



Gunda (Suing as the Legal Representative of the Estate of Banzi Gunda Banzi - Deceased) v Secretary National Land Commission (Environment and Land Judicial Review Miscellaneous Application E004 of 2024) [2026] KEELC 151 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELC 151 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E004 OF 2024**

LL NAIKUNI, J

JANUARY 22, 2026

BETWEEN

JUMAA BANZI GUNDA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF BANZI GUNDA BANZI - DECEASED) EX PARTE APPLICANT

AND

SECRETARY NATIONAL LAND COMMISSION RESPONDENT

JUDGMENT

I. Preliminaries.

1. This is a Judgement pertaining to a Chamber Summons Application dated 19th August, 2024 instituted by the Ex - Applicant herein – Jumaa Banzi Gunda (Suing as The Legal Representative of the Estate of Banzi Gunda Banzi-Deceased) against the Secretary National Land Commission, the Respondent herein. The said substantive application was premised to the provision of Order 53 of the Civil Procedure Rules, 2010, Sections 8 and 9 of the Law Reform Act, cap. 26, Article 47 of the Constitution and all other enabling procedures of the law.
2. Unfortunately, despite service and all efforts made, the Respondent never participated any further in this matter thereafter. Ideally, although, the suit stood unopposed but the Honourable Court proceeded to deal with the matter on its own merit.

II. The Ex – Parte Applicant’s Case

3. The Ex – Parte Applicant sought the following ORDERS in the Chamber Summons application: -
 - a. Spent.



- b. That the Applicant be granted leave to commence judicial review in the nature of Mandamus to compel the Secretary, National Land Commission to pay the Applicant Kshs. Two Million Four Hundred and Twenty Seven Thousand and fourteen shillings.
 - c. That costs of the application be in the substantive motion.
4. Through the 3 paragraphed statutory statement dated 19th August, 2024, which was in the following terms:

A. Description of the parties

5. The Ex – Parte Applicant was Jumaa Banzi Gunda (suing As The Legal Representative Of The Estate Of Banzi Gunda Banzi-deceased), male of legal capacity and a Kenyan Citizen working and residing in Samburu area, Kwale County within the Republic of Kenya.
6. The Respondent is a established under the provision of Section 20 of the National Land Commission Act and the accounting officer of the National Land Commission an independent commission established under the provision of Article 63 of the Constitution of Kenya 2010 which carries out its mandate in Nairobi within the Republic of Kenya.

B. Grounds upon which the relief is sought

7. The grounds on the face of the Statutory statement were that: -
 - a. The Applicant is in pursuit for leave to commence Judicial Review in the nature of Mandamus compelling the respondent to settle the Judgment and/or consequential orders in:- “TRLAP/E013/2024 - Banzi Gunda Banzi – Versus - Kenya Railways Corporation and National Land Commission”.
 - b. The Applicant filed the civil case:- “TRLAP/E013/2024 - Banzi Gunda Banzi – Versus - Kenya Railways Corporation and National Land Commission”. before the Land Acquisition Tribunal.
 - c. Upon hearing and determination of:- “TRLAP/E013/2024 - Banzi Gunda Banzi – Versus - Kenya Railways Corporation and National Land Commission”. the tribunal entered a judgment in favour of the Applicant herein against the Respondent for a sum of Kenya Shillings One Million and Twenty Two Thousand Seven Hundred and thirty four (Kshs. 1, 127, 034/=), special damages amounting to Kenya Shillings Fifty Thousand (Kshs. 50, 000/=) interest and costs of the suit.
 - d. The Applicant through his Advocates notified the National Land Commission of the Judgment entered vide a letter dated the 28th May, 2024 delivered physically and/or via email.
 - e. The Applicant filed a bill of costs which was served upon the Respondent together with the notice of taxation which bill was consequently taxed at a sum of Kenya Shillings One Twenty Seven Thousand (Kshs.127,000/-).
 - f. Applicant was issued with a Decree and Certificate of Costs and consequently issued with a Certificate of Order against the National Land Commission and/or a Certificate of Order for costs against the National Land Commission.
 - g. Cumulatively the National Land Commission owed the Applicant a sum of Kenya Shillings Two Million Four Hundred and Twenty Seven Thousand Seven Hundred and thirty four (Kshs. 2, 427, 734/=).



