

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
JUDICIAL REVIEW NO E013 OF 2025

**IN THE MATTER OF AN APPLICATION BY THE EXPARTE APPLICANT
JAMES KIPKORIR KAINO AND FRANCIS KIPRUTO BARKOIYES**

AND

**IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, CAP 40
LAWS OF KENYA, THE CIVIL PROCEDURE RULES, THE INHERENT
JURISDICTION OF THE COURT AND THE LAW REFORM ACT, CAP 26
LAWS OF KENYA**

AND

**IN THE MATTER OF CERTIFICATE OF ORDER FOR COSTS AGAINST THE
GOVERNMENT AND CERTIFICATE OF JUDGEMENT OR DECREE
AGAINST THE GOVERNMENT**

AND

**IN THE MATTER OF THE CHIEF MAGISTRATE’S COURT AT ELDORET,
CIVIL SUIT NO. 600 OF 2018; JAMES KIPKORIR KAINO AND FRANCIS
KIPRUTO BARKOIYES VS CHEBORORWA ATC AND THE ATTORNEY**

GENERAL

BETWEEN

**REPUBLIC.....APPLICAN
T**

VERSUS

**THE COUNTY GOVERNMENT OF UASIN
GISHU.....RESPONDENT**

EX PARTE

**JAMES KIPKORIR KAINO.....1ST
APPLICANT**

FRANCIS KIPRUTO BARKOIYET.....2ND

APPLICANT

**Coram: Before Justice R. Nyakundi
M/s J.K Kiplagat & Co Advocates**

JUDGMENT

1. The brief background of this Judicial Review Cause is that the Ex Parte Applicants herein moved this Honourable Court for an Order of Mandamus to compel the Respondent herein, the County Government of Uasin Gishu to settle the decretal amount ordered at the Chief Magistrate’s Court and the Certificate of Costs in Eldoret CMCC No. 600 of 2018.
2. The Ex-parte Applicants filed Chamber Summons dated 24th June 2025 seeking the orders that: this Honourable Court be pleased to extend time for filling of these judicial review proceedings for an order of mandamus beyond the statutory time of six months and this Honourable Court be pleased to grant leave to the ex-parte applicants to apply for judicial review for an order of Mandamus. Consequently, this Honourable Court pronounced itself on 16th July 2025 with the following orders: -
 - “3. On consideration of the Ex parte Chamber Summons dated 24th June 2025, leave be and is hereby granted from this court for the Applicants to file a substantive motion within 10 days from today’s date which was on 7th July 2025.**
 - 4. The Substantive motion be served and be heard on 21st of July 2025.**
 - 5. That the Applicant be at liberty to seek the prerogative writ of mandamus.**
 - 6. It is so ordered.”**
3. Pursuant to the above directions, the Ex Parte Applicants filed a Notice of Motion Application premised under Order 53 Rule 1(1) and 1(2) of the Civil

Procedure Rules; Rule 3(1), 3(2) of the High Court Practice and Procedure Rules made under the Judicature Act, section 7 of the Fair Administrative Action Act 2025, section 21 of the Government Proceedings Act and Article 47(1), 48 and 159 of the Constitution of Kenya 2010 seeking the following orders: -

- a. *An Order of Mandamus compelling the accounting officials of Uasin Gishu County Government, namely: The Chief Finance Officer and or the County Secretary and Head of Public Services to pay to the Ex-Parte Applicant or to the Applicant's Advocates on record herein, namely, J.K Kiplagat & Company Advocates a sum of Kshs. 649,981.66/=, being the decretal sum, together with interest thereon at Court rate and further interest thereon until payment of the decretal amount in full.*
 - b. *The costs of this application be borne by the Respondent.*
4. The Application is made on the following grounds on the face of it among others;
- a. The Applicants obtained judgement against Chebororwa ATC and the Honourable Attorney General in Eldoret Chief Magistrates Court Civil Case No. 600 of 2018.
 - b. Chebororwa ATC is Technical Vocational Education and Training institution which has since been devolved and is under management of Uasin Gishu County Government, the Respondent herein.
 - c. The Respondent was served with the decree and certificate of costs in the year 2022 but failed to settle the amount.
 - d. The Respondent instead filed an application to stay execution of the decree, which was later dismissed on 25/5/2023 for want of prosecution.
 - e. The Applicants through their advocates on record have been in communication with the Respondent to pay the decretal amount but nothing has been forth-coming, causing further delay

