

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISCELLANEOUS JUDICIAL REVIEW APPLICATION NO. E002 OF
2025

IN THE MATTER OF AN APPLICATION BY SILAS MATRLONG TOO

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW BY WAY OF MANDAMUS**

AND

**IN THE MATTER OF SECTIONS 2, 103, 147 & 148 OF THE PUBLIC
FINANCE MANAGEMENT ACT, 2012**

AND

**IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT, CHAPTER
40 LAWS OF KENYA**

AND

**IN THE MATTER OF ARTICLES 10, 23 & 41 OF THE CONSTITUTION
OF KENYA**

BETWEEN

SILAS MATELONG TOO EX-PARTE
APPLICANT

VERSUS

THE COUNTY SECRETARY,
UASIN GISHU COUNTY 1ST

RESPONDENT

THE COUNTY EXECUTIVE

JUDGMENT

1. The Ex-parte Applicant filed a Notice of Motion dated 7/02/2025 seeking the following orders:

- a) That an order of judicial review by way of mandamus do issue compelling the County Secretary - Uasin Gishu County and the County Executive Member/Officer for Finance - Uasin Gishu County being the 1st and 2nd Respondents herein respectively, to pay to the Applicant the sum of Kshs. 293,796/= together with accruing interest at court rates of 14% per annum from 4/11/2024 in accordance with the decree issued on 22/11/2024.

- b) That in default of compliance with the order of mandamus and failure to pay the judgment debt in the sum Kshs.293,796/= together with accruing interest at court rates of 14% per annum from 4/11/2024, the order of mandamus be deemed as sufficient notice under Section 30(l) of the Contempt of Court Act, 2016 to the persons holding the offices of the 1st and 2nd Respondents requiring them to show cause why contempt of court proceedings should not be commenced against them at the lapse of 30 days after service of the orders of mandamus.

c) **That in default of compliance with the order of mandamus and failure to pay the judgment debt in the sum of Kshs.293,796/= together with accruing interest at court rates of 14% per annum at the lapse of 30 days upon service of the order of mandamus and failing to show sufficient cause for non-compliance with the orders of mandamus, the Applicant be at liberty to commence contempt of court proceedings against the persons holding the offices of the Respondents for them to be personally summoned to court and be committed to civil jail for contempt of court.**

d) **That costs of this application be borne by the Respondents herein.**

2. The application supported by the Applicant's Affidavit sworn on the same date.
3. He deposed that the present application emanates from the judgment of the Court delivered on 4/11/2024 in his favor against Uasin Gishu County in **Eldoret SCCC NO.E617 of 2024, Silas Matelong Too Vs Uasin Gishu County** and he obtained a decree and Certificate of costs dated 22/11/2024 from the Small Claim Court in **Eldoret SCCC NO.E617 of 2024, Silas Matelong Too Vs Uasin Gishu County** for the sum of Kshs.293,796/= together with accruing interest at Court rates of 14% per annum from the date of the judgment till payment in full.
4. He further deposed that after the delivery of the judgment in his favor, through his Counsel on record, the judgment debtor and its insurer were notified that they were to offset the said decretal sum.

5. He contended that several months have since lapsed since the decree was issued on 22/11/2024 and that the Respondents have showed no intent or commitment to settle the same hence necessitating this application. Further, he deposed that he has extracted a Certificate of Order against the Government which was issued by the Court on 20/12/2024 and later served upon the Respondents on 22/01/2025.
6. He maintained that it is apparent on the face of the notice of entry of judgment, decree and the certificate together with the Certificate of Order against the Government that all the requisite documents were duly served on the Respondents.
7. He further maintained that as a public entity the Respondents are under a Constitutional and legal obligation to comply with the law and with order of Court of law by settling the decretal sum. He urged that the refusal and the delay in making of the decretal sum is inimical to the public, accruing interest as public funds are being list as result of the delayed payment of the decretal sum which is attracting interest as ordered by the Court. According to the Applicant, the responsibility of imitating and making payment lies with the 1st and 2nd Respondents respectively. He urged that the refusal of the 1st and 2nd Respondents to comply with the orders of the Court to pay him is an abdication of public duty, a refusal to honor the rule of the law and promotion of bad governance in the management of public affairs.

