

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
JUDICIAL REVIEW MISC. APPLICATION NO. E048 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

NANCY W KAMAU.....
APPLICANT

VS

COUNTY SECRETARY, NAIROBI CITY COUNTY.....1ST
RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE MEMBER
FOR FINANCE, NAIROBI CITY COUNTY.....2ND
RESPONDENT

NAIROBI CITY COUNTY.....3RD
RESPONDENT

JUDGMENT

1 The Applicant filed a Notice of Motion dated 24th July 2025, seeking orders that: -

1. *Leave be granted to the Applicant to apply for an order judicial review by way of Mandamus, directed to the County Secretary of the Nairobi City County, County Executive Member for Finance of Nairobi City County and Nairobi City County, the 1st, 2nd and 3rd Respondents herein respectively, to pay to the Applicant the sum of Kshs. 4,625,867, being the decretal sum and costs in MILIMANI ELRC.C/1108/2015 BETWEEN NANCY W KAMAU -*

VERSUS- NAIROBI CITY COUNTY with any further costs and interest payable therein.

2. The costs of this application be borne by the 1st and 2nd Respondents herein.

Applicant's Case

- 2 The Applicant avers that he sued the 3rd Respondent, County Government of Nairobi in *MILIMANI ELRC.C/1108/2015* for unfair and unlawful termination of her employment as a superintendent. The suit was heard and judgment was entered against the 3rd Respondent on 30th June, 2023 in the sum of Kshs. 4,625, 867.00 together with costs of the suit.
- 3 The Applicant avers that a decree arising from the said suit has since been extracted and the costs were taxed and allowed on 8th May, 2025 in the sum of Kshs. 226,340.00.
- 4 The Applicant avers that the 3rd Respondent has a public duty and the 1st and 2nd Respondent are its officers charged with the responsibility of honoring the 3rd Respondent's financial obligations, including the satisfaction of decrees issued by various courts against the 3rd Respondent.
- 5 The Applicant avers that the refusal by the Respondents to settle the decretal sum is a gross abdication of the public responsibility which they owe to me as a citizen, who is

suffering immense financial loss as a consequence of the unlawful and unfair termination by the 3rd Respondent.

- 6 It is the Applicant's case that it is only fair and just that the County Secretary - Nairobi City County, the County Executive for Finance - Nairobi City County, and Nairobi City County, being the 1st, 2nd, and 3rd Respondents respectively, be ordered to pay me the sum of Kshs. 4,625,867.00, being the decretal amount inclusive of costs as awarded by the court, and in addition, to remit interest on the said amount as provided by law.

Respondents' Case

- 7 In opposition, the Respondents filed a replying affidavit dated 10th November 2025, sworn by Charles K. Kerich.
- 8 The Respondents aver that the 3rd Respondent is a public institution governed by the provisions of the Public Finance Management Act (PFMA), in all matters pertaining to the management of public finances and expenditure. part IV of PFMA provides that any financial commitments or payments, including the settlement of court decrees and debts by a County Government, must be subjected to the elaborate budgetary process established by law.
- 9 The Respondents aver that the budgetary process of a County must be undertaken under the following critical steps:

- a) **Identification of Priorities:** Listing all development plans and pending financial obligations, including short-term and long-term projects.
- b) **Priority Setting:** Establishing financial and economic priorities for the County over the medium term.
- c) **Revenue and Expenditure Estimation:** Preparing a detailed forecast of County Government revenues and expenditures for the relevant financial year.
- d) **Fiscal Strategy Paper:** Adoption of the County Fiscal Strategy Paper, which outlines the allocation of resources and fiscal responsibilities
- e) **Budget Preparation and Approval:** Drafting budget estimates and submitting them to the County Assembly for deliberation and approval.
- f) **Legislation:** Enacting necessary laws to implement the County's approved budget.
- g) **Implementation:** Executing the budget and ensuring proper accounting, monitoring, and evaluation of all expenditures, including settlement of debts.

10 The Respondents aver that the non-payment of the decretal sum arises not from wilful refusal or neglect but rather due to the complexities and procedural requirements inherent in the public financial management system.

11 They aver that despite the 3rd Respondent's genuine intention to settle the decretal sum, the multiplicity of stakeholders, government departments, and statutory requirements has caused delays in the payment process.

12 It is the Respondents' case that public funds can only be expended in accordance with the law and the approved

budgetary framework. Steps have already been initiated to include the Applicant's decretal sum in the 3rd Respondent's upcoming budget cycle, however, this process requires time and must adhere to the statutory timelines and frameworks.

- 13 The Respondents urged this court to exercise its discretion and grant the 3rd Respondent sufficient time to ensure compliance with the law and facilitate the payment of the decretal sum through the next budgetary allocation.
- 14 The Respondents contend that the 3rd Respondent is committed to satisfying the debt and respectfully requests the Court to consider the public interest and statutory constraints under which the Respondent operates.

