



Republic v Attorney General & another; Mackenzie (Suing as the Administrator of the Estate of the Late Joyce Mumo Mackenzie) (Ex parte Applicant) (Miscellaneous Application 55 of 2020) [2026] KEHC 579 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEHC 579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION 55 OF 2020**

RC RUTTO, J

JANUARY 22, 2026

**IN THE MATTER OF AN APPLICATION FOR CONTEMPT OF COURT
PROCEEDINGS UNDER ORDER 51 OF THE CIVIL PROCEDURE RULES**

BETWEEN

REPUBLIC APPLICANT

AND

HON. ATTORNEY GENERAL 1ST RESPONDENT

**THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND NATIONAL
ADMINISTRATION 2ND RESPONDENT**

AND

**LEONARD MACKENZIE (SUING AS THE ADMINISTRATOR OF THE ESTATE
OF THE LATE JOYCE MUMO MACKENZIE) EX PARTE APPLICANT**

RULING

1. Before this court for determination is an application dated 12th May 2025. The Application seeks the following prayers;
 - i. Spent;
 - ii. Spent
 - iii. That this court be pleased to set aside, vary and/or review the orders issued on 4th February 2025.



- iv. That the file be placed before Hon. Deputy Registrar for computation of interests as per Section 4 (4) of the *Limitation of Actions Act* Cap 22 and a fresh Certificate of order against the government be issued and;
 - v. That the costs of this application be in the cause.
2. The application is supported by the affidavit of Fredrick Ragui Kariuki, State Counsel having conduct of the matter on behalf of the Respondents, sworn on 12th May 2025. He depones that on 5th October 2020, an order of mandamus was issued by Honourable Justice G.V. Odunga compelling the 2nd Respondent to settle the sum of Kshs.3,574,370.86, being the decretal amount awarded in Machakos HCCC No. 135 of 2008 and Machakos HCPT No. 99 of 2011 as damages, costs, and accrued interest. He avers that the ex parte Applicant has been paid Kshs.2,118,865, and that the only outstanding issue relates to the computation of interest, which is disputed.
 3. He further depones that the Office of the Attorney General was served with an order issued on 4th February 2025, requiring the Attorney General to personally appear before the Court to show cause why committal proceedings should not issue. He contends that the initiation of contempt proceedings against the Attorney General, in the absence of any express contempt order directed at him, is unfair and procedurally improper. He further avers that the Attorney General is not the accounting officer of the Ministry of Interior and National Administration and therefore cannot be held in contempt for non-payment of funds, and that the impugned orders are inconsistent with the provisions of the *Public Finance Management Act*.
 4. He avers that payment of Kshs.2,118,865 was made through the Office of the Attorney General, being the decretal sum, interest calculated for a period of six years in accordance with Section 4(4) of the *Limitation of Actions Act*, and the assessed costs. He states that the said amount was forwarded to the High Court at Machakos for onward transmission to the ex parte Applicant's counsel. He further avers that the ex parte Applicant has since received the said sum, as confirmed by a letter dated 19th February 2025, and that the only outstanding issue relates to the computation of interest, in respect of which he contends that a fresh Certificate of Order Against the Government ought to issue. He further states that at the time the summons to show cause were issued on 4th February 2025, directing the Attorney General to appear and show cause why committal proceedings should not issue, the High Court at Machakos had not yet transmitted the funds to the ex parte Applicant's counsel. He further avers that the additional demand of Kshs.1,455,505 as at 15th January 2020 is inordinately high, as the interest claimed was calculated beyond the six-year limitation period prescribed under Section 4(4) of the *Limitation of Actions Act*. He states that the mention notice for 4th February 2025 was served late in the day on 3rd February 2025 and was only brought to the attention of the advocate handling the matter on the afternoon of 4th February 2025, after the matter had already been called out and the summons directed to the Attorney General issued. He avers that had counsel been afforded an opportunity to attend court, the status of the payment would have been brought to the Court's attention.
 5. He further states that there has been no willful refusal by the relevant government agencies to settle the decretal sums and that, in the circumstances, the orders directing the committal of the Attorney General to civil jail are neither warranted nor merited, having been issued ex parte and without the participation of counsel for the Attorney General. He reiterates that the Attorney General is not the accounting officer of the Office of the Attorney General and that, if any contempt proceedings were to be instituted, the same would lie against the Solicitor General, who serves as the accounting officer.
 6. The ex parte Applicant opposed the application by filing Grounds of Opposition dated 8th September 2025 and a Replying Affidavit sworn on 8th September 2025. He depones that on 8th December 2023,



