



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)
AT MILIMANI LAW COURTS, NAIROBI
JUDICIAL REVIEW APPLICATION NO. E052 OF 2025

REPUBLIC.....

APPLICANT

-VERSUS-

CHIEF EXECUTIVE OFFICER,

NATIONAL IRRIGATION AUTHORITY.....1ST

RESPONDENT

NATIONAL IRRIGATION AUTHORITY.....2ND

RESPONDENT

PAMELA ATIENO NYAOKE.....EX PARTE

APPLICANT

JUDGMENT

Pleadings

The Ex parte Applicant has filed the notice of motion application dated 7th July 2025 seeking for Judicial review order of mandamus as against the respondents. She asserts that the court in Nairobi ELC Miscellaneous application No E174 OF 2024 Pamella Nyaoke and National irrigation authority made an order for award of costs in the sum of Ksh 50,000/= to the applicant, which sums she indicates have not been paid to date.

The application was premised on grounds that the 2nd respondents are aware of the said order having been represented by counsel and further the ruling and order dated 11th December 2024 and 8th January 2025 respectively were serve on the respondents.

She deponed that she had complied with the provisions of section 21 of the Government proceedings Act and obtained a certificate of order against the 2nd respondent being a government agency.

That no appeal had been preferred against the said order nor have any stay orders had been issued making the order enforceable which order the respondents have outrightly refused to comply with hence the application for an order of mandamus to compel the payment of the sum of Ksh 50,000/=.

Reply

The respondents filed grounds of opposition dated 21st October 2025 on grounds that application is defective since;

1. The Ex parte Applicant seeks to bypass established administrative and statutory mechanisms for enforcing court orders against government entities specifically, that there is not enough evidence to show that service of the Certificate of Order against the Government, was properly served on the 1st Respondent in their capacity as the Accounting Officer, or that the demand for payment was made in accordance with statutory timelines and requirements.
2. The Ex parte Applicant's has failed to prove that the respondents have neglected to pay the sum of Ksh 50,000/= indicating that delay in paying does not amount to refusal
3. The Ex parte Applicant has failed to join the Attorney General, a necessary party in proceedings involving the enforcement of court orders against government entities.

The application was canvassed by way of written submissions. The Ex parte applicant filed submissions dated 25th August 2025, whereas the respondent's filed submissions dated 21st October 2025

Ex parte Applicant's submissions.

The Ex parte applicant reiterated the averments as laid out in the grounds of opposition in the notice of motion application dated 7th July 2025. She stated that since execution cannot be made against the 2nd respondent, the 1st respondent as the accounting officer was the rightful person to have the order of mandamus directed against. She relied on several case laws including but not limited to the case of Republic Vs principal Secretary, Ministry of Internal Security & Another ex parte Schon Noorani & Another (2018) eKLR

She submitted that she had satisfied the conditions for enforcement of decrees for money issued against the government as in section 21(1) and 2 of the Government proceedings Act, and further that the Attorney general had been served as per section 21(3). In persuading this court she submitted that the court cannot issue orders in vain hence need for it to compel the respondents through the order of mandamus.

Respondent's submissions

The respondent's submissions are anchored on the fact that the Ex parte applicant had failed to prove proper service was effected and that the demand for payment of the sum of Ksh 50,000/= was done in accordance with the law in this case the Government proceedings Act relying on the case of Republic Vs Attorney General & Another Ex parte Stephen Wanyee Roki (2016) eKLR

The respondent in buttressing the ground raised of failure to prove refusal to pay relied on the case of Parte Yaya Towers Limited (2008) eKLR where the court held that delay did not constitute refusal to perform a public duty. Lastly counsel submitted that the Ex parte applicant had not shown that the 1st respondent had the statutory duty to pay the decretal sum notwithstanding that there was no budgetary approval.

Issues for determination before this court.

Whether the Ex parte applicant's notice of motion application date 7th July 2025 is merited has complied with the procedure necessary to apply for orders of mandamus.

The scope of an order of mandamus was discussed by the Court of Appeal in the case of **Kenya National Examination Council vs. Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR** thus:

"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.”

In **Republic v Attorney General & Another ex parte James Alfred Koroso [2013]** eKLR, it was held that where a judgment creditor has complied with Section 21 of the Government Proceedings Act and the Government fails to honour its obligation, an order of mandamus lies to compel the performance of that statutory duty.

The principles established in the aforementioned cases affirm that a mandamus order compels the execution of a public duty imposed by statute on an individual or entity, where such individual or entity has neglected to carry out that duty, thereby prejudicing a party with a legal entitlement to its performance.

The question is therefore whether Ex parte the applicant complied with the elaborate procedure for applying for mandamus under section 21 of the Government Proceedings Act?

A court will only issue an order of mandamus if it is shown that the requirements under Section 21 of the Government Proceedings Act have been fulfilled. In the case of **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 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...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.”

The same reasoning was adopted in **Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR**, where the Court held thus:

“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."

I hold the same view as the courts above in both Republic vs. Permanent Secretary Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandishi and Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security & Another ex-parte Nassir Mwandishi [2014] eKLR

It is only after the procedure as laid down under section 21 of the Government Proceedings Act has been complied with and a demand for payment made that a cause of action accrues for the purposes of an application for an order of mandamus against the Government.

In the instant case, it is undisputed that the Ex parte Applicant has fully satisfied the requirements of Section 21 by securing a valid decree, obtaining a certificate of order against the Government, and duly serving it upon the Respondents. The Respondents are contesting service of the certificate of order and that the demand letters were not served upon them within the laid

down legal parameters. A perusal through the pleadings leads to the verifying affidavit on the statement of facts sworn by Ex parte applicant dated 27th June 2025. The said affidavit has annexures to it, which Annexure marked PAN 3 is the certificate of order, annexure PAN 4 is an email dated 9th June 2025 addressed to the 1st respondent and to the address of the respondents' advocates being info@gallp.co.ke which email address has been shared in all the respondents pleadings. The email shows an attachment which contents of the same point out that the attachment contained a forwarding letter, certificate of order, the copies of the ruling and order. Further there is a demand letter addressed to the 1st respondent in his capacity as the CEO of the 2nd respondent.

The Respondents have not controverted the existence of the email address indicating service. There is no evidence on the contrary that the email was not received by the respondents. There is also no evidence of any appeal, stay of execution or judicial review against the original judgment.

Determination:

The principles of justice and finality require that valid court orders be honoured and parties are required to comply with a lawful decree.

Anchoring on the submissions as above, I find that the notice of motion date 7th July 2025 is merited and is allowed.

Costs of this Application to be borne by the Respondents.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **22nd** day of **January, 2026.**

MOHAMMED N. KULLOW
JUDGE

Judgment delivered in the presence of: -

No appearance... for the Applicant

No appearance... for Respondent

Philomena W...... Court Assistant

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