

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

JUDICIAL REVIEW APPLICATION NO. E030 OF 2021

REPUBLIC.....APPLICANT

VERSUS

THE INSECPTOR GENERAL OF POLICE.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

Ex-parte APPLICANTS

1. INTRASPEED LOGISTICS LTD
2. DOOBA ENTERPRISES LTD
3. WILLEX UGANDA LTD
4. SEBCO UGANDA LTD
5. KPI LTD
6. SULEIMAN BATEGANYA
7. DAVID MUSANA
8. BUNYONYI SAFARIS LTD
9. SEVEN HILLS IMPEX LTD
10. UGANDA AGRICULTURAL TOOLS LTD
11. BOARD CITY LTD
12. ARTHUR TURIAHIKAYO
13. BIDCO (U) LTD
14. KAMPALA CITY TRADERS ASSOCIATION
15. KATRACO (U) LTD
16. MUGENGA HOLDINGS LTD

RULING

1. On 14/10/2021, Hon. Justice Ngaah delivered judgment in this matter wherein he struck out the applicants' substantive Notice of Motion dated 9/3/2021 which was seeking an order of mandamus against the Respondents to compel the Respondents to settle court decree in HCC 398/2009 in the sum of USD 126,379,687 inclusive of interest plus further interest accruing and costs of the suit.

2. The money decree was the damages awarded by the High Court arising from the damages accessioned to the applicant's property and business as a result of the 2007/2008 post-election violence. The decree was pursuant to the judgment rendered on 28/6/2018 which awarded the applicant's damages of USD 104,252,228 plus interest and costs.
3. In striking out the Notice of Motion, the learned Judge gave reasons being, that the applicants had prematurely filed for mandamus in that they had not obtained a certificate of order against the Government as mandated by **Section 21 of the Government Proceedings Act.**
4. At that material time, the Respondents had also filed an appeal before the Court of Appeal, challenging the judgment and decree of the High Court and they even obtained a conditional stay of implementation of the judgment and decree vide Ruling of 10/5/2019 in the Court of Appeal Civil Application No. NAI 349/2018 (UR 283/2018). That appeal has since been heard and determined vide judgment of the court delivered on 24/10/2025.
5. In the said judgment, the Court of Appeal upheld all the prayers sought by the applicants herein as granted by the High Court in the Civil suit No. 398 of 2009 except the prayer for loss of business wherein the applicants had been granted 6 years, which period of loss the Court of Appeal reduced to three (3) years from six (6) years.

6. Meanwhile, as there was stay orders of the Court of Appeal as aforesaid, this matter could not progress further after the judgment was rendered striking out the mandamus application.
7. The question is, mandamus application having been struck out, what is it that was pending to be determined? The answer is that no sooner had Justice Ngaah struck out the substantive motion for Mandamus, than the applicants lodged an application dated 29th November 2021 seeking for review of the judgment and order that struck out the substantive mandamus application.
8. In their said application, the applicants intimated that they had inadvertently omitted to include the certificate of order against the Government which had been issued in the primary suit and that they had since filed it in court a day prior to the delivery of the judgment that struck out the substantive mandamus application.
9. They even annexed copy of the said certificate of order against the Government which was dated 13th October 2021 which reflected the amended decree dated 8/11/2018. The initial certificate of order against the Government is dated 22nd March 2019 which is annexed to the applicant's supplementary affidavit sworn by Judith Guserwa on 7/2/2022.
10. The question of whether the application for review of the judgment was opposed is now spent since the parties did appear before me this morning and they mutually agreed that indeed, with the certificate of order against the Government having been filed, the judgment could be reviewed.

11. I will therefore not belabor so much into the merits of the application for review. I allow the application for review of the judgment rendered on 14/10/2021 by Ngaah J, striking out the applicant's substantive mandamus Notice of Motion dated 9/3/2021. I set aside that judgment striking out the mandamus notice of motion dated 9/3/2021.

12. Having set aside the order striking out the substantive mandamus motion, as to whether I can enter judgment in terms of the substantive motion for mandamus Application as argued, I note that the judgment of the Court of Appeal varied the decree of the High Court by reducing the claim for loss of business from six (6) months to three (3) years and this varying has a serious spiral effect on the judgment and decree in HCC 398/2009. The effect is that a fresh decree must be drawn to reflect the Court of Appeal judgment.

13. Similarly, a fresh certificate of order against the Government must be issued by that primary Court that exercised original civil jurisdiction to reflect the judgment of the Court of Appeal. Once issued, and pursuant to the procedural requirements of **Section 21 of the Government Proceedings Act**, the applicant is mandated to serve the said certificate of order against the Government, twenty-one (21) days from the date of issuance of the said order, upon the Attorney General and or the accounting officer (s) of the relevant Government Departments or Ministries, before applying for mandamus.

14. In view of the mandatory procedural requirements under the **Government Proceedings Act**, it would be redundant and superfluous if this Court was to review the judgment of Ngaah J and enter judgment for the applicants in terms of the substantive mandamus motion.

15. The logical thing to do is to vacate and set aside the orders striking out the motion and order that the motion for mandamus is now overtaken by events and direct the applicant to now follow the procedure for enforcement of the now new decree and certificate of order against the Government that is aligned with the Court of Appeal judgment of 24/10/2025.

16. Accordingly, I find and hold that these proceedings are overtaken by events of the decision of the Court of Appeal dated 24/10/2025 which varied the initial decree upon which the initial certificate or order against the Government was predicated.

17. These proceedings and file are closed with no orders as to costs.

18. I so order.

Dated, Signed and Delivered at Nairobi this 13th Day of November, 2025

R.E. ABURILI
JUDGE