

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT THIKA  
JUDICIAL REVIEW APPLICATION NO. E008 OF 2025

REPUBLIC.....APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF MURANG'A.....1<sup>ST</sup>  
RESPONDENT

COUNTY ATTORNEY, MURANG'A COUNTY.....2<sup>ND</sup>  
RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE MEMBER,  
DEPARTMENT OF FINANCE AND ECONOMIC PLANNING,  
COUNTY GOVERNMENT OF MURANG'A.....3<sup>RD</sup>  
RESPONDENT

*EX-PARTE.....SGA GUARDING LIMITED alias SGA KENYA LIMITED*

**JUDGMENT**

By a notice of motion dated 28<sup>th</sup> May 2025, the ex-parte applicant asked this court to grant the following orders;

- a. An order of mandamus compelling the 3<sup>rd</sup> respondent to settle the decretal sum emanating from Thika sccc No. E1712 of 2023 being Kshs 906,065/= awarded to the applicant plus the costs and interest awarded thereon calculated at court rates from the date of filing suit until payment in full.
  
- b. The costs of this application be borne by the respondents.

The application is supported by affidavit of the applicant's advocate Mr. Victor Ajwang sworn on 28<sup>th</sup> May 2025. It was deponed that the ex-parte applicant had instituted a suit against the 1<sup>st</sup> and 2<sup>nd</sup> respondents vide Thika small claims court claim number E1712 of 2023 where upon trial the applicant was awarded a sum of Kshs 906,065.00 plus costs and interest from the date of filing the claim until payment in full. The applicant adds that the said respondents had failed to settle the decretal sums and since the 1<sup>st</sup> respondent is a government within the meaning of Article 6(2) of the Constitution as read together with Section 21(5) of the Government Proceedings Act, execution cannot issue against it pursuant to Order 29 Rule 2(2) of the Civil Procedure Rules. In the circumstances, the only method to get the decree satisfied is through this application.

The applicant exhibited a certificate of order against the government dated 25-10-2024 issued pursuant to Section 21(1) of the Government Proceedings Act and added that despite many demands, the respondents have failed to settle the decretal sum in the said claim.

I have gone through the application and the supporting affidavit. I note that this court granted leave to the applicant to bring this application on 19-05-2025. The respondents were served with the application but the only action they took is to instruct one Miss Muchiri who appeared in court on their behalf on 9-07-2025 and 18-08-2025 and asked for time to file responses which she never did.

I have also looked at the annexures to the supporting affidavit. There being no controverting facts presented by the respondents, this court is satisfied that a judgement against the 1<sup>st</sup> and 2<sup>nd</sup> respondents exists. I am also satisfied that the

certificate against the government has been served upon the 1<sup>st</sup> and 2<sup>nd</sup> respondents who are in law required to settle the decretal sum. It is a duty they are obligated to perform by virtue of the office they hold.

An order of mandamus is a command issued against a government agency, office or organ compelling them to perform their specified public duties. Where the court is satisfied that the public officer or organ has a duty to perform or fulfil certain obligations or functions and they have failed to do so an order will issue. The Court of Appeal held in ***Kenya National Examination Council v Republic; Njoroge & 9 others (Ex-Parte) (1997) KECA 58 (KLR)*** that;

*‘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.’*

There being a legal and lawful claim issued by a competent court, the respondents are under a public duty to pay the applicant the decretal sum as awarded. I am not clear whether the 3<sup>rd</sup> respondent was the right office to have been joined as a 3<sup>rd</sup> respondent or it should have been the Chief Officer of the relevant ministry or department. However, there being no opposition to the application, it is not for this court to define the functions of the County Government departments or officers.

Again, it is not clear why the 1<sup>st</sup> and 2<sup>nd</sup> respondents were joined in the application yet the orders sought are not directed to any of them. Perhaps, they should have been joined as interested parties. Be that as it may, I see no impediment to granting of the application as sought as that is a mere issue of misjoinder which should not defeat the substance of the application. It was so held in ***Republic v County Chief***

**Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi) (2018) KEHC 8750 (KLR)** thus;

*‘In this case the person against whom the contempt proceedings ought to be commenced is the County Executive in Charge of Finance of the Nairobi County Government who is mentioned as one of the persons against whom the order is sought. In my view the mere fact that other persons are similarly mentioned does not render the application fatally incompetent as this is merely a misjoinder of parties.’*

In view of what I have said above, I am satisfied that the application is merited and I proceed to issue the following orders;

- a. An order of mandamus is hereby issued compelling the 3<sup>rd</sup> respondent to settle the decretal sum emanating from Thika small claims court claim number E1712 of 2023 being Kshs 906,065/= awarded to the applicant plus the costs and interest awarded thereon calculated at court rates from the date of filing the claim until payment in full.
- b. The costs of this application be borne by the 3<sup>rd</sup> respondent.

Dated, signed and delivered at Nairobi this **11<sup>th</sup>** day of **December** 2025.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Ajwang holding brief for Mr. Olao for the applicant and absence of the respondent.