



Republic v County Government of Isiolo & 3 others; Mbogo & Muriuki Advocates (Ex parte Applicant) (Judicial Review E004 of 2025) [2025] KEELC 5800 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5800 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
JUDICIAL REVIEW E004 OF 2025**

**JO MBOYA, J
JULY 30, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY GOVERNMENT OF ISIOLO 1ST RESPONDENT

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF
ISIOLO 2ND RESPONDENT**

**ICT AND ECONOMIC PLANNING COUNTY GOVERNMENT OF
ISIOLO 3RD RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE,
ICT AND ECONOMIC PLANNING, COUNTY GOVERNMENT OF
ISIOLO 4TH RESPONDENT**

AND

MBOGO & MURIUKI ADVOCATES EX PARTE APPLICANT

JUDGMENT

1. What is before me is the Notice of Motion Application [Substantive Application] dated 27th May 2025 and wherein the Ex-parte Applicant [herein after referred to as the applicant] has sought the following reliefs;
 - i. That an order of Mandamus do issue compelling the respondents to forthwith and without and delay or cause to be paid Kshs.3,555,525/= Three million, five hundred and fifty five thousand, five hundred and twenty five thousand only together with costs and interests to satisfy the decree passed in Isiolo Environment and Miscellaneous Application No. E006 of 2025.



- ii. Costs be in the cause.
2. The subject application is anchored on various grounds which have been highlighted in the body thereof. Furthermore, the subject application is premised on the statement of facts dated 20th May 2025; the affidavit in verification of the statement of facts sworn on even date; the annexures thereto and the Supplementary affidavit sworn by the applicant on 18th July 2025.
 3. The Applicant herein has contended that the 1st respondent instructed and or engaged the applicant's law firm, namely; Ms. Mbogo & Muriuki advocate to represent same in Isiolo ELC No. E001 of 2021, wherein the 1st respondent had been sued. Furthermore, it has been contended that the applicant took up the instructions, filed the requisite pleadings and thereafter participated in the proceedings up to and including its conclusion.
 4. Be that as it may, the Applicant has posited that despite having acted for and on behalf of the 1st respondent, the 1st respondent failed/neglected to pay the professional fees. To this end, it has been contended that the applicant was constrained to and indeed filed an Advocate–Client bill of costs vide Isiolo ELC Misc Application No. E006 of 2024. Moreover, it has been posited that the said advocate-client bill of costs was duly taxed, culminating into the issuance of a certificate of taxation for the sum of Kshs.3,540,525/= only.
 5. Additionally, it was averred that following the issuance of the certificate of taxation, the applicant proceeded to and filed an application under the provisions of section 51 [2] of the *Advocates Act*, Chapter 16, Laws of Kenya; seeking to have the certificate of taxation converted into a Judgment. In this regard, the Applicant posited that the application for conversion of the certificate of taxation was duly allowed and Judgment was entered in favour of the Applicant. For good measure, the applicant referenced the judgment of the court rendered on 22nd April 2025. [See annexure KM 3 attached to the affidavit in verification of facts].
 6. The Respondents filed a Replying affidavit sworn by one Dade Boru, sworn on 10th July 2025; and wherein the deponent has conceded that the applicant herein was indeed instructed by the 1st respondent. Furthermore, the deponent has contended that the applicant is indeed entitled to payment of the professional fees. Nevertheless, the deponent has contended that the respondents have been engaging with the applicant in an endeavor to have the decretal sum paid. To this end, the deponent has averred that the parties need to be afforded an opportunity; nay, more time to pursue alternative dispute resolution.
 7. Moreover, the deponent has averred that the applicant has not established and or demonstrated the requisite basis to warrant the grant of the orders of mandamus, either as sought or otherwise. To this end, the deponent has implored the court to find and hold that the application beforehand ought not to be granted.
 8. The subject matter came up for hearing on 30th July 2025, whereupon the advocate for the parties covenanted to adopt the various affidavits and annexures that had been filed. Moreover, the advocates for the parties agreed to leave the matter to the Court to determine on the basis of the pleading[s] and affidavit[s] on record.
 9. To this end, learned counsel for the applicant adopted and reiterated the grounds contained in the body of the application dated 27th May 2025; the affidavit in support thereof sworn on 27th May 2025; the statement of facts dated 20th May 2025; the affidavit in verification of the statement of facts sworn on 20th May 2025; the supplementary affidavit sworn on 18th July 2025; and the list and bundle of authorities dated 18th July 2025.