- f. The Applicants have a right to enjoy the fruits of their judgment, necessitating these proceedings for an order of mandamus.
 - g. All the matters deponed to in the affidavit of James Kipkorir Kaino are relied upon.
5. The Notice of Motion Application is grounded on the verifying Affidavit of James Kipkorir Kaino who deponed as follows: -
- a) *That I have the authority of the 2nd Applicant herein to plead and deponed, hence competent to swear this affidavit.*
 - b) *That we sued Chebororwa ATC and the Honourable Attorney General for defamation and obtained judgment in our favour.*
 - c) *That through our advocates, we served the 1st Respondent with a copy of the decree and certificate of costs for satisfaction.*
 - d) *That instead of making the necessary payments, the 1st Respondent filed an application to stay execution of the decree and later failed to prosecute the same. The application was dismissed for want of prosecution.*
 - e) *That the Respondent being a government body, we instructed our advocates on record to write to them to pay, so as to avoid further costs. After receiving the letter, the Respondent has been evasive, necessitating these proceedings.*
 - f) *That this application has been brought timely without unreasonable delay.*
 - g) *That we have a right in law to enjoy the fruits of our judgment, which being against a government body, judicial review order of mandamus is necessary.*
 - h) *That I swear this affidavit in support of the application for extension of time and for leave to apply for judicial review orders of mandamus; and to verify the correctness of the facts relied upon and the grounds and other matters set out in the Statutory Statement lodged herewith.*

Replying Affidavit evidence by the Respondent

6. The application is opposed vide a Replying Affidavit sworn by Phillip Meli who averred as follows;
- a. *I am the County Secretary for the Respondents herein hence competent to swear this affidavit.*
 - b. *That I have read and understood the contents of the application dated 20th June, 2025 together with the verifying affidavit of James Kipkorir Kaino as well as the annexures thereto and the same having been further explained to me at the Office of the County Attorney being counsels on record and I wish to tender this response in opposition thereof.*
 - c. *That the Notice of Motion is incurably defective, incompetent, frivolous, scandalous and devoid of substance in law.*
 - d. *That I have been informed by counsel on record which information believe to be true that the application is time-barred, contra-statute and a nullity.*
 - e. *That the statutory period of 6 months within which to institute a Judicial Review Application have long lapsed.*
 - f. *That the judgment of the Honourable court awarded a decretal sum of Kshs 584,146.66 to the ex parte applicants but on the face of the Notice of motion they have proceeded to plead for Kshs 649,981.66 against the Court judgement*
 - g. *That satisfaction of decrees or judgment is deemed to be an expenditure by Parliament/County Assembly and as a result of this must be notified in law and provided for in the Government's expenditure.*
 - h. *That it is for the above reason that section 32 of the Government Proceedings Act provides any expenditure incurred by or on behalf of the Government by reason of this Act shall be used out of the monies provided by Parliament.*

- i. That Parliamentary control over expenditure is based upon the principle that all expenditure must rest upon legislative authority. In this case County Assembly by dint of County Government Act and Public Finance Management Act.*
 - j. That no payment out of public funds is legal unless it is authorized by statute in this case by fiscal plan and a budget process.*
 - k. That only through appropriation can County Government of Uasin Gishu pay a debtor and as such immediate payment upon issuing of decree and judgment is not tenable.*
 - l. That in the event that the instant application is allowed, then it is my prayer that the County Government be given time so that it can factor in the said debt in the next financial cycle of 2025/2026 financial year.*
 - m. That in the event that the instant application is allowed then it is our prayer that the Honourable Court do set a timeline for payment that will not put the County Government in conflict with any statutory litigation.*
 - n. That in light of the facts discussed above, it is the Respondents prayer that the Court dismisses the application dated 20th June, 2025.*
7. The Application was canvassed by way of written submissions.

