KEHC 147 (KLR* where it was held:**

“The orders are issued in the name of the Republic and in the case of mandamus order its officers are compelled to act in accordance with the law. The state so to speak by the very act of issuing the orders frowns upon its officers for not complying with the law. The orders are supposed to be obeyed by the officers as a matter of honour/and as ordered by the State. Execution as known in the Civil Procedure process was not contemplated and this includes garnishee proceedings. There is only one way of enforcing the orders where they are disobeyed i.e. through contempt proceedings. The applicant should therefore have enforced the mandamus order using this method. There is only one rider - an officer can only be committed where

the public body he serves has funds and where he deliberately refuses to pay or where a statute has earmarked funds for payment since an officer does not incur personal liability...Local Authorities Transfer Fund Act, which provides funds to local authorities, part of which should be used to pay debts does not provide for their attachment since section 263A of the Local Government Act prohibits it. It just enables the Local Authorities to honour their debt obligations including those covered by a mandamus order. The Local Authorities have to pay as a matter of statutory duty or in the case of mandamus in obedience to the order from the state or the Republic. There is no provision in the LATF Act for attachment or execution”.

11. Having considered the material on record and in the absence of any impediment, I do not see why the respondent should not be compelled to perform its statutory duty by settling the sums due from it to the Applicant.
12. In the result I allow the application and hereby issue an order of mandamus directed at the Chief Officer Finance, Machakos County compelling him/her to pay to the Applicant the sum of Kshs 600,141/- within sixty (60) days of this judgment.
13. The costs of these proceedings are awarded to the EX Parte Applicant.

Orders accordingly.

**Judgment signed, dated and delivered virtually on this
14th day of November 2025.**

E. N. MAINA

JUDGE

IN PRESENCE OF:

Mr. Ogara Advocate for the Applicant

No appearance for the Respondent

C/A: Geoffrey

ORIGINAL