Replying Affidavit

8. The application is opposed by the Respondents vide the Replying Affidavit sworn by **Lazarus Sile** on 19/05/2025 who described himself as the Respondents' Director Roads, Transport and Public Works.
9. He deposed that the Applicant did not comply with the provisions of Section 21(1) & (2) of the Government Proceedings Act with respect to Application for a Certificate of Order against Government, that the Applicant has not served if any was duly obtained a Certificate of Order against Government upon the Accounting Officer of the Respondents or the relevant Department within the County Government as required by the provisions of Section 21(3) of the Government Proceedings Act and that this Application being an Execution of a decree against Government is defective for want of the extraction, application and service of the Certificate of Order against Government as per the provisions of Section 21(4) & (5) of the Government Proceedings Act.
10. He further deposed that pursuant to the provisions of the Public Finance Management Act the statutory duty to pay out funds from the County Treasury vests in the County Executive Committee Member in Charge of Finance and not the Respondents herein, as such the Respondents herein is wrongly suited, that failure to sue the County Executive Committee Member in Charge of Finance is fatal as he will be condemned unheard contrary to the express rules of natural justice, that all expenditures by the County Government are appropriated by the County Assembly and not the Respondents herein in each financial year and that there is a statutory process the Respondents must abide by before the settlement of its debts.

11.In addition, he deposed that the Respondents' officers responsible for payment of any of the Respondents' funds are public officers and are prohibited under Sections 196 and 197 of the Public Finance Management Act 2012 from paying the Applicant as it would be an offence to spend any public funds without any prior authorization and budgetary appropriation, that the payment of the decretal sums as prayed for is an immediate settlement that would require County Assembly approval through an Appropriations Bill which is usually done in a budget cycle and that funds cannot be expended without such approval and as such granting of the orders as prayed would be tantamount to the court usurping the powers of the County Assembly to appropriate funds of Uasin Gishu County.

12.He maintained that the County Budget Cycle at the moment is already closed for the Financial Year 2024/2025 and funds that can be spent are already budgeted for and such spending already duly approved and that the Respondents shall be ready to pay once the funds for the decretal sum is allocated for, approved and passed by the County Assembly as provided for under section 125 of the Public Finance Management Act, 2012.

13.He deposed further that under Section 32 of the Government Proceedings Act, satisfaction of decrees or judgment against government is deemed to be an expenditure by Parliament and in this case the County Assembly, that as a result, the present Application and ensuing orders must be anchored in law as a government expenditure, that the County Assembly control over expenditure is based upon the principle that all expenditure must rest upon legislative authority. In this case County Assembly by dint of County Government Act and Public Finance Management Act, that no payment out

of public funds is legal unless it is authorized by statute in this case by fiscal plan and a budget process and that only through appropriation can County Government of Uasin Gishu pay a debtor and as such immediate payment upon issuing of decree and judgment is not tenable.

14. In the end he urged that in the event that the instant application is allowed, then the County Government should be given time so that it can factor in the said debt in the next financial cycle of 2025/2026.

Submissions

15. It was directed that the application be canvassed vide written submissions. Pursuant thereto the Applicant filed submissions dated 21/05/2025 while the Respondents did not file any.

The Applicant's Submissions

16. Counsel for the Applicant submitted that the institution of judicial review proceedings in the nature of mandamus cannot be equated with execution proceedings. Counsel argued that seeking an order of mandamus cannot be equated with execution proceedings. He urged that an applicant seeking an order for mandamus is not seeking relief against the Government, but to compel the Government official to do what the Government through the Parliament has directed them to do. He submitted that the law is settled that an order of Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays.

17. He relied on the case of **Apotex Inc v Canada** in regarding the test set out for issuing an order on mandamus. Counsel submitted that the principles set

out in the said case apply to the present case. He urged that the County Government of Uasin Gishu, having been served with a valid decree and a certificate of order against the government is under a statutory obligation under Section 21 of the Government Proceedings Act to satisfy the judgment. Counsel submitted that the Respondents' continued inaction is not only unlawful but also deeply prejudicial to the applicant, who has no other recourse.

18.He cited the case of **Republic v Attorney General & Another exparte James Alfred Koroso, Nairobi HC JR Misc. Appeal No.44 of 2012** and submitted that this is precisely the position the Applicant finds himself in baby-sitting a barren decree, having walked the full path of litigation and secured a lawful award, only to face institutional defiance and complete failure of administrative accountability. Counsel observed that as it has been reiterated in finitude it is not justice when a litigant is sent home with a decree in hand but no means of enforcement.