- h. Despite knowledge of the Judgment and/or service of the certificate of order and Certificate of order for costs the National Land Commission had refused, neglected and/or declined to settle the decree.
 - i. There was no justifiable reason and/or any excuse whatsoever as to why the Judgment in “TRLAP/E013/2024 - Banzi Gunda Banzi – Versus - Kenya Railways Corporation and National Land Commission” should not be settled.
 - j. The Respondent was the Accounting Officer of the National Land Commission and was mandated and has a duty to pay all claims against the Government as ordered by the Tribunal.
 - k. The Applicant in obtaining a Decree and subsequently the certificate of order against the Government, acquired a specific legal right which gave rise to the Commission's statutory obligation through its accounting officer to pay the decretal amount.
 - l. The Respondent had both a statutory and public duty to satisfy the decree issued by a competent court in favor of the Applicant.
8. The application was premised on the grounds, testimonial facts and averments made out under the 18th Paragraphed Verifying Affidavit of Jumaa Banzi Gunda, the Applicant sworn on 19th August, 2024, Statutory statement dated the same day and on the grounds on the face of the Chamber Summons Application dated 19th August, 2024 herein; the Applicant herein together with twelve (12) exhibits marked as “JBG - 1 to JBG - 12” annexed thereon. He averred that:
- a. The Affiant was the Applicant herein, well versed with the facts and thus competent enough to have sworn this affidavit.
 - b. The Affiant had read and understood the Chamber Summons application and statutory statement filed herein and relied on the same.
 - c. The Affiant was the legal representative of the estate of Banzi Gunda Banzi, his late father, having been issued with a limited grant ad litem by the Magistrate's Court at Kaloleni. (Annexed in the affidavit and marked as “JBG - 1” was a true copy of the limited grant ad litem dated the 22nd February, 2024).
 - d. On behalf of the estate of Banzi Gunda Banzi, the Affiant filed “TRLAP/E013/2024 Banzi Gunda Banzi – Versus - Kenya Railways Corporation and National Land Commission before the Land Acquisition Tribunal”. (Annexed in the affidavit and marked as “JBG - 2” was a true copy of the plaint dated the 22nd February, 2024).
 - e. Upon hearing and determination of “TRLAP/E013/2024 Banzi Gunda Banzi – Versus - Kenya Railways Corporation and National Land Commission”, the Tribunal entered Judgment in favour of the Affiant and/or in favour of the estate of the deceased against the National Land Commission for a sum of Kenya Shillings One Million Twenty Two Thousand Seven Thirty Four Hundred (Kshs. 1,022,734/=), special damages amounting to Kenya Shillings Fifty Thousand (Kshs. 50,000/=), interest, and costs of the suit. (Annexed in the affidavit and marked “JBG - 12” was a true copy of the Judgment dated the 27th May, 2024).
 - f. The Affiant's advocates immediately notified the National Land Commission of the judgment vide a notice dated the 28th May, 2024, which notice was served upon the Respondent via email and/or by physical copy. (Annexed in the affidavit and marked as “JBG - 3”, “JBG - 4”, and “JBG - 7” were true copies of the notice of Judgment, email printout, and affidavit of service dated 28th May, 2024).