Ex-parte Applicants Written Submissions

8. The Applicants filed their written submissions dated 13th October 2025 through their learned Counsel Mrs. Cherop who listed 2 issues for determination as follows: -
- a. Whether the judicial review application is time barred by statute?*
 - b. Whether the Ex parte Applicants application for orders of mandamus is merited?*
9. On the first issue, the learned counsel for the ex parte Applicants Mrs. Cherop submitted that the Judicial Review application is not time-barred by statute. She stated that the Applicants had demonstrated through

affidavit evidence that the Respondent was duly served with the decree and certificate of costs and several correspondences requesting payment were exchanged. However, the Respondent failed to discharge its duty to pay the sums due. Counsel explained that the delay in instituting judicial review proceedings was occasioned by ongoing dialogues between the parties which ultimately proved unfruitful.

10. Relying on Section 7 of the Fair Administrative Actions Act, Counsel submitted that the Respondent had a statutory duty to act by paying the decreed amount but failed to do so despite notice. She further noted that the Applicants had obtained an order for extension of time to file judicial review proceedings as granted in their application dated 24th June 2025 and therefore, the application was properly before the court. Counsel urged that the reasons for delay were justified, the Respondent was aware of its obligation and an extension of time had already been granted making the application not statute-barred.
11. On the second issue of merits of the application for an order of mandamus, Counsel submitted that the Respondent being a County Government is a judgment debtor in Eldoret Magistrates Court Civil Case No. 600 of 2018 and that both the decree and certificate of costs dated 21st October 2022 were served upon it, yet payment remains outstanding. She argued that the order of mandamus sought is intended to compel the Respondent to perform its public duty to settle the decretal amount of Kshs. 649,981.66 as decreed by the court. Counsel relied on the case of **Republic Vs Kenya National Examinations Council Ex Parte Gathenji & 8 Others (Civil Appeal No. 234 of 1996)**, where the Court of Appeal held that mandamus compels the performance of a public duty imposed by statute and cited Section 21 of the Government Proceedings Act which provides for execution of orders against the Government. She emphasized that under section 21(3), the Accounting Officer of the

Government department concerned is legally bound to pay the amount due under a certificate of order.

12. The Learned Counsel also referred to the decision in **Gichina (Suing as the administrator of the Estate of the Late Joseph Gichina Muhoro) Vs County Government of West Pokot [2024] KEELC 7104 (KLR)**, which affirmed that Section 21 of the Government Proceedings Act applies to County Governments pursuant to the 2015 amendment. In conclusion, counsel submitted that the Respondent, being a County Government and judgment debtor had failed to perform its statutory duty to satisfy the decree. Having obtained leave and extension of time, the ex parte Applicants were properly before the court. She therefore urged the court to find the application meritorious and to grant the orders of mandamus as prayed.

Respondent's Written Submissions

13. The Respondent filed its written submissions dated 6th October 2025 through its learned Counsel Mr. Mutua who listed 2 issues for determination as follows
- a. Whether the Judicial Review application is time barred, contra-statute and a nullity?*
 - b. Whether the application offends the provisions of the Civil Procedure Rules and the Law Reform Act, Cap 26 Laws of Kenya?*
 - c. Whether the application should be struck out and the prayers sought dismissed?*
14. The learned counsel for the Respondent Mr. Mutua submitted that in respect to paragraphs 4 and 5 of the Replying Affidavit, the Notice of Motion is incurably defective, incompetent, frivolous, scandalous and devoid of substance in law. He argued that judgment was delivered in the year 2019 more than seven years ago and therefore the statutory period of six (6) months within which to institute a Judicial Review Application

has long lapsed. On this ground alone, counsel prayed that the application filed by the Applicants be struck out with costs.

