

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CONSTITUTIONAL, HUMAN RIGHTS & JUDICIAL REVIEW
DIVISION
JUDICIAL REVIEW APPLICATION NO. E010 OF 2025

REPUBLIC.....APPLICANT
-VERSUS-
COUNTY EXECUTIVE COMMITTEE MEMBER
FOR FINANCE MOMBASA COUNTY.....1ST RESPONDENT
COUNTY CHIEF OFFICER
MOMBASA COUNTY.....2ND RESPONDENT
ex parte;
VINCENT CHOKAA T/A CHOKAA & COMPANY ADVOCATES

JUDGMENT

1. Before court is a motion dated 29 April 2025 expressed to be brought under Order 53 Rule 1 (1), (2) and (3) of the Civil Procedure Rules. The applicant seeks, in the main, the order for mandamus. To be precise, the applicant prays:

“That an Order of Mandamus do issue against the 1st and 2nd Respondents, The County Executive Committee Member for Finance and The County Chief Officer of the County Government of Mombasa, compelling them to forthwith and without delay, perform their duty by causing to be paid to the Applicant out of the revenue of the County Government of Mombasa the sum of Kshs.30,414,900.80/= (Thirty Million four Hundred and fourteen thousand Nine hundred and eighty cents.)

together with accrued interest at 14% per annum from 10th January, 2016 until payment in full.”

The applicant has also prayed for an order on costs.

2. The application is based on a statutory statement dated 29 April 2025 and an affidavit sworn on even date by Vincent Chokaa, Esq. In support of the motion, Chokaa has sworn that he is an advocate of this Honourable Court trading as M/s. Chokaa & Company Advocates.
3. In the years 2009 to 2018, the Municipal Council of Mombasa (and later the County Government of Mombasa) engaged Chokaa’s firm of advocates for legal services. However, upon presentation of fee notes for payment for the services rendered, the County Government of Mombasa, neglected, ignored or refused to pay and settle the fees.
4. The firm of advocates proceeded to file advocate-client bills of costs which were taxed between the year 2016 and 2025. The total amount taxed in all the matters in which the applicant rendered services for the County Government of Mombasa was Kshs. 30,414,900.80.
5. The applicant obtained judgments and extracted decrees against the County Government of Mombasa for the sums due in the respective matters. The applicant also extracted and served upon the respondents the certificates of order against the County Government for these sums.
6. Despite service of the certificates of order against the Government, the respondents have neglected, ignored or refused to make the payment. It is

for this reason that the applicant has now moved this Honourable Court for the order of mandamus to compel the respondents to settle the certificates.

7. In response to the motion, the respondents filed a preliminary objection dated 13 June 2025 contending that the motion is incompetent and fatally defective because it was filed without leave of this Honourable Court. Mr. Mangaro, the learned counsel for the respondents, also swore and filed a replying affidavit opposing the motion. In the affidavit, the learned counsel for the respondent has insisted that the applicant did not obtain leave before filing the substantive motion. According to counsel, leave was sought and obtained in Miscellaneous Application No. E006 of 2025, which is a separate case from the one before court.
8. The record shows that indeed the applicant obtained leave to file substantive motion in Miscellaneous Application No. E006 of 2025. In the chamber summons seeking for leave, the prayer for leave was couched as follows:

“That the Applicant be granted leave to apply for an order of mandamus to issue against the Respondent's, The County Executive Committee Member for Finance and The County Chief Officer of the County Government of Mombasa compelling them to forthwith and without delay, perform their duty by causing to be paid to the Applicant out of the revenue of the County

Government of Mombasa the sum of Kshs.30,414,900.80/= together with accrued interest at 14% per annum from 10th January, 2016 until payment in full”.

9. Once leave was granted, the miscellaneous application was spent and all that was required of the applicant was for it to file a substantive motion. This, the applicant did by filing the instant motion as a separate suit, as it ought to be. The practice of filing the substantive motion in the miscellaneous application in which leave has been granted is to be deprecated. The application for leave does not exist beyond the grant of leave; its life comes to an end, and is spent once leave has either been granted or rejected. There is, therefore, no merit in the respondent’s preliminary objection which has, by and large, been replicated in the affidavit “sworn” in response to the application.

10. There is evidence, and it has not been denied that certificates of order against government for various amounts have been served upon the county Government of Mombasa; exhibited to the affidavit in support of the main motion are certificates in the following cases:

- (i) Miscellaneous Application No. 243 of 2021 for the sum of Kshs. 28, 789, 235.00
- (ii) Miscellaneous Application No. 242 of 2021 for the sum of Kshs. 411,932.09

- (iii) Miscellaneous Application No. 243 of 2014 for the sum of
Kshs. 361,672.00
- (iv) Miscellaneous Application No. 244 of 2014 for the sum of
Kshs. 404,028.80
- (v) Miscellaneous Application No. 245 of 2014 for the sum of
Kshs. 120,369.00
- (vi) Miscellaneous Application No. 246 of 2014 for the sum of
Kshs. 327,664/=

11. Service of these certificates upon the County Government of Mombasa has not been disputed.

12. At the hearing of the application Mr. Keyonzo, the learned counsel for the applicant reiterated that the amount owed to his client has not been paid and the only alternative open to the applicant is for this Honourable Court to compel the respondents, by way of an order of mandamus, to pay the sum or sums due. Mr. Mangaro, the learned counsel for the respondents submitted that the motion was not properly before court for want of leave to file a substantive motion for judicial review relief. It has been noted that there is no merit in this argument.

13. 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.

14. 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.

15. 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.

16. 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.”

17. 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.”

18. 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.)”

19. The applicant firm of advocates has demonstrated that it extracted several certificates of order against government in various matters and that these certificates, except one, were duly served upon the respondents through the office of the County Attorney. It has not been suggested that the applicant defaulted in any step prescribed under section 21 of the Government Proceedings Act as to disentitle it the order of mandamus.

20. 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.

21. Accordingly, I hereby allow the applicant's motion dated 29 April 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 Kshs. 30,414,900.80/= (Thirty Million four Hundred and fourteen thousand Nine hundred and eighty cents)*** in terms stated in the Certificates of Order against the Government, issued in the following matters:

- (i) Miscellaneous Application No. 243 of 2021 for the sum of Kshs. 28,789,235.00.
- (ii) Miscellaneous Application No. 242 of 2021 for the sum of Kshs. 411,932.09
- (iii) Miscellaneous Application No. 243 of 2014 for the sum of Kshs. 361,672.00
- (iv) Miscellaneous Application No. 244 of 2014 for the sum of Kshs. 404,028.80
- (v) Miscellaneous Application No. 245 of 2014 for the sum of Kshs. 120,369.00
- (vi) Miscellaneous Application No. 246 of 2014 for the sum of Kshs. 327,664/=

The applicant will have costs of the application. Order accordingly.

Signed, dated and posted on the CTS on 30 December 2025

Ngaah Jairus
JUDGE