- g. The Affiant's advocate filed a bill of costs which, together with a notice of taxation, was served upon the Respondent, where after the bill was taxed at a sum of Kenya Shillings One Twenty Seven Thousand (Kshs. 127,000/=) and a Certificate of Costs issued. (Annexed in the affidavit and marked as "JBG - 11" was a true copy of the Certificate of Costs).
- h. The Affiant was issued with a decree and certificate of costs and consequently issued with a certificate of order against the National Land Commission and/or a certificate of order for costs against the National Land Commission.
- i. Despite knowledge of the judgment and/or service of the certificate of order and certificate of order for costs, the National Land Commission refused, neglected, and/or declined to settle the decree. (Annexed in the affidavit and marked as "JBG - 8", "JBG - 9", and "JBG - 10" were true copies of the forwarding letter dated 7th August, 2024, certificate of order dated 6th August, 2024, and Certificate of Order for Costs dated 6th August, 2024 respectively).
- j. Cumulatively, the National Land Commission owed the Affiant, as the legal representative of the estate of the deceased, a sum of Kenya Shillings Two Million Four Twenty Seven Thousand Seven Thirty Four (Kshs. 2,427,734/=), which amount remained unsettled, and the Affiant was never given reasons why the said amount should not have been paid.
- k. There was no justifiable reason and/or any excuse whatsoever as to why the judgment in "TRLAP/E013/2024 Banzi Gunda Banzi – Versus - Kenya Railways Corporation and National Land Commission" should not have been settled.
- l. The Affiant was advised by his advocates on record, Messrs. B. Maitha & Co. Advocates, which advice he verily believed to be true, that the Respondent was the Accounting Officer of the National Land Commission and was mandated and had a duty to pay all claims against the Commission as ordered by the Tribunal.
- m. The Affiant was further advised by his Advocates on record, Messrs. B. Maitha & Co. Advocates, which advice he verily believed to be true, that in obtaining a decree and subsequently the certificate of order against the National Land Commission, he acquired a specific legal right which gave rise to the Commission's statutory obligation, through its accounting officer, to pay the decretal amount.
- n. The Affiant was advised by his advocates on record, Messrs. B. Maitha & Co. Advocates, which advice he verily believed to be true, that the Respondent had both a statutory and public duty to satisfy the decree issued by the Tribunal in his favour.
- o. The Affiant was advised by his advocates on record, Messrs. B. Maitha & Co. Advocates, which advice he verily believed to be true, that settlement of decrees and judgments of the court by the Respondent was an administrative function which ought to have been exercised expeditiously and/or within the ambit set out under the provision of Article 47 of *the Constitution*, and in default, this court had the original supervisory jurisdiction over the Respondent.
- p. Unless leave had been granted to allow the Affiant to commence judicial review in the nature of mandamus, the proceedings and/or judgment of the Land Acquisition Tribunal would have been mere academia, and he would have been unable to realize the fruits of his judgment.
- q. The Affiant had a prima facie case with chances of success, and it was in all fairness and in the interest of justice that the orders sought ought to have been granted.



- r. What was stated above was true and correct to the best of the Affiant’s knowledge, information, and belief.

III. Analysis & Determination

9. I have carefully assessment the Judicial review application brought to this Honourable Court by the Ex – Parte Applicant, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes. Despite of all the directions made by Court, the Respondent declined to file any responses leaving the Court to make a determination of the matter on its own merit.
10. For the Honourable Court to reach an informed, reasonable, fair and Equitable decision, it has crystalized the subject matter into four (4) salient issues for analysis. These are as follows:-
- a. What is the scope, meaning and nature of the concept of the Judicial Review.
 - b. Whether the Judicial review suit instituted by the Applicant meets the threshold of such a suit and has merit whatsoever?
 - c. Whether the Applicant is entitled to the prerogative reliefs sought.
 - d. Who will bear the costs of the Application for Judicial Review.

ISSUE No. a). What is the scope, meaning and nature of the concept of the Judicial Review.

11. Under this Sub – heading, the Honourable Court will deliberate on the scope, meaning and nature of the concept of the Judicial Review. But before that, the Court will extrapolate on the brief facts of the case for ease of reference. Judicial review in Kenya is not concerned with the merits of a decision but with the decision-making process. The Court must interrogate whether the impugned administrative action was lawful, reasonable, and procedurally fair.
12. In our legal parlance and jurisprudence, Judicial Review is founded under the provisions of Order 53 Rules 1 to 7 of the Civil Procedures Rules 2010 where the Prerogative orders of “Mandamus”, “Prohibition” and “Certiorari” are issued.
13. Primarily, the provisions of Sections 8 and 9 of the *Law Reform Act* Cap. 26 of the Laws of Kenya where the Provisions of Order 53 of the Civil Procedure Rules 2010 was borrowed from the case of *Farmers Bus Services – Versus - Transport Licensing Appeals Tribunal (1975) E.A. 523*. And upon the promulgation of *the Constitution* of Kenya in 2010 Article 47 of *the Constitution* of Kenya introduced the Provisions of Fair Administration of justice and later on the legislation of “the Fair Administration of Action Act of 2012” which is the statutory framework governing judicial review and the Administrative law in Kenya currently.
14. The legal efficacy and scope of the statutory order of Mandamus, Prohibition and Certiorari are remedies granted by High Court to persons inferred by the exercise of administrative of judicial powers. These prerogative orders are only available against public bodies. Their origins lie in the expansion of common law in England and the jurisdiction of the Court of King Bench to acquire Superintendence over the observance of law by officials. These orders are predicated upon the fact that without law, society cannot function with fundamental values such as social order, social justice and personal freedom. Today public authorities determine an overwhelming extent how much of these values are enjoyed. Their decision affect vast numbers of people collectively and individually “Ipso Facto” unlawfully decision, must be available to Judicial Scrutiny hence judicial Review. The social need for how and the protection of legality is violated when a public official exceeds his/her authority or does not use his/her power in the prescribed manner. The order of “Mandamus” is derived from the Latin



