

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KIAMBU**  
**JUDICIAL REVIEW DIVISION**  
**MISC. CIVIL APPLICATION NO. E017 OF 2025**

**BETWEEN**

**ARCON WORKS LIMITED.....APPLICANT**

**VERSUS**

**THE CHIEF FINANCE OFFICER,  
COUNTY GOVERNMENT OF KIAMBU.....1<sup>ST</sup> RESPONDENT**

**THE CHIEF OFFICER, REVENUE, ICT  
SUPPLY CHAIN MANAGEMENT & INTERNAL AUDIT  
COUNTY GOVERNMENT OF KIAMBU.....2<sup>ND</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER  
FINANCE AND ECONOMIC PLANNING,  
COUNTY GOVERNMENT OF KIAMBU.....3<sup>RD</sup> RESPONDENT**

***EX-PARTE***

**ARCON WORKS LIMITED.....EX-PARTE  
APPLICANT**

**RULING**

1. The Applicant has brought a Notice of Motion application dated 14<sup>th</sup> July, 2025 seeking for an order of mandamus to compel the Respondents to settle a Certificate of Order against government arising out of a decree obtained against the Respondents on 7<sup>th</sup>

May, 2025, in **KIAMBU HCCOMMARB/E002/2024**. The application seeks for the following orders;-

- a) An order for leave for the Applicant to apply for an Order of Mandamus to direct and compel the Chief Finance Officer of Kiambu County Government and/or Chief Officer, Revenue, ICT Supply Chain Management & Internal Audit of the County Government of Kiambu to satisfy the Certificate of Order Against Government dated 16<sup>th</sup> May, 2025 issued in Kiambu High Court Commercial Arbitration No. E002 of 2024, **Arcon Works Limited vs. County Government of Kiambu**, now standing at Kshs.220, 188, 694.08 and interest at 15.5% until payment in full, within 14 days of service of the judgment and Order of the Court herein (sic);
- b) An order for leave for the Applicant to apply for Order of Mandamus to direct and compel the County Executive Committee Member, for Finance and Economic Planning of the County Government of Kiambu to satisfy the Certificate of Order Against Government dated 16<sup>th</sup> May 2025 issued in Kiambu High Court Commercial Arbitration No. E002 of 2024, **Arcon Works Limited vs. County Government of Kiambu**, now standing at Kshs. 220,188,694.08 and interest at 15.5% until payment in full, within 14 days of service of the judgment and order of the Court herein (sic);
- c) An Order for costs.

2. The application is anchored on the Statutory Statement dated 1<sup>st</sup> July, 2025 and the affidavit of even date sworn by James Mburu. The deponent averred that judgment was delivered in favour of the applicant on 14<sup>th</sup> March, 2025 in Kiambu High Court Commercial Arbitration No. E002 of 2024, Arcon Works Limited vs. County Government of Kiambu. Consequently, a Decree was issued on 12<sup>th</sup> May, 2025 and the Applicant proceeded to obtain a Certificate of Order against Government which was issued on 16<sup>th</sup> May, 2025.
3. Both the Decree and the Certificate of Order against Government were served on the Respondents who refused to pay hence necessitating the instant application. The application is the only available means for ensuring that the Applicant enjoys the fruits of the judgment in their favour.
4. The application was served on the Respondents. There is return of service on record but none of the Respondents responded to the Applicant's application.

### **ISSUE FOR DETERMINATION**

5. The sole issue for determination is whether this application merits the Order of Mandamus sought.

### **ANALYSIS**

6. An Order of Mandamus is also referred to as a Mandatory Order. Halsbury's Laws of England/Judicial Review (Volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction at Paragraph 703 states:-

***“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”***

7. The instant application for an Order of Mandamus is brought under Section 21 of the Government Proceedings Act Cap. 40 which provides as follows:-

***“21. Satisfaction of orders against the Government: -***

***(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.***

**(2) *A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.***

**(3) *If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon.***

***Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.***

**(4) *Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.***

**(5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.”**

7. In **REPUBLIC V PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT & ANOTHER; Wang'ombe (Exparte) (Application E112 of 2023) [2024] KEHC 4336 (KLR) (Judicial Review) (19 April 2024) (Judgment)** the Court correctly observed:-

**“7. One of the ways through which decrees or orders are enforced is, of course, execution or attachment. However, the Government is protected from such process of execution or other similar process in enforcement of decrees or orders by section 21(4) of the Government Proceedings Act.**

**8. In the face of this protection from execution or attachment, the only available route open to the applicant is to compel the 1<sup>st</sup> respondent to perform his statutory duty under section 21(3) of the Act and pay what has been decreed as due and owing to the applicant. In other words, only the order of mandamus would be the appropriate order under the circumstances.”**

8. The Applicant has demonstrated that it extracted a Certificate of Order against government and that the same was duly served upon the Respondents. The Applicant properly complied with the requirements of Section 21 of the Government Proceedings Act. The prayers in the substantive application may have been

incorrectly couched in the same manner as in the application for leave i.e an application for leave for the applicant to apply for Order of Mandamus. This does not render the application defective as it is clear what is sought for by the application and the correct procedure for judicial review was followed.

9. The Applicant made a demand for payment and the Respondents failed to pay. This is a patent demonstration that the Respondents have failed to perform a public duty which they are obliged to discharge under Section 21 (3) of the Governments Proceedings Act. The application therefore merits an Order of Mandamus to compel the Respondents to discharge their statutory duty.
10. Accordingly, the Court hereby allows the Applicant's Notice of Motion dated 14<sup>th</sup> July, 2025 to the extent that an order of mandamus is hereby granted in terms of prayer (b) of the motion.

### **FINDINGS AND DETERMINATION**

11. For the forgoing reasons this Court makes the following findings and determination
  - (i) The application is found to have merit and is hereby allowed.
  - (ii) An Order of Mandamus do hereby issue to compel the County Executive Committee Member, for Finance and Economic Planning of the County Government of Kiambu to satisfy the Certificate of Order Against Government dated 16<sup>th</sup> May 2025 issued in Kiambu High Court Commercial Arbitration No. E002 of 2024, **Arcon Works**

**Limited vs. County Government of Kiambu**, now standing at Kshs.220,188,694.08.

(iii) Interest at 15.5% be applicable within 14 days of service of the judgment and until payment in full.

(iv) There is no order as to costs because the application was unopposed.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**A. MSHILA**

**JUDGE**

**In the presence of;**

Sanja - Court Assistant

Ndugire - h/b for Amadi - for the Applicant

N/A - for the Respondent