

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MIGORI**

**JUDICIAL REVIEW APPLICATION NO E002 OF 2025**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS  
ACT AND THE FAIR ADMINISTRATIVE RULES, 2024**

**IN THE MATTER OF ENFORCEMENT OF A JUDGMENT OF THE  
ENVIRONMENT AND LAND COURT DATED 18<sup>TH</sup> FEBRUARY  
2025 IN MIGORI ELC PETITION NO E006 OF 2022**

**BETWEEN**

**PETER OCHARA ANAM..... 1<sup>ST</sup>  
APPLICANT**

**BENERD OCHIENG OUMA..... 2<sup>ND</sup>  
APPLICANT**

**VERSUS**

**CHIEF EXECUTIVE OFFICER & ACCOUNTING  
OFFICER, NATIONAL LAND COMMISSION..... 1<sup>ST</sup>  
RESPONDENT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup>  
RESPONDENT**

**RULING**

**(On whether the respondents should be compelled to pay  
the decretal debt due and owing to the applicants)**

**The Application**

**1. The Applicants filed an Originating Motion dated 19<sup>th</sup>  
September 2025 seeking orders that:**

**1. ...Spent**

2. That this honourable court be pleased to issue an order of judicial review in the nature of mandamus compelling the respondents- chief executive officer and accounting officer, national land commission to pay the applicants the sum Two Hundred Thousand Shillings (Ksh. 200,000/=), being the decretal amount to enforce the decree of Hon. Justice Munyao Sila, J delivered on 18<sup>th</sup> February 2025 in Migori ELC Petition E006 of 2022- Peter Ochara Anam & Bernard Ochieng Odhiambo v National Land Commission & National Irrigation Authority.
  3. The court be pleased to award interest on the said sum from 22<sup>nd</sup> May 2025, being the date of service of the certificate of order against the government on the respondents until payment shall have been made in full.
  4. That costs of this Judicial Review application be made to the applicants and be paid by the 1<sup>st</sup> respondent and or the two respondents, jointly and severally.
- 2.** The application is grounded on the grounds outlined in the application as well as the supporting affidavit sworn by the 1<sup>st</sup> applicant in support of the application. The applicants' case is that their lands were trespassed into by the National Irrigation Authority, which forcibly laid infrastructure thereon in a manner tantamount to expropriation without prompt and just compensation.
  - 3.** The Applicants commenced a Constitutional Petition seeking compensation for the violation of their constitutional rights.

They stated that, this Court, albeit differently constituted, found in their favour and awarded them Ksh. 100,000/=, being nominal damages for the violation of their constitutional rights and Ksh.100,000/= being costs of the petition.

- 4.** The Applicants added that the court later issued a decree, which was served upon the respondents and a certificate of costs which was also obtained and served upon the respondents.
- 5.** It was also the applicant's averment that they applied for, obtained and served upon the respondents a certificate of order pursuant to the provisions of the Government Proceedings Act.
- 6.** They maintain that, despite service and knowledge of the judgment, decree, certificate of costs and certificate of order upon the respondents, they have failed and neglected to pay the decretal debt owed to the applicants. The applicants also contended that they served the respondents with a notice and intention to sue on 15<sup>th</sup> July 2025 as mandated by Rule 5 of the Fair Administrative Action Rules, 2024. Despite service, the applicants maintain that the respondents have taken no action to remedy the situation.
- 7.** They contend that the respondents are duty bound respect orders of the as well as their (applicants') constitutional rights. They further maintain that, unless the respondents are compelled to pay the decretal sum owed to the applicants, there is a very slim possibility that the same will ever be paid.

- 8.** In addition to the aforestated, the applicants state that the decree of the court has never been impugned, impeached and/or set aside. They maintained that the inaction by the respondents should not be countenanced by this court and emphasized that equity should never suffer a wrong without a remedy.
- 9.** The Applicants also stated that there is no other adequate remedy available to them and invoked this court's jurisdiction to compel the respondents to pay the applicants the decretal sum as ordered by the court as well as interest from the date of service of the certificate of costs upon the respondents.
- 10.** The Affidavit sworn by the 1<sup>st</sup> applicant in support of the application largely replicates the contents of the application. As such, there is no point replicating the same herein, save to point out that the 1<sup>st</sup> applicant has annexed several annexures to the supporting affidavit.