word “Mandare” meaning to command. It is issued in cases where there is a duty of a public or a quasi-public nature or a duty imposed by statute, it compels the fulfillment of a duty where there is a lethargy on the part of a body or officer concerned.

15. In a nutshell Judicial Review is the means by which High Court judges scrutinize public law functions intervening as a matter of discretion to quash, prevent, require and/or classify not because they disagree with the judgment but so as to right a recognizable public law wrong. This public law wrong could be unlawfulness, Wednesbury unreasonableness or irrationality, unfair hearing, ultra vires bad faith, unfairness, made or arrived at out of excess powers (ultra vires) biasness, capriciousness or unjudicial.
16. In an application for Judicial review the Applicant must be a person with a sufficient interest – (Locus Standi) and who commences proceedings promptly. To support this legal concept on judicial review, I have made indepth references to several literature review and court decisions – “Pharmaceutical manufacturers Association of South Africa in re- ex parte president of Republic of South Africa - 2000 S.A. 674 CC at 33 Republic – Versus - Speaker of the Senate and Another Ex-parte Afrison Export Import Limited 2018 eKLR Republic –Versus- Stanley Mambo Amuti (2018) eKLR.”; the Kenya National Examination Council – Versus - Republic (Ex - Parte - Geoffrey Gathenji & Another Nairobi Civil Appeal No. 266 of 1996.
17. The Court of Appeal in “Kenya National Examination Council – Versus - Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR” stated:

“Judicial review is concerned not with the merits of a decision but with the decision-making process. The Court must ensure that the decision is lawful, reasonable, and procedurally fair.”
18. Similarly, in “Pastoli – Versus - Kabale District Local Government Council & Others [2008] 2 EA 300”, the Court held:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality, and procedural impropriety.”
19. Mandamus is a prerogative order issued in certain cases to compel the performance of a duty. It lies where an injured party has a right to have something done, but has no alternative means of compelling its performance, especially in scenarios where the obligation arises out of the official status of the respondent [c.f. “Shah – Versus - Attorney General (No.3) Kampala HCCM no. 31 of 1969 (1970) EA 543”].
20. Differently put, an order of Mandamus is used to compel public officers to perform duties imposed upon them by common law or by statute [c.f. “Shah – Versus - Attorney General (Supra)”]. Given that traditional execution proceedings are not available against the Government, a holder of a valid decree against the government can only realize the fruits of their judgment by applying for an order of Mandamus compelling the relevant Accounting Officer to settle the decretal sum due from the government.
21. In the foregoing I find that the Judicial review suit instituted by the Ex – Parte Applicant meets the threshold of such a suit. Proceeding to examine its merit, to succeed in an application seeking an order



of Mandamus, the applicant must, in addition to proving the existence of a valid decree against the government, comply with the provisions of Section 21 of the *Government Proceedings Act* by:

“(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.”

22. The provision of Section 21 (3) of the *Government Proceedings Act* imposes a statutory duty on the Accounting Officer for the concerned government department to pay the sums contained in the Certificate of Order once said Order is duly served upon the Hon. Attorney General. From a holistic reading of the *Government Proceedings Act*, it is evident that the statutory duty of the Accounting Officer under Section 21 (3) is not conditional upon budgetary allocation and/or parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues [See “R – Versus - Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex-parte Fredrick Manoah Egunza [2012] eKLR”].
23. The circumstances under which judicial review order of mandamus are issued were discussed in the case of:- “Republic – Versus - Kenya National Examinations Council Ex - Parte Gathenji & 8 Others Civil Appeal No 234 of 1996”, where the Court of Appeal cited with approval, Halsbury’s Law of England, 4th Edition. Vol. 7 p. 111 para 89 thus: -

“The order of mandamus is of most extensive remedial nature and is in form, of 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.”

