

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**JUDICIAL REVIEW APPLICATION NO. E032 OF 2024**

REPUBLIC.....APPLICANT

-VERSUS-

1. COUNTY EXECUTIVE COMMITTEE MEMBER  
FINANCE & ECONOMIC PLANNING,  
COUNTY GOVERNMENT OF MOMBASA.....1<sup>ST</sup> RESPONDENT  
2. ACCOUNTING OFFICER, COUNTY GOVERNMENT OF  
MOMBASA.....2<sup>ND</sup> RESPONDENT

*ex parte;*

**MWANGI NJENGA T/A MWANGI NJENGA &  
COMPANY ADVOCATES**

**JUDGMENT**

1. Before court is a motion dated 23 January 2025 expressed to be brought under sections 8 and 9 of the Law Reform Act, cap 26 and Order 53 Rule 3 of the Civil Procedure Rules, 2010. The applicant seeks primarily the order for mandamus. The prayer for the order has been couched as follows:

*“1. That an Order of Mandamus do issue to compel the County Executive Committee Member, Finance and Economic Planning or the Accounting Officer of the County Government of Mombasa to pay to the Exparte Applicant, MWANGI NJENGA T/A MWANGI NJENGA & COMPANY ADVOCATES, the sum of Kenya Shillings Two Million, Nine Hundred and Fifty Five Thousand, Four Hundred and Twenty One and Sixty Four Cents*

*(Kshs. 2,955, 421. 64) being the outstanding advocates costs as certified being due and owing from the Respondent to the Exparte Applicant, arising from the Certificate of order against the Government issued on 21st March 2024 by the Deputy Registrar of the High Court of Kenya in MOMBASA MISC CIVIL APPLICATION NO. E026 OF 2022 (MWANGI NJENGA T/A MWANGI NJENGA & COMPANY ADVOCATES =VS= COUNTY GOVERNMENT OF MOMBASA).”*

The applicant has also sought for the order for costs.

2. The application is based on a statutory statement dated 11 October 2024 and an affidavit of even date sworn by Mr. Mwangi Njenga, verifying the facts relied upon.
3. Mr. Njenga has sworn that he is an advocate of this Honourable Court, practising as such in the name and style of **M/S MWANGI NJENGA & COMPANY ADVOCATES**, the *ex parte* applicant in this suit.
4. According to Mr. Njenga, he taxed the advocate client bill of costs against the County Government of Mombasa in several cases in which he represented the County Government of Mombasa. In Mombasa High Court Miscellaneous Application No. E026 of 2022 (Mwangi Njenga T / A Mwangi Njenga & Company Advocates versus County Government of Mombasa), judgment was entered in his favour as against the County

Government of Mombasa on 5 May 2022 for **Kshs 2,349, 762.35** and a decree issued on 25 May 2022.

5. He applied for and obtained a Certificate of order against the Government that was eventually issued on 21 March 2024 against the County Government of Mombasa for a total amount of Kshs 2,955,421.64 which comprises of the decretal amount of Kshs 2,349,762.35 plus interest of Kshs 605,659.29.
6. The certificate of order against the Government was duly served upon the office of the County Attorney, of the County Government of Mombasa vide a letter dated 22 March 2024 and was duly received. Despite service of the Certificate of Order against the Government and despite the demands for settlement of the said amount, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed, refused and or neglected to settle the said costs or any part thereof, thus rendering the instant application necessary.
7. It is the applicant's contention that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's failure to settle the costs smirks of contempt and disrespect of the decisions of the Honourable Court and that the respondents are unreasonable, irrational and unfair to the applicant.
8. The respondents filed grounds of objection in which they have contended that the application violates the Public Finance Management Act, 2012 and the County Government Act, 2012. They have further contended that

application is an abuse of the Court process and should be dismissed with costs.

9. One of the ways through which decrees or orders are enforced is, of course, through execution or attachment. However, the Government is protected from such process of execution or other similar process in enforcement of decrees or orders by section 21 of the Government Proceedings Act, in particular, section 21(3) thereof. That section reads as follows:

***21. Satisfaction of orders against the Government***

***(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.*

10.A County Government is, of course, a “government” in the strict sense of the word but perhaps to discount any doubt of this sort of status of the devolved unit, section 21(5) of the Act makes it clear that a county Government enjoys the same protection from execution and attachment as the National Government.

11.I have consistently held in applications such as the one before court that, in the face of this protection, the only available route open to the applicant is to compel the accounting officer of the Government or the concerned Government department to perform his statutory duty under section 21(3) of the Government Proceedings Act and pay what has been

decreed as due and owing to the applicant. In other words, only the order of mandamus would be the appropriate order under the circumstances.

12. According to **Halsbury's Laws of England/JUDICIAL REVIEW (VOLUME 61 (2010) 5TH EDITION)/5. JUDICIAL REMEDIES/ (1) INTRODUCTION** paragraph 689:

*“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”*

13. This is reiterated in paragraph 703 which states:

*“A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an*

*inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”*

14. And with particular reference to public officers who, like in the instant case, fail to perform their duty, paragraph 706 is clear that a mandamus order may be issued to compel them to carry out the duty. It reads as follows:

***“706. Public duties by government officials.***

***If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See R v Metropolitan Police Comr, ex p Blackburn (No 3) [1973] QB 241, [1973] 1 All ER 324, CA; R v London Transport Executive, ex p GLC [1983] QB 484, [1983] 2 All ER 262, DC.)”***

15. The applicant has demonstrated that he extracted a certificate of order against government and that the same was duly served upon the respondents through the office of the County Attorney. It has not been suggested that he defaulted in any step prescribed under section 21 of the Government Proceedings Act as to disentitle him to the order of mandamus.

16.It follows that, a demand for payment having been made and the respondents having failed to pay; no other evidence is required to demonstrate that the respondents have failed to perform a public duty with which they are charged under section 21(3) of the Government Proceedings Act. A mandamus order would properly issue in such circumstances.

17.Accordingly, I hereby allow the applicant's motion dated 23 January 2025 to the extent that an order of mandamus is hereby issued compelling the respondents, jointly and severally to pay the applicant ***the sum of Kenya Shillings Two Million, Nine Hundred and Fifty Five Thousand, Four Hundred and Twenty One and Sixty Four Cents (Kshs. 2,955, 421. 64), more particularly*** in terms stated in the Certificate of Order against the Government, issued on 21 March 2024. The applicant will also have costs of the suit.

18.At the hearing of the application, the respective counsel for the applicant and the respondents urged the court to adopt their submissions in Judicial Review Application Nos. E031 of 2024; E033 of 2024; and, E034 of 2024. Accordingly, the judgement in this matter shall apply in the aforementioned matters mutatis mutandis. Orders accordingly.

**Signed, dated and delivered on 21 November 2025**

Ngaah Jairus  
**JUDGE**