15. Counsel relied on the authority of **Judicial Review Application No. 1 of 2021 Peter Orenge Migiro Vs Samwel Omagwa James & 2 others**. He further submitted that the application is time-barred, contra statute and a nullity as under Order 53 Rule 1 and 2 of the Civil Procedure Rules, leave to file a Judicial Review application must be sought within six (6) months from the date of judgment or decision and that the ruling herein was issued on 2nd October 2018. Mr. Mutua added that the scope of Judicial Review is now entrenched in the Constitution and where one opts to proceed under the Law Reform Act and Order 53, they must comply with the six-month limitation as the court has no discretion to enlarge time for filing such applications. He also cited Section 9(2) and (3) of the Law Reform Act, Cap 26 which provide that applications for mandamus, prohibition or certiorari must be filed within six months or such shorter period as may be prescribed.
16. The Learned Counsel concluded that the application is contra statute and therefore incompetent urging the court to dismiss it with costs. Without prejudice and in response to other grounds in the Replying Affidavit, Counsel submitted that even if the application were not struck out, the Honourable Court had awarded a decretal sum of Kshs. 584,146.66, yet the Applicants are now claiming Kshs. 649,981.66 without justification.
17. Finally, the Learned Counsel submitted that satisfaction of decrees or judgments is deemed to be an expenditure by Parliament or County Assembly and payment out of public funds must be authorized by statute through the budget and appropriation process. Therefore, immediate payment upon issuance of a decree is not tenable. In the event the court allows the application, counsel prayed that the County Government be

granted sufficient time to factor the said debt in the next financial cycle so as not to put the County in conflict with statutory obligations.

Analysis and Determination

18. I have read and considered the pleadings herein. There are two (2) issues for determination by this Honourable Court: -
- a. Whether the Judicial Review application is time-barred by statute
 - b. Whether the Applicants are entitled to the relief of Mandamus compelling the Respondent to pay the decretal amount.

Whether the Judicial Review application is time-barred by statute

19. The application subject of these proceedings was brought under Order 53 Rule 1(1) & 1(2) of the Civil Procedure Rules. However, the learned Counsel for the Respondent had submitted that the application offends section 9(1) & (2) of the Law Reform Act. This section which is relied by the Respondent's Counsel provides as follows: -

9. Rules of court

(1) Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court-

- (a) prescribing the procedure and the fees payable on documents filed or issued in cases where an order of mandamus, prohibition or certiorari is sought;*
- (b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;*
- (c) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made.*

(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe those applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.

20. Similarly, Order 53 Rule 2 of the Civil Procedure Rules provides that:

2. Time for applying for certiorari in certain cases [Order 53, rule 2]

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

21. In all the authorities cited by the respondents, the courts consistently held that leave to seek judicial review orders of mandamus, certiorari or prohibition cannot be granted unless the application is filed within six months from the date of the act or omission being challenged. This position aligns precisely with the provisions of Section 9(2) of the Law Reform Act as previously emphasized in this ruling. Seeking mandamus to compel settlement of money decrees was discussed in the case of **Republic Vs Chief Executive Officer, IEBC exparte Patrick Mweu Musimamba [2018] eKLR** where Nyamweya J (as she then was) stated:

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“20. In addition, the time limit of 6 months within which to bring an application for judicial review orders only applies where the order sought is one of certiorari, which is not the case in the present application which is seeking an order of mandamus. The limitation

period with respect to an order of mandamus to enforce a sum due on a judgment is provided for by section 4(4) of the Limitation of Actions Act...”

22. Onto the question of whether the filing of the application for leave to apply for mandamus to compel settlement of certificate of order against the government was statute barred, a similar argument arose in the case of **Republic Vs County Government of Nairobi Ex Parte Macharia Njeru & another [2021] eKLR** where the Honourable Court held as follows: -

“Section 9(2) of the Law Reform Act, Cap. 26 which the learned counsel for the respondents made reference to on the argument that the applicant’s motion is out of time reads as follows:

9.

(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe those applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.

Subsection (3) states in express terms the time within which an application for the order of certiorari should be made; it is of little relevance to the applicant’s Application which seeks the order for mandamus. Subsection (1), on the other hand, talks about the power to make rules to provide for any matters of procedure with respect to applications for judicial review orders.