10. On the other hand, learned counsel for the respondent adopted the replying affidavit sworn on 10th July 2025 and thereafter invited the court to consider the import and tenor of Article 159 [2] [c] of *the Constitution* 2010; pertaining to the alternative dispute resolution mechanism. In particular, learned counsel highlighted the need to afford the parties more time to pursue negotiations pertaining to settlements and or liquidation of the decretal sum.
11. Having reviewed the Notice of Motion Application dated 27th May 2025; the affidavits in support thereof; the annexures attached thereto; the list and bundle of authorities referenced and upon taking into account the response by the respondents, I come to the conclusion that the determination of the subject application turns on one singular issue namely; whether the Applicant has established the requisite basis to warrant the issuance of the order of mandamus or otherwise.
12. It is important to recall and reiterate that no execution by way of attachment of the movable properties of the 1st respondent can be undertaken. Furthermore, it is common ground that the 1st respondent is insulated from execution by dint of section 21 [4] of the *Government Proceedings Act*, cap 40 Laws of Kenya.
13. Arising from the fact that no execution can be commenced and or maintained against the 1st respondent [the county government of Isiolo], the only legal avenue for executing and or enforcing court decrees as against the 1st respondent is by way of mandamus. To this end, it is instructive to reference the decision of the Court of Appeal in the case of Five Star Agencies Ltd & another vs National Land commission & others [2024] KECA 439. [See also the decision in the case of Republic vs County Secretary Nairobi County Government, *ex parte* Wachira Nderitu Ngugi & Co. Advocates [2014] eKLR.
14. Be that as it may, it is common ground that before an order of mandamus can issue as against the 1st respondent, it must be shown and or established that the applicant has indeed extracted the decree, the certificate of costs and the certificate of order and thereafter served the said documents upon the 1st respondent. For good measure, the preliminary steps and conditions that must be complied with are highlighted at the foot of section 21 [1], [2], [3] and [4] of the *Government Proceedings Act*. [See also the decision of the court in the case of Permanent Secretary's office of the president and another *ex parte* Nasir Mwandihhi [2014] eKLR, where the court highlighted the preliminary conditions that must be satisfied before an order of mandamus can issue as against the Government and or County Government.
15. Flowing from the foregoing, it is therefore imperative to interrogate the documentation filed before this court to ascertain whether the applicant herein has met the conditions envisaged under section 21 of the *Government Proceedings Act*.
16. To start with it is worthy to underscore that the applicant herein duly extracted the decree arising from the Judgment of the court; extracted the certificate of costs and also extracted the certificate of order in compliance with the provisions of Order 29 Rule 3 of the Civil Procedure Rules 2010. Notably, the said documents have been duly annexed to the affidavit in support of the substantive Notice of Motion. [see annexure KM3 attached to the affidavit sworn on the 27th May 2025].
17. Furthermore, the applicant has also annexed a copy of the affidavit of service demonstrating that the documents under reference were duly served upon the 2nd respondent for and on behalf of the County Government of Isiolo. In addition, the applicant has also annexed a copy of the demand letter dated 10th February 2025, wherein the applicant intimated to the 2nd respondent that a certificate of costs had been issued and thus it behoved the respondents to settle and or liquidate the decretal sum.