These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

ISSUE No. b). Whether the Judicial review suit instituted by the Ex – Parte Applicant meets the threshold of such a suit and has merit whatsoever?



24. Under this sub – title, the Honourable Court will be assessing the merit of the application by the Ex – Applicant’s application under the already set out provisions of the Law. In this case, the Applicant, acting as legal representative of the estate of the deceased Banzi Gunda Banzi, obtained a limited grant ad litem from the Magistrate’s Court at Kaloleni. He instituted proceedings before the Land Acquisition Tribunal against Kenya Railways Corporation and the National Land Commission. On 27th May 2024, the Tribunal entered judgment in favour of the Applicant for a sum of Kenya Shillings One Million Twenty Two Thousand Seven Thirty Four Hundred (Kshs. 1,022,734/=), plus special damages of a sum of Kenya Shillings Fifty Thousand (Kshs. 50,000/=), interest, and costs. A bill of costs was taxed at a sum of Kenya Shillings One Twenty Seven Thousand (Kshs. 127,000/=), and a decree together with a certificate of order against the Government was duly issued under Section 21 of the *Government Proceedings Act* (Cap. 40). Despite service of the decree and certificate of order, the Respondent has failed, refused, or neglected to settle the decretal sum.
25. *The Constitution* contemplates just compensation where land is compulsorily acquired. The provision of Article 40 (3) of *the Constitution* provides that:-
- “The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
- (a) Results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - (b) Is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - (i) Requires prompt payment in full, of just compensation to the person; and
 - (ii) Allows any person who has an interest in, or right over, that property a right of access to a court of law.”
26. Further, the provision of Section 7 of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to —
- (a) a court in accordance with section 8; or
 - (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.
- Subsection (2) provides that a court or tribunal under subsection (1) may review an administrative action or decision on any of the grounds listed in the said section.
27. Further, the provision of Article 47 of *the Constitution* stipulates thus:
- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—



- (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
- (b) promote efficient administration.”

28. Lord Diplock in the case of “Council for Civil Service Unions – Versus - Minister for Civil Service [1985] A.C. 374, at 401D” clearly set the standards of judicial review when he stated that:-

“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as “Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”

29. The Applicant herein seeks leave to commence judicial review proceedings in the nature of Mandamus compelling the Respondent, the Secretary of the National Land Commission (NLC), to satisfy a decree and certificate of order issued in “TRLAP/E013/2024 Banzi Gunda Banzi – Versus - Kenya Railways Corporation & National Land Commission”, amounting to Kshs. 2,427,734.

30. This Court finds that the judicial review claim meets the threshold requirements. The Applicant has established sufficient interest (locus standi), prompt filing of proceedings and has shown grounds of illegality, irrationality, and procedural impropriety. Accordingly, the suit is properly before this Court and has merit for consideration on its substance.

ISSUE No. c). Whether the Applicant is entitled to the prerogative reliefs sought.

31. Under this Sub – heading, having clearly set out the principles on Judicial review above, the Honourable Court now wishes to apply them onto the instant case. In so doing, the Court has considered the Applicant’s application, the Statutory Statement, the Verifying Affidavit, the exhibits annexed to the verifying affidavit on record. Before anything though we must answer the question of whether the Respondent, as Secretary and Accounting Officer of the National Land Commission, had a statutory duty to satisfy the decree issued in favour of the Ex - Applicant.

32. The provision of Section 21(1) & (3) of the Government Proceedings Act (Cap. 40, Laws of Kenya) provides that once a decree and certificate of order against the Government is issued, the accounting officer of the relevant department is mandated to pay the sums specified. The provision of Section 21(4) further bars execution against the Government, making mandamus the only viable enforcement mechanism. The provision of Article 47 of the Constitution of Kenya, 2010 guarantees fair administrative action that is expeditious, lawful, reasonable, and procedurally fair. The provision of Article 48 of the Constitution ensures access to justice, which includes the right to enjoy the fruits of a judgment.

