



Republic v County Secretary, Nairobi City County; Wangui t/a Minimix Agencies (Ex parte Applicant) (Miscellaneous Application E113 of 2024) [2025] KEHC 17592 (KLR) (Judicial Review) (26 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E113 OF 2024
JM CHIGITI, J
NOVEMBER 26, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY SECRETARY, NAIROBI CITY COUNTY RESPONDENT

AND

EVALYNE WANGUI T/A MINIMIX AGENCIES EX PARTE APPLICANT

JUDGMENT

1. The Application that comes up for determination is the one dated 28th November, 2024 wherein the Applicant is seeking the following orders;
 - a. That an order of Mandamus to compel the Respondent herein to satisfy the judgment and decree of the Chief Magistrate's Court at Nairobi given on 26th August 2022 by Honourable Mr. H. M Nyaga (CM), as he then was, in Milimani Chief Magistrate's Court Civil Suit No. E461 of 2020 - Evalyne Wangui TIA Minimix Agencies versus Nairobi City County and in terms of the consequent Certificate of Order against the Government issued herein on 28th September 2022 and as may subsequently be updated by the court with further interests accrued thereon.
 - b. Costs of this Application be provided for.



The Applicants Case;

2. Judgment was delivered on 26th August 2022 in favour of the Ex Parte Applicant against the County Secretary, Nairobi City County. A decree was thereafter issued on 26th September 2022. Thereafter the court issued to the Applicant a Certificate of Order against the Government dated 28th September 2022. The said documents were all served upon the Respondent.
3. In *JA v Principal Secretary Ministry of Education* [2019] eKLR, the court stated that,

“On this same issue, Githua, J in *Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* [2012] eKLR expressed herself as follows:

“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.”
4. The Applicant is convinced that it has fulfilled all the legal requirements that regulate the execution of the decree of this nature.

The Respondent’s Case;

5. The Respondent admits that it owes the funds that are claimed by the Applicant. However, the Respondent is seeking time to be able it to organize the payment in line with the statutory framework that regulates the release of public funds. It advances an argument that the Applicant's funds are going to be considered in the next budgetary cycle.
6. The Respondent further argues that there are talks towards the settlement of the amount owed through mechanisms that have been initiated by the Judiciary.
7. The Respondent case is that it is a public institution governed by the provisions of the *Public Finance Management Act*, 2012 (PFMA), and the non-payment of the Applicant's decretal sum arises not from willful refusal or neglect by the Respondent but rather due to the complexities and procedural requirements inherent in all matters pertaining to the management of public finances and expenditure, which the Respondent is subjected to.

Analysis and determination;

This court finds the following to be the issue for determination;

1. Whether the Applicant is entitled to order of Mandamus.
2. Who shall bear the cost?



Whether the Applicant is entitled to the order of Mandamus.

8. In the case of *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 the court 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.”

9. In the case that is before this court, the Applicant herein has moved this Court to compel the Respondent to satisfy the decree that was issued in their favour by a competent Court of law.
10. The court notes that the Respondent does not deny that it owes the Applicant the amount claimed. The Respondent is simply telling the court that the Applicant’s funds have been factored in the next budgetary cycle. Such a defense where a decree holder is pursuing an order for Mandamus cannot hold.
11. The Applicant has complied with the requisite statutory procedural provisions under Section 21 of the *Government Proceedings Act* and it would be unfair to delay the Applicant past this day. 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.

Costs;

12. In *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* [2014] eKLR, we stated as follows:

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth



the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or Respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation."

13. The Applicant is successful in the Application as a result of which it is entitled to costs.

Disposition;

14. This court is satisfied that the Applicant has proven its case and that it is entitled to the orders sought.

Order;

The Application is allowed with costs to the Applicant. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF NOVEMBER 2025.

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J. CHIGITI (SC)

JUDGE