the Applicants wrote to his advocates on record indicating that they had deposited Kshs.2,120,365 into the Judiciary account at Machakos Law Courts on 11th November 2023. He avers that the said amount did not constitute the full decretal sum. Consequently, his advocates responded by a letter dated 25th January 2024, clarifying the shortfall and enclosing an invoice from the Judiciary dated 25th July 2023, which confirmed the total decretal amount as Kshs.3,574,371.

7. He further states that the original decretal amount awarded to him was Kshs.1,906,754, being the judgment sum in the suit. The costs arising from the suit were assessed at Kshs.218,074, while the costs of the petition were separately assessed at Kshs.213,611. As at April 2019, he avers that the petition costs had accrued interest amounting to Kshs.162,344.36, bringing the cumulative amount owed to Kshs.2,500,783.36 as at that date. He states that, over time, the aforesaid amounts continued to accrue interest in accordance with the prevailing court rate of 12% per annum, with interest applied from the date of judgment, being 28th September 2016, and continuing to accrue on the principal decretal sum and costs up to 25th July 2023. He avers that, as a result, the total amount due and owing rose to Kshs.3,574,370.86, which sum represents the cumulative total of the principal award, the assessed costs for both the suit and the petition, and all accrued interest over a period of approximately six years and ten months.
8. With regard to the orders issued on 4th February 2025, he avers that the same were made pursuant to lawful and regular court proceedings, and that the Applicant has not demonstrated any sufficient cause to warrant their setting aside or stay. He contends that the present application is intended to delay and frustrate the enforcement of the judgment. He further avers that reliance on Section 4(4) of the Limitation of Actions Act is erroneous, as the claim was filed and reduced into judgment within the prescribed limitation period, and that the computation of interest is properly governed by Section 26 of the Civil Procedure Act, which permits the award of interest on the principal sum from the date of judgment until payment in full.
9. The application was canvassed by way of written submissions. The Applicants' submissions are dated 24th September 2025, while the ex parte Applicant's submissions are dated 29th September 2025.

Applicant's Submissions

10. Counsel for the Applicant commenced his submissions with a brief introduction to the application dated 12th May 2025. In outlining the background of the matter, counsel submitted that on 5th October 2020, an order of mandamus was issued by Honourable Justice G.V. Odunga, compelling the 2nd Respondent to settle the sum of Kshs 3,574,370.86, being the decretal amount awarded in Machakos HCCC No. 135 of 2008 and Machakos HCPT No. 99 of 2011 as damages, costs, and accrued interest. Counsel further submitted that judgment in HCCC No. 135 of 2008 had initially been delivered on 15th October 2012 by Honourable Justice Asike Makhandia, dismissing the suit. Thereafter, by an application dated 24th March 2016, the ex parte Applicant sought review of the dismissal order, which application was allowed by Honourable Justice Ogolla on 28th September 2016. He submitted that the judgment was reviewed on liability, with the result that the Plaintiff was awarded Kshs.1,688,680, and that the reviewed judgment was silent on the issue of interest.
11. Counsel further submitted that costs were awarded in HCCC No. 135 of 2008 and were assessed at Kshs.218,074. He added that during the pendency of that suit, the ex parte Applicant had filed a petition, being Machakos HCPT No. 99 of 2011, in which costs were taxed at Kshs.213,611. He further submitted that summons to show cause were issued by the Court on 4th February 2025, and that the ex parte Applicant, by a letter dated 19th February 2025, acknowledged receipt of Kshs.2,118,865 from the Court.