Indeed, there are no other Rules besides Order 53 of the Civil Procedure Rules. Nowhere in that Rule is it stated that an application for the order of mandamus must be made within six months of the date of the act complained of. It is only in Order 53 Rule 2 that a

specific timeline is given for the application for the order of certiorari. That particular Rule reads as follows:

2. Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

23. From my own assessment, I note that it has not been demonstrated that the ex-parte applicant's Notice of Motion application is one of those 'specified proceedings' contemplated in section 9(2) of the Law Reform Act which rules prescribe that may be made within six months of the act or omission complained of. Under Order 53 of the Civil Procedure Rules which are unquestionably the rules contemplated under section 9(2) of the Law Reform Act, only the prerogative order of certiorari is expressly subject to a statutory time limit. This however, does not mean that the timing of applications for other judicial review remedies is irrelevant. Because these remedies are discretionary, the speed or delay with which an applicant approaches the court may influence whether leave should be granted or whether the substantive application should ultimately succeed. That concern does not arise in the present matter. The critical point is that neither section 9(2) of the Law Reform Act nor Order 53 imposes a time limitation for filing an application for mandamus.

24. A decree not being an administrative decision, it is therefore my considered view that the limitation period for execution of decree is 12 years as stipulated in section 4 of the Limitation of Actions Act. In interpreting statutes, certain general principles apply subject to limited

exceptions. First, where two laws appear to conflict, the more specific statute prevails over the more general one unless Parliament clearly intended otherwise. Second, where there is a conflict between statutes, the later enactment ordinarily takes precedence over the earlier one unless the earlier statute is more precise and unequivocal. Finally, it is presumed that Parliament does not pass redundant or purposeless laws; each statute is assumed to serve a meaningful and deliberate purpose. In the comparative jurisprudence in the case of **David Sejjaka Nalima Vs Rebecca Musoke, Civil Appeal No 12 of 1985**, the Court of Appeal of Uganda observed; -

“According to principles of Construction, if the provisions of a latter Act are so inconsistent with or repugnant to those of an earlier Act that the two cannot stand together, the earlier Act stands impliedly repealed by the latter Act. It is immaterial whether both Acts are Penal Acts or both refer to civil rights. The former must be taken to be repealed by implication. Another proposition is if the provisions are wholly inconsistent in their application to particular cases, then to that extent the provisions of the former Act are exempted or their operation is excluded with respect to the cases falling within the provisions of the Act.”

25. The case law discussed above establishes that where two provisions or statutes conflict, the later one prevails and may be treated as having repealed the earlier one. In **Lucy Mirigo & 550 Others Vs Minister for Lands & 4 Others [2014] eKLR**, the Court of Appeal considered the issue of when time begins to run for limitation purposes in relation to an order of mandamus. Although the Court was not dealing specifically with the enforcement of a decree, it underscored the principle that no statutory time limit applies to the remedy of mandamus. The Court made this position clear in its reasoning.:

“On our part, we have examined the provisions of Order 53 of the Civil Procedure Act which is the juridical basis for an application for mandamus. Rule 2 of Order 53 provides a six-month limitation period for an order of Certiorari. There is no limitation period to institute an action for mandamus. Limitation for purposes of mandamus is to be determined by the reasonableness and length of time between the cause of action and time of filing suit.”

26. This court is bound by the above decision of the Court of Appeal. In the present matter, the mandamus being sought relates to the enforcement of a decree against the county government and as a result, **section 4(4) of the Limitation of Actions Act** is the applicable provision and it states as follows;

4(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

27. In my considered view, the twelve-year limitation period under the Limitation of Actions Act applies to all actions arising from a judgment including applications for mandamus compelling satisfaction of that judgment. Consequently, a mandamus application cannot be brought more than twelve years after the judgment was issued or the date of default. I am also of the opinion that although the Law Reform Act provides the framework for judicial review remedies such as mandamus, it does not set a specific time limit for using mandamus to enforce a decree. It is section 4(4) of the Limitation of Actions Act that imposes this twelve-

year limitation on actions founded on judgments, including those pursued through mandamus.

28. Be that as it may, it is common ground that the underlying decree and certificate of costs were served on the Respondent and that the judgment giving rise to the decree was delivered in 2019. The Respondent submits that the Applicants' present application is therefore out of time. I find that this objection is answered by the orders made by this Court on 16th July 2025 which granted leave to the Applicants to apply for Judicial Review and extended time for filing those proceedings. That order was granted on the Applicants' ex-parte application and forms part of the record of this cause. In those circumstances, using the legal principles discussed above, the objection that the application is time-barred fails and is dismissed.

