



**Republic v County Government of Marsabit & another; Budima Contractors
& Suppliers Limited (Ex parte Applicant) (Judicial Review Miscellaneous
Application E005 of 2025) [2026] KEHC 735 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 735 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E005 OF 2025**

FR OLEL, J

JANUARY 26, 2026

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS
UNDER SECTION 8(2) AND 9 OF THE LAW REFORM ACT
AND ORDER 53 OF THE CIVIL PROCEDURE ACT**

AND

**IN THE MATTER OF FAIR ADMINSTRATIVE ACTIONS ACT
2015**

AND

**IN THE MATTER OF SATISFACTION OF DECREE MADE BY
HONOURABLE CHRISTINE WEKESA SENIOR PRINCIPAL
MAGISTRATE IN MARSABIT CIVIL CASE NO E002 OF 2022**

DATED 9 TH MAY 2023

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF MARSABIT 1ST RESPONDENT

GOVERNOR MOHAMMED MOHAMUD ALI 2ND RESPONDENT

AND

BUDIMA CONTRACTORS & SUPPLIERS LIMITED ... EX PARTE APPLICANT



JUDGMENT

A. Introduction

1. The Applicant herein filed their chamber summons dated 2nd September 2025, seeking leave to institute judicial review proceedings against the respondents to compel the County Governor & the County Government of Marsabit to pay them the sum of Kshs 8,600,000/= plus costs and Interest as ordered by Hon. Christine Wekesa (SPM) on 9th May 2023 in Marsabit SPMCC No E002 of 2022. Subsequently leave so sought was granted on 6th September 2025 and the substantive notice of motion Application filed on the same day though dated 2nd September 2025.
2. The Ex parte Applicant in the said application sought for orders that; An Order of Madamus do issue compelling the Respondents to pay them the decretal sum of Kshs 6,000,000/= issued in Marsabit CMCC E002 of 2022 plus cost and interest thereon. They also prayed to be awarded the costs of this suit.
3. The respondents despite being service by both Application did not file any response nor did they attend court when the matter came up for inter parties hearing. By dint of provisions of Rule 51 Rule 14(4) of the Civil procedure Rules the said Application may be heard Ex parte.

B. Determination

4. The only issue that then arises for determination is if an order of “Mandamus” should issue in the circumstance. In Republic vs Kenya National Examinations Council ex parte Gathenji and 9 Others, [1997] e KLR. The said Court held as follows in this regard:

“The next issue we must deal with is this: 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....”

5. Further in *Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR Mativo J. Discussed the requirements to be considered before an order of Madamus could issue and stated as follows:

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. vs. Canada (Attorney General)*, and, was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*. The eight factors that must be present for the writ to issue are:-

- (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.
6. It is a proven fact that the Ex parte Applicant holds a valid decree dated 9th May, 2023 issued in Marsabit SPMCC NO. E002 of 2022 plus costs and interest arising therefrom and the same remains unsettled despite demand.
7. The applicant has met all the above requirements, except proof of service upon the respondent with a certificate of order against them as mandatorily required under Section 21 of the *Government Proceedings Act*. Secondly the duty to pay the decree is not imposed directly on the 2nd respondent, who is the current Governor of Marsabit County but on the County Treasury comprising of the County Executive Member of Finance, and the Chief Officer of the said the Department Under Section 103 of the *Public Finance Management Act* No 18 of 2012.
8. This Court therefore finds that arising from these provisions, the 1st Respondent is jointly responsible with the County Executive Committee Member of Finance for the satisfaction of Court orders and decrees on payment of money owed by the Marsabit County by virtue of their roles and functions. In



this regard, I adopt the holding in Republic vs. Town Clerk of Webuye County Council & Another HCCC 448 of 2006 wherein Majanja J. addressed the importance of the Court in ensuring that the right of a successful litigant to enjoy the fruits of his judgement as follows:

“...a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of *the Constitution* particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of *the Constitution*

C. Disposition

9. In the circumstances I do find that the Notice of Motion Application dated 02/09/2025 has merit and the same is allowed against the 1st respondent in terms of prayer (1) and (2). But the Applicant will extract and serve the certificate of order against the Government first before execution can issue.
10. The suit as against the 2nd Respondent is dismissed.
11. The costs of this suit is assessed at Kshs 150,000/= all inclusive.
12. Stay of execution 60 days.
13. It is so ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 26TH DAY OF JANUARY, 2026.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 26th day of January 2026.

In the presence of;

.....for Ex parte Applicant

.....for Respondent

.....Court Assistant