33. The Applicant herein seeks leave to commence judicial review proceedings in the nature of Mandamus compelling the Respondent, the Secretary of the National Land Commission (NLC), to satisfy a decree and certificate of order issued in the civil case of:- “TRLAP/E013/2024 Banzi Gunda Banzi – Versus -



Kenya Railways Corporation & National Land Commission”, amounting to a sum of Kenya Shillings Two Million Four Twenty Seven Thousand Seven Thirty Four (Kshs. 2,427,734/=).

34. In the case of “Republic – Versus - Kenya National Examinations Council ex - parte Gathenji & 8 Others Civil Appeal No. 234 of 1996”, the Court of Appeal highlighted circumstances under which a party can seek an order of Mandamus and provided inter alia::

“The order of Mandamus is of 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 or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

35. In the case:- “Republic – Versus - Principal Secretary, Ministry of Internal Security & Another Ex - Parte Schon Noorani & Another [2018] KEHC 9433 (KLR)”, the Court provided parameters for the writ of Mandamus to issue as follows:

- “(i) There must be a public legal duty to act;
- (ii) The duty must be owed to the Applicants;
- (iii) There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - (i) A prior demand for performance;
 - (ii) A reasonable time to comply with the demand, unless there was outright refusal; and
 - (iii) An express refusal, or an implied refusal through unreasonable delay;
 - (iv) No other adequate remedy is available to the Applicants;
 - (v) The Order sought must be of some practical value or effect;
 - (vi) There is no equitable bar to the relief sought;
 - (vii) On a balance of convenience, mandamus should lie..”

36. The need by the public body to comply with the legal duty and or obligation timeously and with due promptitude was highlighted in the case of:- “Republic – Versus - the County Secretary, Nairobi City County and another Ex - Parte 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.
37. I hasten to state that the decree of the court was issued against the Respondent herein. To this end, the Respondent was and remains enjoined to liquidate the decree. The Respondent cannot be heard to state that the decretal sum was arrived at without compliance with the provision of Section 111 of the Land Act, No. 6 of 2012. If anything, the Respondent knows what to do, in the event same is convicted that the decree in question is irregular, illegal and or unlawful.
38. The Ex – Parte Applicant has demonstrated that a valid decree and certificate of order were issued against the National Land Commission. The Respondent, as accounting officer, was duly served with the decree and certificate. Despite service, the Respondent failed, refused, or neglected to satisfy the decretal sum. The statutory framework under the provision Section 21 of the Government Proceedings Act imposes a mandatory duty on the Respondent to pay. The refusal to comply amounts to administrative inaction, contrary to the provision Article 47 of the Constitution, and undermines the Applicant’s right to access justice under Article 48.
39. In conclusion, Respondent does have a statutory duty to satisfy the decree. That duty arises from statute, constitutional provisions, and judicial precedent. The Respondent’s failure to act is unlawful and justifies the issuance of an order of mandamus compelling payment.
40. On whether an order of mandamus should issue compelling the Respondent, as Accounting Officer of the National Land Commission, to satisfy the decree in favour of the Ex – Parte Applicant, this Court’s analysis is that the Applicant obtained a valid decree and certificate of order against the National Land Commission. These were duly served upon the Respondent. Despite service, the Respondent failed, refused, or neglected to satisfy the decretal sum.
41. At all moments from the temple of Justice, I emphatically hasten to stress that any person who walks through the doors of the court and procures a Judgment must be assured that the Judgment, [if any] obtained means something. Furthermore, such a judgment will be enforced in accordance with the law. Absent such assurance, then the rule of law shall be brought to disrepute.
42. The Respondent’s refusal to pay amounts to administrative inaction contrary to Article 47 of the Constitution, and it undermines the Applicant’s right to access justice under Article 48. Courts have consistently held that decrees are not issued in vain, and mandamus is the appropriate remedy to enforce compliance.
43. The statutory framework under Section 21 of the Government Proceedings Act imposes a mandatory duty on the Respondent to pay. Since execution cannot issue against the Government, mandamus is the only effective remedy available to the Applicant.
44. Before concluding on this issue, it is instructive to cite and reference the decision in the case of “Kenya National Examination Council – Versus - Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR”, where the Court of Appeal highlighted the circumstances under which the order of mandamus does issue. 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 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.”

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.