### **Issues, Analysis and Determination**

- 11.** The issue for determination in this application is whether the applicants are entitled to an order of mandamus to compel the respondents to pay the decretal sum owed to the applicants.
- 12.** The procedure of levying execution against movement in is provided in the Government Proceedings Act. Section 21(1) thereof provides that:

*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.*

**13.** Section 21 (3) of the said Act on the other hand provides:

*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.*

**14.** Lastly, section 21 (4) prohibits execution against the Government and provides that:

*Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, 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.*

**15.** In **Republic vs. Permanent Secretary Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandishi [2014] eKLR**, Odunga, J. (as he then was), held as follows:

*“It must be remembered that an application for an order of mandamus seeking an order compelling the Government to satisfy a decree is a very elaborate procedure. Before the Court issues such an order, there must be proof that the provisions of the government proceedings Act have been complied [with] with respect*

*to issuance of certificate of costs and certificate of order against the Government. After the issuance of the aforesaid documents, just like in any application for mandamus, there must be a demand for payment made by or on behalf of the decree holder to the relevant department seeking payment since in an application for an order of mandamus, the law as a general rule requires a demand by the applicant for action and refusal as a prerequisite to the granting of an order, though there are exceptions to the rule...The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view, is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court.”*

**16. In Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR**, the Court summarized the procedure for executing money decrees against the government. The court held that:

*“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 accrue.”*

a. In **Republic v Trans Nzoia County Public Service Board & 2 others; Sifuna & Sifuna Advocates (Ex**

**parte) (Judicial Review E011 of 2022) [2022] KEHC 17120 (KLR) (8 December 2022) (Judgment),** the court held that:-

*Before the Court issues such an order, there must be proof that the provisions of the Government Proceedings Act have been complied with in respect to issuance of certificate of costs and certificate of order against the Government. After the issuance of the aforesaid documents, just like in any application for mandamus, there must be a demand for payment made by or on behalf of the decree holder to the relevant department seeking payment since in an application for an order of mandamus, the law as a general rule requires a demand by the applicant for action and refusal as a prerequisite to the granting of an order, though there are exceptions to the rule.*

- 17.** The upshot of the foregoing is the grant of the orders sought depends on whether the Applicants have satisfied the requirements stipulated in section 21 of the Government Proceedings Act.
- 18.** This court is satisfied that the Applicants have met the requirements set out in section 21 of the Government Proceedings Act. This is so because there is a judgment in their favour, and they have annexed a copy of the Certificate of an Order against the National Land Commission dated 29<sup>th</sup> April, 2025; a copy of the judgment dated 18<sup>th</sup> February 2025; a copy

of the decree dated 29<sup>th</sup> April 2025; a copy of the certificate of costs dated 21<sup>st</sup> may 2025; a copy of the notice of intention to sue dated 15<sup>th</sup> July, 2025; an affidavit of service dated 18<sup>th</sup> September 2025. They allege that the sum due has not been satisfied by the Respondents. The Respondents have not controverted that by way of Replying Affidavit or shown any evidence to the contrary. The sum has to be satisfied irrespective of the fact that it is government that owes it.

**19.** Accordingly, this court allows the application in the following terms:

- i. An order of Mandamus is hereby issued compelling the National Land Commission to pay the applicants the decretal sum of Kshs. 200,000/= from the date ordered in the certificate, and the interest thereon, as per the provisions of the law, until payment in full in accordance with the decree and certificate of order against the National land commission;**
- ii. The applicant shall have the costs of these proceedings.**

**20.** It is so ordered.

**Ruling** Dated, **SIGNED** and **DELIVERED** virtually via the **Teams** Platform this **20<sup>th</sup> day of January 2026.**

**HON. DR. IUR NYAGAKA**

**JUDGE**

**In the presence of:**

M. Odero Advocate for the Applicant

No Appearance for Respondents