



**Republic v Chief Executive Officer, National Irrigation Authority & another;
Anyour & another (Ex parte Applicants) (Judicial Review Application
E046 of 2025) [2026] KEELC 209 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 209 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E046 OF 2025
MN KULLOW, J
JANUARY 22, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF EXECUTIVE OFFICER, NATIONAL IRRIGATION AUTHORITY 1ST
RESPONDENT**

NATIONAL IRRIGATION AUTHORITY 2ND RESPONDENT

AND

BENARD OTIENO ANYOUR EX PARTE APPLICANT

NICHOLAS O ANYUOR EX PARTE APPLICANT

JUDGMENT

Pleadings

1. 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. He asserts that the court in Nairobi ELC Miscellaneous application No E168 of 2024 Peter Anyuor Mangira (Deceased) and National irrigation authority made an order for award of costs in the sum of Ksh 50,000/= to the applicants, which sums he indicates have not been paid to date.
2. 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 served on the respondents.



3. The Ex parte applicant indicate that he has 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.
4. 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/=.
5. The respondents have not entered appearance not filed any response to the application
6. The application was canvassed by way of written submissions. The Ex parte applicant filed submissions dated 25th August 2025.

Ex parte Applicant's submissions.

7. The Ex parte applicant reiterated the averments as laid out in the grounds in the notice of motion application dated 7th July 2025. He 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. He 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
 8. He submitted that he 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 he submitted that the court cannot issue orders in vain hence need for it to compel the respondents through the order of mandamus.
- Issues for determination before this court.
9. 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.
 10. 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.”



11. 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.
12. 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.
13. 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](#)?
14. 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 Mwandihhi* [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.”

15. 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.”

16. 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 Mwandih and Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security& Another ex-parte Nassir Mwandih [2014] eKLR
17. 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.
18. 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 evidenced by the affidavit of service of sworn by Winnie Awuor Paul dated 28th July 2025.
19. The principles of justice and finality require that valid court orders be honoured and parties are required to comply with a lawful decree.

Determination

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

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