“What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

45. Most recently, the circumstances under which an order of mandamus does issue as against a public body and or state organ was re-visited in the case of:- “Five Star Agencies Limited & another – Versus - National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023 (Consolidated)) [2024] KECA 439 (KLR) (12 April 2024) (Judgment)”, the court stated as hereunder:-

“It is clear beyond any peradventure that the procedure to be followed in execution against the government is to seek an order of Mandamus to compel the relevant person in the Government to settle the decree in question. This finding, in our view, readily answers the question posited by Five Star whether its right to prompt compensation and equality under the relevant provisions of *the Constitution* and the *Land Act* can exist in the absence of a legal remedy”.

46. In my humble albeit view, the Ex - Parte Applicant has ably demonstrated that unless the order of mandamus does issue, the decree of the court which has neither been challenged, impugned and or set aside, would remain a paper Judgment. Such kind of situation must not be countenanced by a court of law and of Equity. Moreover, it is common ground that Equity does not suffer a wrong without remedy.
47. Consequently, an order of Mandamus should issue compelling the Respondent, as Accounting Officer of the National Land Commission, to pay the decretal sum of Kenya Shillings Two Million Four Twenty Seven Seven Thirty Four (Kshs. 2,427,734/=) together with interest and costs. Thus, I discern that the Respondent’s statutory and constitutional duty to satisfy the decree is graphically clear, and mandamus is the proper mechanism to enforce it.



ISSUE No. c). Who will bear the costs of the Miscellaneous Application for Judicial Review?

48. It is now well established that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party at the conclusion of a legal action or proceedings in any litigation. The proviso of the provision of Section 27 (1) of the Civil Procedure Act, Cap. 21 provides as follows: -

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.”

49. On this legal point, I seek refuge from the cases of:- “Republic – Versus - Rosemary Wairimu Munene, Ex - Parte Applicant – Versus - Ihururu Dairy Farmers Co - operative Society Ltd this court held as follows: -

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

50. Further, I am guided by the following passage from the Halsbury’s Laws of England; 4th Edition (Re-issue), {2010}, Vol.10. para 16

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice”

51. Still on the same subject Mr. Justice (Retired) Kuloba in ‘Judicial Hints on Civil Procedure, 2nd Edition, (Nairobi) Law Africa) 2011’, page 94 stated: -

“Costs are (awarded at) the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.....”

52. With respect to the instant application, the Honourable Court has found that the application by the Ex – Parte Applicant is meritorious. Thus the Ex – Parte Applicant is entitled to costs of the suit to be borne by the Respondent accordingly.

IV. Conclusion & findings

53. Flowing from the indepth analysis highlighted in the body of the Judgment, I come to the conclusion that the Ex - Parte Applicant has demonstrated the requisite basis to warrant the grant of the orders



sought. Simply put, the substantive notice of motion application [Judicial Review Application] is meritorious.

54. Consequently, and in the premises, the final orders of the court are as hereunder:-

- a. That Judgement be and is hereby partly entered in favour of the Ex – Parte Applicant under the following terms and conditions:-
 - i. The Honourable Court be pleased to issue a judicial review order – Prerogative writs - in the nature of Mandamus to compel the Respondent, the Secretary and Accounting Officer of the National Land Commission, to pay the Ex - parte Applicant the sum of Kenya Shillings Two Million Four Hundred and Twenty-Seven Thousand Seven Hundred and Thirty-Four (Kshs. 2,427,734/-) being the decretal amount together with interest at the court rate of 12% per annum from the date of award until payment in full, be and is hereby issued against the Respondent.
 - ii. The payment at the foot of clause (i) shall be processed and paid out to the Ex - Parte Applicant WITHIN 60 DAYS from the date hereof, and in default the Ex - Parte Applicant shall be at liberty to take appropriate steps including but not limited to citation for contempt.
- b. That the costs of the proceedings herein be and are hereby awarded to the Ex - Parte Applicant.
- c. That such costs shall be agreed upon, and in default, to be taxed by the Deputy Registrar of the Court.

It Is So Ordered Accordingly

JUDGEMENT DELIVERED THROUGH MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....22NDDAY OF.....JANUARY.....2026.

.....

HON. JUSTICE L.L. NAIKUNI

ENVIRONMENT & LAND COURT

AT

KWALE

Judgement delivered in the presence of:-

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Maitha Advocate for the Ex – Parte Applicant.
- c. No appearance for the Respondent.