Applicant's Case

- 15 The Applicant submitted that the Respondent is not opposed to the prayers sought save that it requires time to settle the amount. Judgement was delivered in his favour of the Applicant on 30th June 2023 and the amount payable has been due and owing for the last 3 budgetary cycles. The Respondent has not placed any material before this court to demonstrate that it has indeed initiated the process of payment.
- 16 It is the Applicant's submission that budgeting and budgetary process is a continuous exercise and it would be imperative to have evidence of the current process which ought to explicitly include funds allocation for the

settlement of decree. This omission is thus evidence that the Respondent is not willing to settle the decree and the only remedy available to the Applicant is the grant of the order sought.

- 17 The Applicant submitted that caselaw establishes that the only remedy available to a decree-holder who has a decree against a county government in Kenya is through judicial review. The certificate of Order herein was served upon the Respondents but there was no response either way in respect to the same. They cited **Republic V Permanent Secretary, Ministry Of State For Provincial Administration And Internal Security Exparte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR)** wherein it was held: *“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way*

of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act.

The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment.

Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

- 18 It is the Applicant’s submission that the Respondents had been served with the Certificate of Order and the

judgement has been outstanding since 2023. Further, the Respondents acknowledge that they are under an obligation to settle the said judgement. thus, there is no valid grounds of opposition advanced against the order sought.

Respondents' Submissions

- 19 The Respondents submitted on four issues: whether the *ex-parte* Applicant has met the legal threshold for the grant of an order of mandamus; whether the Respondents can lawfully be compelled to make payment outside the budgetary process; whether the 1st and 2nd Respondents are personally liable for payment of decretal sums; and whether the application is premature and an abuse of the court process.

- 20 On the first issue, the Respondents submitted that they not failed to pay the Decretal sums and costs. The Applicant served them with the Certificate of Order issued on 20th May 2025 and served upon the Office of the County Solicitor on 9th June 2025, which was after the budget process had lapsed and therefore could not be considered in the budget of the FY 2025-2026. The budget for the financial year had already been allocated for payment of legal fees and decretals. Further, the Nairobi City County is funded through allocation of funds by the Nairobi County Assembly.

- 21 They cited ***Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR*** wherein the court held: *“It is common ground that an order of Mandamus will issue to compel a person or body of persons who has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.....Mandamus is employed to compel the performance, when refused, of a Ministerial duty, this being its chief use. It is also employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way.....”*
- 22 The Respondents submitted that they have not refused to pay the Applicant, but rather it is in the process of payment which must comply section 125 of the Public Finance Management Act, (PFMA) provides for the budget making process. Additionally, Sections 117,125,129, 131 and 133 provides that settlement of any monies owed by the County must comply with the said provisions.
- 23 It is the Respondents’ submission that they are guided by the provisions of the PFMA which stipulates how expenditure should be first budgeted for before being spent.
- 24 On the second issue, the Respondents submitted that this application is premature, and the court should not issue an

order of mandamus to compel a process that must lawfully be channelled through the County's budgetary cycle.

- 25 The Respondents submitted that they have already constituted a committee to verify all decree holders and prioritize payments based on availability of funds and the 'first in, first out' principle. The total verified decrees against the County currently stand at Kshs. 7,044,619,657.46, further illustrating the financial strain faced by the Nairobi City County.
- 26 On the third issue, the Respondents submitted that Section 21(3) of the Government Proceedings Act is clear that payments of decretal sums are to be made by the accounting officer of the concerned government entity, upon approval through the appropriate budgetary allocation. The 1st and 2nd Respondents are public officers sued in their official capacities; and no law imposes personal liability upon them for the payment of County debts. They cited ***Republic V Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR)*** wherein it was emphasized that an order of mandamus cannot issue to compel payment where no budgetary allocation exists.
- 27 On the final issue, the Respondents submitted that this application seeks to circumvent statutory procedures and interfere with the County's lawful financial operations. The

Court should not be drawn into micro-managing county fiscal processes.

- 28 It is the Respondents' submission that granting the orders sought would prejudice the County Government and open the floodgates to similar claims, thereby frustrating the County's ability to prioritize essential services and other decree holders.
- 29 It was submitted for the Respondents that the Applicant has not demonstrated any refusal or neglect on the part of the Respondents to perform a public duty. The Respondents are bound by and operate strictly within the statutory fiscal procedures established under the Public Finance Management Act, which prescribe the process of budgeting, allocation, and expenditure of public funds.
- 30 It is the Respondents' submissions that they cannot lawfully make payments outside the approved budgetary framework. The instant application is therefore premature, misconceived, and constitutes an abuse of the court process.
- 31 I have examined all the averments and submissions of the parties herein. The respondents have indicated that they are aware of the debt owing to the applicant and have made provision of its payment in the budget cycle of the 3rd respondent.

32 The respondents have in principle agreed to this application and thus the only remedy for the applicant is to allow the application as prayed and enter judgment for the applicant as prayed and direct that the respondents be and are directed to pay the sum of Kshs 4,625,867/- being the decretal amount plus costs as awarded in Milimani ELRC/1108/2015 on 30th June 2023. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

Dated, Signed and Delivered Virtually at Nairobi this 14th Day of January, 2026.

**HELLEN WASILWA
JUDGE**