



**Republic v County Government of Marsabit; Dream EP Global (K) Energy (Ex parte Applicant)
(Judicial Review E001 of 2021) [2025] KEHC 16985 (KLR) (20 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
JUDICIAL REVIEW E001 OF 2021
FR OLEL, J
NOVEMBER 20, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF MARSABIT RESPONDENT

AND

DREAM EP GLOBAL (K) ENERGY EX PARTE APPLICANT

JUDGMENT

A. Introduction.

1. Before the court for determination is the Ex parte Applicants Amended notice of motion Application dated 3rd February 2023, brought pursuant to provisions of Section 21 of the *Government proceedings Act*, Order 29 and Order 53 Rule 3 & 4 of the Civil Procedure Rules, 2010 and all other enabling provisions of law. The Ex parte seek for Orders that;
 - a. An order of Mandamus do issue compelling the accounting officer of the Respondent to pay the Applicant the sum of Kshs.34,911,430.84 together with interest thereon at the rate of 12% PA from 8th September 2020 until payment in full, being the decretal sum issued in Marsabit High Court Civil Case No 1 of 2020.
 - b. Mr Malicha Boru the CEC Finance and Economic Planning and Mr Wario Jirmo the chief officer Finance of the respondent be directed to comply with the order in (1) above by satisfying the said decretal sum within thirty (30) days from the date of service of the order.
 - c. In default, a Notice to show cause do issue against Mr. Malicha Boru the CEC Finance and Economic Planning, and Mr Wario Jirmo the chief officer Finance of the Respondent requiring them to show cause why they should not be cited for contempt of court orders.



- d. That the respondent do bear the costs of this Application.
2. The application is supported by the grounds stated on its face and the supporting affidavit of Nuru A. Said a director of the Applicant company dated on the even date. In response the respondent did file their Replying Affidavit dated 28th March 2023 and 11th June 2025 and thereafter the Ex parte Applicants also filed their Further Affidavit dated 22nd May 2023 and 21st July 2025 in response thereto.

The Application

3. It was the Ex parte Applicants contention that on 25th October 2016 the respondent did issue a Tender notice Number MBT/COU/UD/84/2016-2017 for street lighting project powered by renewable energy, which tender, they did bid for and were successful. Subsequently they were issued with a favorable notification of award, which they accepted on 27th December 2016 and on 26th January, 2017 entered into an Engineering Procurement Agreement for the performance of the said tender works to create, set up and establish four solar generating stations and further would also install the dream power boxes, and install 240 LED street lights mounted on 5 meter masts within Marsabit and Moyale town.
4. The said contract was costed at Kshs.68,728,217/= out of which they were paid a sum of Ksh 55,628,755/= leaving a deficit of Kshs 13,099,442/=, which was to accrue interest at a rate of 2% above bank rates from the date of issue of notification of the award. To enforce this payment, they did file Marsabit High Court Civil Case No 1 of 2020, were successful and on 18th September 2020, extracted the decree, order of certificate against the government and the certificate of costs, which were then served upon the respondent. As a follow up on 21st August 2021, their advocate wrote a demand letter to the chief finance officer requesting for payment, but the same has been ignored and no payment made to date despite persistent follow up.
5. It was therefore imperative that the orders sought be granted to ensure that justice prevails.

The Response.

6. The respondent filed two Relying affidavits in response to this Application. In the first Replying Affidavit dated 28.03.2023 sworn by Mr Wario Jirmo, the chief officer finance, he did depone that the application as filed was defective as the applicants had failed to attach the decree, they sought to execute as mandatorily required by Section 21(1) of the *Government Proceedings Act*, Cap 40. Further he urged the court to note that they had not received disbursements from the national treasury to enable them honour pending financial obligations and thus it would be futile to issue warrants of arrest against the him as they had not refused to pay, nor were they in contempt of any court order.
7. The respondent further in opposition to the said application filed a second replying Affidavit, sworn by Mr Hussein Tarry Sasura, the county secretary dated 11th June 2025, where he stated that there was an ongoing EACC investigation into the contract between the Ex parte Applicant and the respondent and therefore they could not commit to settle the decretal sum until they got clearance from the EACC.

The Applicants' Further Affidavit.

8. The Ex Parte Applicant in response also did file their further Affidavit dated 21 July 2025, where they deponed that there were no ongoing investigations being done by EACC and the said averments were mere insinuations made without any basis nor had the respondent provided evidence to prove the same. Further it was to be noted that none of their directors nor their advocates had been summoned to record any statements by the said investigation agency and it was therefore clear that the issue of



EACC had been raised as a red herring to delay the realization of the decree issued in Marsabit HCCC No 1 of 2020, which the appellant had not appealed against.

9. The Ex parte Applicant thus urged the court to find that orders of the court are not rendered in vain and are not for cosmetic purposes, had to be adhered to and be enforced. They thus urged this court to grant the prayers sought.

B. Determination.

10. I have carefully considered the Application, Supporting Affidavits, and the responses filed in opposition to the said Application. I have also considered the detailed submissions of the Exparte Applicant's counsel and discern that the issue which arise for determination is whether
 - a. Whether the order of Mandamus should be granted against the respondents and in default of payment NTSC be issued.
 - b. Who should bear the costs of this Application?
11. In Republic vs Kenya National Examinations Council exparte Gathenji and 9 Others, [1997] e KLR. The said Court held as follows in this regard:

“What is the scope and efficacy of an Order Of Mandamus? Once again we turn to Halsbury’s Law Of England, 4th Edition Volume 1 at page 111 from paragraph 89. That learned treatise says:-

“The order of mandamus is of a 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.”

At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

What do these principles mean? They mean that an order of mandamus will compel 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....”