18. Additionally, it is worthy to underscore that vide the demand letter dated 10th February 2025, the applicants notified the 2nd respondent [who is the administrative head] that unless the decretal sum was paid within a set timeline, the applicant would be constrained to execute [see annexure KM6A attached to the Supplementary affidavit sworn on 18th July 2025].
19. It is worthy to recall that the contents of the supporting affidavit and the supplementary affidavit filed by the applicant have not been controverted. For good measure, the respondents have not denied that same are indebted to the applicant. In addition, the respondents have not disputed service of the various statutory documents underpinning the issuance of an order of mandamus. Moreover, the respondents have not averred that the decretal sum has since been settled. On the contrary, what the respondents have contended is that same have been engaging with the applicant in an endeavor to settle the decretal sum.
20. Nevertheless, it is not lost on me that the applicant has denied any engagement with the respondent. Moreover, the applicant has contended that the respondents have not been keen to liquidate and or settle the decretal sum despite several promises. [See paragraph 3 of the supplementary affidavit sworn on 18th July 2025].
21. Arising from the foregoing, it is important to highlight that the respondents have had a reasonable opportunity and latitude to process and pay the decretal sum. However, the respondents herein do not appear to be keen to settle and or liquidate the decretal sum. On the contrary, the respondents appear to take solace in their negligence, failure and or utter refusal to process and pay the decretal sum.
22. To buttress the holding that the Respondents have had adequate period/ duration, it suffices to invoke and reference the decision in the case of Republic vs the County Secretary, Nairobi City County and another exparte Prof. Tom Ojienda & associates [2019] eKLR where the court stated thus;
 13. For Mandamus to issue, there must be a public legal duty to act and the duty must be owed to the Applicant. These two tests are not in dispute. There must be a clear right to the performance of that duty, meaning that the Applicant has satisfied all conditions precedent. There must have been a prior demand for performance; a reasonable time to comply with the demand, unless there was outright refusal; and an express refusal, or an implied refusal through unreasonable delay.[Emphasis added].
23. In the premises, I beg to state that having duly engaged and instructed the applicant, who thereafter rendered his professional services, it is only fair, just and expedient that the respondents be compelled to pay the professional fees. Further and in any event, there is no gainsaying that the respondents have a statutory duty to settle any decretal sum issued by a court of law, unless there exists compelling reasons to the contrary. However, in respect of the instant matter, no such compelling reason[s] has been availed and or demonstrated.
24. In the premises, I come to the conclusion that the Applicant herein has laid before the court a sufficient basis to warrant the issuance of the order of mandamus. For good measure, the ingredients that underpin the issuance of an order of Mandamus have been duly established and proven.
25. Before concluding on this matter, it is instructive to reference the decision of the Court of Appeal in the case of Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 [KLR], where the Court expounded on the scope of the order of mandamus.



26. For coherence, the court stated as hereunder;

What is the scope and efficacy of an order of mandamus? once again, we turn to Halsbury's Laws 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.”

At paragraph 90 headed “the mandate,” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

27. Bearing in mind the dictum highlighted in the decision [supra] and taking into account that the respondents have had reasonable timelines to process and pay the decretal sum, I find and hold that an order of mandamus is merited.

FINAL DISPOSITION

28. Flowing from the analysis highlighted in the body of the Judgment, it must have become apparent that the applicant has indeed established a basis to warrant the grant of the order sought at the foot of the substantive Notice of Motion Application beforehand.

29. Consequently, and in the premises, the final orders of the court are as hereunder;

- I. An order of mandamus be and is hereby issued compelling the respondents to forthwith and without further delay to pay to the applicant [exparte applicant] the sum of Kshs.3,555,525/ = Three million, five hundred and fifty five thousand, five hundred and twenty five thousand only together with costs and interests in satisfaction of the decree passed in Isiolo Environment and Miscellaneous Application No. E006 of 2025.
- II. The Payment at the foot of clause [I] hereof shall be undertaken within 60 days from the date hereof and in default, the applicant [Ex-parte Applicant] shall be at liberty to take out contempt proceedings.
- III. The Applicant sought that costs shall be in the cause. To this end, I decline to grant any orders as to costs.
- IV. For the avoidance of doubt, Each party shall bear own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF JULY 2025

OGUTTU MBOYA, FCIARB; CPM [MTI-EA].



JUDGE

In the presence of:

Hussein - Court Assistant.

Mr. Ken Muriuki for the Ex-parte applicant

Mr. Koome Murithi for the Respondents

