

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
JUDICIAL REVIEW NO E018 OF 2024
IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF
KENYA

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT NO. 17 OF
2012

AND

IN THE MATTER OF FINANCE MANAGEMENT ACT 2012

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT
2015 SECTIONS 7, 8, 9, 10, & 11

IN THE MATTER OF ORDER 29 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF APPLICATION BY HESBON ASAVA MAGE FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW PROCEEDINGS FOR
ORDERS OF MANDAMUS

BETWEEN

REPUBLIC
APPLICANT

VERSUS

THE MIGORI COUNTY GOVERNMENT.....1st
Respondent

The County Migori Government of Migori..... 2nd
Respondent

**The County Chief Officer Finance, Migori County.....
3rd Respondent**

**Hesbon Asava Mage (suing as the personal Representative of
the estate of Asava Janet)**

.....EXPARTE APPLICANT

JUDGEMENT

The ex-parte Applicant filed a suit against Migori County Government in Migori CMC CC No. 298 of 2017 claiming for damages, costs and interest for the loss of life of his daughter.

The ex-parte Applicant obtained a judgment against Migori County Government in the sum of Kshs. 3,007,680 and costs of Kshs. 157,880 delivered on 5th September 2019.

That despite service of the judgment, decree and certificate of costs on the Respondents, no effort has been made to settle the decretal sum.

The ex-parte Applicant seeks orders of mandamus to compel the Respondent to pay the said decretal sums pursuant to Section 21 (4) of the Government Procedures Act as they had refused and/ or failed to satisfy the said decree despite having been given notice of the same.

Upon filing of the application, the Respondents were duly served but they did not respond to the application. On 26th March 2025 directions were taken for canvassing of application by way of written submissions and timelines given for each party to file and serve submissions but it is only the ex-parte Applicant who filed submissions dated 27th May, 2025 and urged the court to issue the orders prayed for as they had satisfied and complied with the provisions of Section 21 of the Government Proceedings Act in relation to service of the decree and

certificate of order and that the Respondent being a public body had the duty to satisfy the claims made against it.

This court having considered the application herein finds that the Respondent a public body has all along been aware of the suit against it. It was made aware of the judgment and decree of the trial court but they did not challenge it since 5th September 2019 when it was delivered. Having failed to respond to the application seeking to execute the judgment of the trial court and having failed to file submissions as per directions given on 26th March 2025, this court finds that the ex-parte Applicant's application remains unopposed and is therefore allowed as prayed. The orders of mandamus compelling the Respondents to satisfy the decree of the court in Migori CMCC No. 298 of 2017 in the sum of Kshs. 3,007,680 together with costs of Kshs. 157,880 are hereby issued. The Respondents are also condemned to pay cost of the application and interest on the decretal sums from the date of the suit herein until payment in full. Orders Accordingly.

DATED, SIGNED, AND DELIVERED AT MIGORI THIS 4th Day of December, 2025.

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ANNE ONG'INJO
JUDGE