12. The requirements for an order of mandamus to issue were further explained by Mativo J. in Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another [2018] eKLR as follows:

“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. The test for mandamus is set out in Apotex Inc. vs. Canada (Attorney General), and, was also discussed in Dragan vs.



Canada (Minister of Citizenship and Immigration) . The eight factors that must be present for the writ to issue are:-

- (i) There must be a public legal duty to act;
- (ii) The duty must be owed to the Applicants;
- (iii) There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand, unless there was outright refusal; and
 - iii. An express refusal, or an implied refusal through unreasonable delay;
 - iv. No other adequate remedy is available to the Applicants;
 - v. The Order sought must be of some practical value or effect;
 - vi. There is no equitable bar to the relief sought;
 - vii. On a balance of convenience, if an order of Mandamus should lie.

13. It is an uncontested fact that there was a contract between the parties herein under Tender MBT/COU/UD/84/2016-2017 for supply of street lighting project valued at Kshs.68,728,217, which project was fully implemented and Ksh.55,628,775 paid leaving a balance of Kshs.13,099,442. The applicant subsequently did file Marsabit Hcc Civil Case No 1 OF 2020 claiming the unpaid sums plus interest and applicable penalty and eventually obtained judgment as against the respondent, for the sum of Kshs.37,801,686/= plus interest at 12% PA from 26th July 2021 until date of payment in full. Their costs were further taxed at Kshs.736,421.46/= and eventually demand for payment of the same issued on 20th September 2021.
14. The applicant averred that it has now been several years since issuance of the decree and the respondent has deliberately failed, refused and/or intentionally declined to settle the same hence the need for this application to enforce payment.
15. The issues therefore that require to be determined are firstly, whether the Respondent is under a public duty and obligation to satisfy the orders issued in favour of the Applicant in the said judgment, and secondly, if so, whether the Applicant is entitled to the reliefs sought.
16. Section 21 of the [Government Proceedings Act](#) stipulates that the following requirements must be met in the enforcement of orders as against Government organs in civil proceedings:
 - “(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.”

17. Marsabit County Government is one of the Counties established by Article 6 of *the Constitution* and the First Schedule to *the Constitution*, and is constitutionally recognized as a distinct government level of government by the said Article. In addition, the definition of “Government” in the *Government Proceedings Act* refers to the “Government of Kenya”. In this respect I adopt the holding by Odunga J. in *Republic v Attorney General & another ex-parte Stephen Wanyee Roki* [2016] eKLR as regard the application of the *Government Proceedings Act* to County Governments:

“Although the provisions of the *Government Proceedings Act* do not expressly refer to County Governments, section 7 of the Sixth Schedule to *the Constitution* (Transitional And Consequential Provisions) provides that:

All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.

21. It follows that the provisions of the *Government Proceedings Act*, a legal instrument enacted before the effective date must be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into



conformity with the Constitution. One such construction would be the reality that Government is now at two levels and Article 189(1)(a) of the Constitution requires that the Constitutional status and institutions of government at both the National and County levels be respected. In my view such respect cannot be achieved unless both levels of Government are treated equally and one such area would be with respect to execution proceedings.”

18. As to whether the Respondent herein is under a duty to pay the subject decretal sums, an order of mandamus would normally issue when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed. 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.
19. This was also the holding in Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) where Githua J. held 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.”
20. The decretal sum due from the Marsabit County government has in this respect not been disputed by the Respondent. The Ex parte Applicant in this respect has annexed copies of the judgment, decree, certificate of order against the government and certificate of costs to prove that they are genuinely owned money by the county and have complied with all prerequisite obligations demanded by Section 21(3) of the Government Proceedings Act, Cap 40 and thus should be paid.
21. The respondent excuse that they have not got national government budgetary support and/or that there are EACC investigations ongoing into the said contract ring hollow and are diversionary excuses that cannot hold.



22. Section 103 of the *Public Finance Management Act* No 18 of 2012 in this respect also establishes the County Treasury comprising of the County Executive member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under section 103(3) of the said Act, the County Executive Committee Member for Finance is the head of Treasury, and is thus the responsible for finance matters in the County.
23. This Court therefore finds that arising from these provisions, the Respondent jointly with the County Executive Committee Member of Finance and chief officer finance are jointly responsible for the satisfaction of Court orders and decrees on payment of money owed by the Marsabit County by virtue of their roles and functions. In this regard, I adopt the holding in *Republic vs. Town Clerk of Webuye County Council & Another HCCC 448 of 2006* wherein Majanja J. addressed the importance of the Court in ensuring that the right of a successful litigant to enjoy the fruits of his judgement as follows:

“...a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of *the Constitution* particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of *the Constitution*.

Disposition

24. Taking all relevant factors into consideration, I accordingly grant the following orders:
- a. An order of Mandamus do issue compelling the accounting officer of the Respondent to pay the Applicant the sum of Kshs.34,911,430.84 together with interest thereon at the rate of 12% PA from 8th September 2020 until payment in full, being the decretal sum issued in Marsabit High Court Civil Case No 1 of 2020.
 - b. That the said amount be paid within the next 90 days from the date hereof failure of which enforcement proceedings will be levied as against the current CEC Finance and Economic Planning and Chief Officer Finance-Marsabit county
 - (b) The Applicant shall have the costs of this suit and the same is assessed at Ksh 200,000/= all inclusive
25. It is so ordered.

READ, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS ON THIS 20TH DAY OF NOVEMBER, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 20TH DAY OF NOVEMBER 2025.

In the presence of;

Ms Wanjaufor Petitioner

Ms Gekonefor Respondent

Mr. JarsoCourt Assistant