12. The Applicant's counsel identified two issues for determination: whether the Attorney General should be summoned to court pursuant to a Notice to Show Cause for alleged non-payment of decretal sums; and whether a fresh Certificate of Order Against the Government ought to issue.
13. On the first issue, counsel relied on Section 67(1) of the [Public Finance Management Act](#), the decision in *James Samuel Mburu v Attorney General & Another* [2017] eKLR, and *Republic v Attorney General & 2 Others; Associated Architects & 3 Others ex parte* [2023] eKLR, to submit that the Attorney General is not the accounting officer of the Ministry of Interior and National Administration, nor of any other ministry, and has no statutory mandate over the financial administration of ministries. Counsel submitted that it is the Principal Secretary who serves as the accounting officer for each State Department or agency. Counsel further submitted that there is no statutory provision or judicial authority that assigns accounting responsibility to the Attorney General in respect of the Ministry in question, and that, consequently, the Attorney General cannot properly be summoned to show cause regarding the payment of decretal sums. He argued that financial liability arising from acts, omissions, or court decrees against a Ministry lies with the designated accounting officer of that Ministry and not with the Attorney General acting in his representative capacity.
14. Regarding the second issue, counsel for the Applicant submitted that by a judgment delivered on 5th October 2020, Honourable Justice G.V. Odunga granted an order of mandamus compelling the settlement of Kshs 3,574,370, being the decretal sum arising from Machakos HCCC No. 135 of 2008 and Machakos HCPT No. 99 of 2011 as damages and costs. Counsel submitted that in HCCC No. 135 of 2008, judgment had initially been delivered on 15th October 2012, dismissing the suit, but that the ex parte Applicant subsequently filed an application dated 24th March 2016 seeking review of the dismissal order. The said application was allowed by Honourable Justice Ogolla on 28th September 2016, with the result that the judgment was reviewed on liability and the Plaintiff was awarded Kshs 1,688,680. He submitted that the reviewed judgment was silent on the issue of interest, and that the costs in HCCC No. 135 of 2008 were later assessed at Kshs 218,074. Counsel further submitted that during the pendency of HCCC No. 135 of 2008, the ex parte Applicant had filed a petition, being Machakos HCPT No. 99 of 2011, in which costs were taxed at Kshs 213,611. He submitted that through the Office of the Attorney General, payment of Kshs 2,120,365 was made to the Court for onward transmission to the ex parte Applicant's counsel, the said sum comprising the decretal amount, interest calculated for a period of six years in accordance with Section 4(4) of the [Limitation of Actions Act](#), and the assessed costs.
15. Counsel contended that the ex parte Applicant subsequently extracted a Certificate of Order Against the Government for Kshs 3,574,370, which amount he submitted was exaggerated and included interest that had not been awarded by the Court. In relying on *Assia Pharmaceuticals Limited v Kenya Alliance Insurance Co. Limited (Civil Case No. 1605 of 1999)* [2021] eKLR, counsel submitted that only interest accruing within the six years immediately preceding the enforcement of the interest claim is recoverable in law.
16. In conclusion, counsel submitted that the application is meritorious and urged the Court to grant the orders sought.

Ex-parte Applicant's Submissions

17. The ex-parte applicant submits that the court issued a decree in his favor for Kshs.3,574,371, comprising a judgment sum of Kshs.1,906,754, costs of the suit of Kshs.218,074, petition costs of Kshs.213,611, and interest on petition costs of Kshs.162,344.36. He further submits that, by 25th July 2023, the amount had risen to Kshs.3,574,370.86 due to interest accrued under Section 26 of the [Civil](#)