19.Counsel argued that the state through its institutions has a constitutional obligation to ensure that court decrees are enforced against within a reasonable time. Counsel submitted that delay or indefinitely postpone enforcement under the guise of bureaucratic constraints is not only administratively irresponsible but also a violation of article 48 of the Constitution which guarantees the right to access to justice as was held in the case of **Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR.**

20.Counsel maintained that the right to access to justice entails more than access to courtroom, it includes timely and meaningful enforcements of

judgments. It is a mockery of justice for a litigant to spend years and resources pursuing a legal dispute, only for the judgment to be treated as a worthless piece of paper. According to Counsel, this display is a systemic threat to the credibility of the legal system.

21. Counsel argued that the Respondents failure to pay the decretal sum is not due to lack of resources but is instead a deliberate display of contempt for the judicial process which signals a pattern of administrative neglect and a disregard for court orders.

22. Counsel reiterated that the Applicant has a legitimate right to enjoy the fruits of his judgment and that this right should not be thwarted by administrative inertia or institutional arrogance. Additionally, Counsel urged that the Applicant has fully met the requirements to be granted an order of mandamus compelling the Respondents to pay the decretal sum forthwith.

Determination

23. Having appreciated the party's pleadings on record, the only issue for determination is **“whether the Applicant has satisfied the legal requirement for issuance of an order of mandamus.”**

24. Order 53 Rule 1 of the Civil Procedure Rules provides as follows:

(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave as aforesaid shall be made ex parte to a judge in Chambers, and shall be accompanied by-

(a) a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and

(b) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the Respondents, over the same subject matter and that the cause of action relates to the applicants named in the application.

(3) The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.

(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the Judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter parties before grant of leave. Provided

further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.

25. It is also well settled in law that an application such as the one now before me, ought to be preceded by a certificate of order served on the defaulting government agency. In this regard, Section 21 of the Government Proceedings Act provides 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.”

26. In discussing the writ of mandamus the Court of Appeal in the case of; **Kenya National Examination Council v Republic, Ex-Parte Geoffrey Gathenji Njoroge & 9 Others** [1997] eKLR stated as follows:

“The next issue we must deal with is this: What is the scope and efficacy of an Order of Mandamus? Once again we turn to Halsbury’s Law of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says: -

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

27. In **Republic v County Government of Vihiga Ex Parte Global Exhibitions Incorporated Ltd** [2021] eKLR it was held as follows:

“A party wishing to realize the fruits of a judgment or decree against the Government must obtain a certificate of order against the Government. The Government pays against the

certificate of order against it. It is a critical accounting instrument for the purpose of Government finances and accounts. The centrality of the certificate of order against Government, with respect to enforcement of money decrees against the Government, whether at the national or at the county level, has been the subject of pronouncement by the courts.”

28.The debt owed to the Ex Parte Applicant is not disputed. The certificate of order against the Government under Order 29 Rule 3 of the Civil Procedure Rules was issued on 20/12/2024. The same was served upon the respondents on 22/01/2025. The decree has not been satisfied. The ex-parte Applicant was thus justified in approaching this court for relief. In their response to the application, the Respondents provided evasive and unpersuasive justifications for not paying the debt.

29.In the circumstances, I find that the Application has merit and the same is allowed in its entirety as follows;

- a) That an order of judicial review by way of mandamus be and is now hereby issued compelling the County Secretary - Uasin Gishu County and the County Executive Member/Officer for Finance - Uasin Gishu County being the 1st and 2nd Respondents herein respectively, to pay to the Applicant the sum of Kshs. 293,796/= together with accruing interest at court rates of 14% per annum from 4/11/2024 in accordance with the decree issued on 22/11/2024.**

- b) That in default of compliance by the 1st and 2nd Respondents with the order of mandamus and failure to pay the judgment debt in the sum Kshs.293,796/= together with accruing interest at court rates of 14% per annum from 4/11/2024, the order of mandamus be deemed as sufficient notice under Section 30(l) of the Contempt of Court Act, 2016 to the persons holding the offices of the 1st and 2nd Respondents requiring them to show cause why contempt of court proceedings should not be commenced against them at the lapse of 30 days after service of the orders of mandamus.**
- c) That in default of compliance by the 1st and 2nd Respondents with the order of mandamus and failure to pay the judgment debt in the sum of Kshs.293,796/= together with accruing interest at court rates of 14% per annum at the lapse of 30 days upon service of the order of mandamus and failing to show sufficient cause for non-compliance with the orders of mandamus, the Applicant be at liberty to commence contempt of court proceedings against the persons holding the offices of the Respondents for them to be personally summoned to court and be committed to civil jail for contempt of court.**
- d) That costs of this application is to be borne by the Respondents.**

Read Dated and Signed at ELDORET on 19th December 2025

E. OMINDE
JUDGE