Whether the Applicants are entitled to the relief of Mandamus compelling the Respondent to pay the decretal amount.

29. In Kenya, writ of mandamus is a remedy available under Judicial Review, which is a process initiated at the High Court and subject to the appeal in the Court of Appeal. The significance of Judicial Review extends to a body exercising a public function even if it does not have a statutory or prerogative basis. The key principles governing granting of mandatory orders include:

- **Public law duty:** The body in question has a public law duty (not merely a private law obligation) to perform a specific action.
- **Failure to act:** The public body has failed or refused to perform this duty.
- **No alternative remedy:** There is no other adequate legal remedy available to the claimant. The remedy of a mandatory order is a last resort.
- **Clear obligation:** The duty to be performed must be specific and not involve a high degree of discretion on the part of the public body.

- **Timeliness:** The application for judicial review must be made promptly, usually within three months of the grounds for the claim arising.

30. In matters of Judicial Review remedy which is now entrenched in Article 23 of the Constitution the Courts are fashioned with wide powers to be exercised in favour of citizens against proceedings and decisions of inferior courts, tribunals, public bodies and other persons who carry out quasi-judicial functions or those who are engaged in the performance of the public acts and duties for the common good. The Learned Author **Lord Hailsham** in his treatise as regards the purpose of judicial review stated as follows:

“Since the range of authorities, and the circumstances of the use of their power, are almost infinitely various, it is of course unwise to lay down rules for the application of the remedy which appear to be of universal validity in every type of case. But it is important to remember in every case that the purpose of remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law. The purpose of judicial review is to ensure that the authority, after accordingly fair treatment, reaches on a matter which it is authorized or joined by law to decide from itself a conclusion which is correct in the eyes of the court.”

31. To start with in this petition, would be the task of the Court to satisfy itself on the level of statutory breaches committed by the Respondent in answer to fulfill the enforcement of the judgment duly issued by a court of law. This is not a doubtful right which cannot be enforced by this Court.

The duty to perform by the Respondent in settling the fruits of the judgment is undisputed and plainly defined. What is deducible from the petition by the Applicants is that they had a legally protected right that has been infringed by the Respondent. It is also clear from the evidence that the Applicants demanded for the performance of this duty of settling the judgment debt, but the Respondent has failed to respond accordingly. It is trite that in matters of public bodies like County Government no other legal remedy is available to the Applicants to enforce the debt save for a command of mandamus. In the following extract herein under the court will be delving into more details on the writ of mandamus and the suitability, legitimacy, propriety, justness and regularity of issuing the prerogative writ in favour of the Applicants.

32. The law governing the grant of the order of mandamus is well settled. In **Republic Vs Attorney General & Another Ex parte James Alfred Koroso [2013] eKLR**, The Court held *that once a judgment is entered against the Government and it fails to satisfy the decretal amount, the affected party may properly apply for an order of mandamus to compel the responsible accounting officer to make payment. The Government cannot avoid fulfilling its lawful obligations by citing internal budgetary or financial limitations.* Similarly, in the case of **Republic Vs Kenya National Examinations Council ex parte Gathengi & 8 Others Civil Appeal No 234 of 1996**, the Court of Appeal cited, with approval, *Halsbury's Law of England*, 4th Edn. Vol. 7 p. 111 par 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."

33. Section 21 of the Government Proceedings Act provides for **Satisfaction of orders against the Government** and states as follows:

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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.*
34. The reading of Section 21(4) of the Government Proceedings Act prohibits execution against the Government thus leaving the applicant no other appropriate remedy except mandamus. That was the position in the English case of ***R (Regina) Vs Dudsheath, ex parte, Meredith [1950] 2 ALL ER 741, at 743***, Lord Goddard C. J. said -
- "It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy opens to the party seeking it. This is one of the reasons, no doubt, why, where there*

is a visitor of a corporate body, the court will not interfere in a matter within the province of the visitor, and especially this is so in matters relating to educational bodies such as colleges."