- Procedure Act*, applied at the court rate of 12% per annum from 28th September 2016. Regarding the stay orders issued on 4th February 2025, counsel for the ex-parte applicant relied on Order 42 Rule 6 of the Civil Procedure Rules, submitting that the Respondents have not demonstrated substantial loss, and that mere allegations of financial difficulty or inconvenience are insufficient; real evidence of impending loss is required. He further submits that the orders of 4th February 2025 were procedural, intended to facilitate enforcement, and are not subject to appeal or review, with the court being functus officio on the merits of the judgment.
18. On the computation of interest under Section 4(4) of the *Limitation of Actions Act*, he submits that the provision applies only to judgments older than 12 years and is therefore inapplicable in the present case, as the judgment was delivered on 28th September 2016, and enforcement proceedings commenced and have continued well within the statutory period. He therefore submits that reliance on Section 4(4) is erroneous, and that the computation of interest is governed by Sections 26 and 27(2) of the *Civil Procedure Act*, which entitle the Decree Holder to interest on both the principal sum and costs. He further submits that the computation and recovery of interest by the Decree Holder is both statutorily grounded and legally enforceable, and that the interest in this case was calculated accurately, reflected in the decretal sum of Kshs.3,564,370.86 as of July 2023, and continues to accrue at a rate of 14% per annum.
 19. Regarding the issuance of a fresh certificate of order against the government, the ex-parte applicant submits that the certificate of order issued on 15th January 2020 is valid and binding under Section 21 of the *Government Proceedings Act*. He further submits that there is no error, defect, or irregularity in the certificate that would justify its withdrawal or the issuance of a new one. In reference to *Republic v Attorney General & Another ex parte James Alfred Koroso* [2013] eKLR and *Kipkalya Kones v Republic & Another ex parte Kimani wa Nyoike* [2006] eKLR, the ex-parte applicant submits that the application for a new certificate is a procedural smokescreen, intended to reinitiate a process that is already complete and to delay compliance.
 20. In conclusion, the ex parte applicant submits that the Notice of Motion Application dated 12th May 2025 is an abuse of the court process and should be dismissed with costs to the ex parte Applicant.

Analysis and determination

21. I have considered the present application, the supporting affidavit, the Replying Affidavit and the submissions filed and the following issues arise for determination;
 - a. Whether the orders issued on 4th February 2025 ought to remain in force in the circumstances of this case; and
 - b. How the dispute relating to computation and recovery of interest should properly be resolved.

Whether the orders issued on 4th February 2025 ought to remain in force in the circumstances of this case

22. The orders of 4th February 2025 were issued in aid of enforcement and were intended to compel compliance with a lawful decree of the Court. At the time the orders were made, the Court was acting on the information then available to it.
23. The material now placed before the Court demonstrates that payment of a substantial portion of the decretal sum had already been processed and deposited with the Judiciary for onward transmission, and that the remaining dispute does not concern outright refusal to comply, but rather the correctness of the balance claimed.



24. Contempt enforcement mechanisms are designed to address willful disobedience of court orders. They are not intended to replace ordinary procedural mechanisms where the dispute turns on accounting, reconciliation or interpretation of statutory provisions governing interest.
25. In the present case, it is evident that the continuation of the orders of 4th February 2025 would not advance compliance but would instead escalate a dispute that is essentially arithmetical and legal in nature. The Court is therefore persuaded that the enforcement objective that informed the issuance of those orders has since been overtaken by events.
26. In the exercise of the inherent jurisdiction and in furtherance of the overriding objective under Sections 1A and 1B of the Civil Procedure Act, this Court finds that it is in the interests of justice that the orders issued on 4th February 2025 be lifted, to allow the parties to resolve the outstanding dispute.
27. This then ushers in the second issue for determination. It is common ground that the principal decretal sums and taxed costs are not in dispute. What remains sharply contested is the computation of interest, including its duration, rate and the applicable statutory framework.
28. The Respondents rely on Section 4(4) of the Limitation of Actions Act to contend that recovery of interest is statutorily limited, while the ex parte Applicant invokes Section 26 of the Civil Procedure Act as the basis for continued accrual of interest at the court rate. These are substantive legal questions which cannot be conclusively determined through affidavit evidence alone.
29. The proper forum for resolving disputes on computation of decretal sums, including interest, is the office of the Deputy Registrar acting within the mandate of taxation proceedings.
30. In this court's view, the most orderly and just approach is to direct that any challenge to the computation of interest be mounted through a formal application to be filed by either party, setting out the legal and factual basis of the challenge and the application be then be canvassed and determined before the Deputy Registrar in accordance with the law.
31. Based on the foregoing;
 - a. The orders issued on 4th February 2025 are hereby lifted.
 - b. Any dispute relating to the computation and recovery of interest be challenged by way of a formal application and the same shall be canvassed and determined before the Deputy Registrar.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 22ND DAY OF JANUARY, 2026.

RHODA RUTTO

JUDGE

In the presence of;

.....for Applicant

.....for Respondent

Selina Court Assistant