35. In the circumstances of this case, the ex parte applicants have no alternative means of enforcing the judgment, as execution cannot be taken out against the Government. Mandamus is therefore the only avenue available to secure the fruits of the judgment awarded to them. Without intervention, they would be left indefinitely holding a decree that yields no practical outcome. Such a situation is incompatible with our current constitutional framework, particularly **Article 48**, which obligates the State to guarantee access to justice for all. Access to justice cannot be said to have been ensured if successful litigants are unable to enjoy the fruits of judgments issued in their favour because of obstacles created by the acts or omissions of public officers. It must be remembered that public offices are positions of trust, and public officers are duty-bound to act for the benefit of the people of Kenya. In my view, it is wholly incompatible within a democratic society to deprive a citizen of rights that have been lawfully confirmed by a court of competent jurisdiction. Public officers must keep in mind that, under **Article 129 of the Constitution**, executive authority originates from the people of Kenya and must be exercised in line with the Constitution in a way that reflects service to the public and promotes their welfare and best interests. In the case of **Republic Vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza [2012] eKLR**, the Court stated:

"An order of mandamus is a command issued by the High Court to compel the performance of a public duty which is imposed by statute, where the person or body has failed to perform that duty. Once a judgment is entered against the Government and a certificate of order is issued, the obligation to pay becomes a statutory duty."

36. In the instant case, the applicant has satisfied all conditions precedent to the grant of the order of mandamus because of the following:
- a) A valid decree has been obtained.
 - b) Certificate of Order against the County Government was issued on 21st October 2022.
 - c) The certificate was served upon the respondents.
37. Before I pen off, I note that the Respondent validly raises the point that there is a discrepancy between the decretal sum appearing on the record relied upon by the Applicants and the sum now claimed in the Notice of Motion the decree and certificate on record reflect Kshs. 584,146.66 but the Applicants' motion seeks Kshs. 649,981.66. A glimpse at the record filed in the Court file indicate that the Amended decree dated 21st October 2022 has a decretal amount of kshs 584,146.66/= and there is also a Certificate of Costs with an amount of kshs. 65,835/=. A simple addition of these values in the court record bring an aggregate amount of kshs. 649, 981.66/= owed to the ex parte Applicants. I thus hold that there is no discrepancy in view of the above and the decretal sum owed by the Respondent is valid and correct.
38. On the evidence before me, the Respondent does not assert that payment has been made. Instead the Respondent relies on the budgetary and appropriations process and contends that payment cannot be made immediately because it must be provided for in the County's budget/fiscal cycle. While it is true that payments out of public funds require appropriation and compliance with public financial management Act, that procedural requirement does not extinguish the underlying obligation to pay nor does it render a mandamus inappropriate where a public body has been shown to have neglected to satisfy a court decree and certificate of costs. Furthermore, the Respondent's unsubstantiated claims regarding budgetary allocations cannot constitute a legitimate defence or justify refusal to satisfy a lawful court decree. Ongoing failure

to comply erodes the authority of the courts and violates the constitutional guarantee of access to justice under **Article 48**.

39. In the circumstances and having considered all relevant material and submissions, the Court is satisfied that the applicant has met the threshold for the issuance of the order of mandamus. Consequently, the following orders shall abide: -

- a) *That an order of mandamus be and is hereby issued compelling the Respondent to pay to the ex-parte Applicants the outstanding decretal sum of Kshs 649,981.66/= as per the judgment delivered on 22nd February 2019 and the Certificate of Costs against the Respondent with interest at Court rates to be computed from 10th July 2019 being the date of default until payment in full.*
- b) *That an order be and is hereby issued that the Respondent, being a County Government and a judgment debtor in Eldoret CMCC No. 600 of 2018, shall within sixty (60) days from the date hereof give a proposed mode of payment of the decretal sum of Kshs. 649,981.66 together with any interest lawfully accruing thereon as stipulated in the decree and certificate of costs duly served upon it.*
- c) *That the Ex parte Applicants shall have the costs of this application with interest thereon at Court rates.*
- d) *That this matter shall be mentioned on **26th January 2026** before the Deputy Registrar of the High Court to confirm compliance with the orders above.*

40. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 14TH DAY
OF NOVEMBER 2025**

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R. NYAKUNDI
JUDGE