

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E326 OF 2025

J.M. NJENGA & CO. ADVOCATES LLP.....APPLICANT
VERSUS

CHIEF FINANCE OFFICER,
NAIROBI CITY COUNTY.....1ST RESPONDENT

COUNTY SECRETARY,
NAIROBI CITY COUNTY.....2ND RESPONDENT

JUDGMENT

1. The application before this court is the Notice of Motion dated 16/10/2025 filed pursuant to leave granted in JR MISC APPL. No. E 256 of 2025 on 29th September, 2025, in the chamber summons dated 19th August 2025.
2. The applicant J.M. Njenga & Company Advocates LLP seek judicial review order of mandamus to compel the Respondents on behalf of Nairobi City County to pay to the Applicant, the sum of Kshs.100,533,222.23/- plus interest accrued thereon from 18th July 2025 until payment in full arising from a decree issued on 26th March 2025 and certificate of taxation issued on 14th July 2025 both summed up in a certificate of order and costs against the Government issued on 17th July 2025 in HCC Commercial And Tax Division Commercial Suit No. E391 OF 2022 vide a Ruling rendered on 19th December, 2024 by Prof (Dr.) Nixon Sifuna J.

3. The application is based on the grounds set out in the statutory statement dated 19th August 2025 and verifying affidavit sworn on even date by Mr. Jeremy Njenga the Managing Partner in the Applicant firm.
4. The Applicant's case is that vide a judgment delivered on 19th December 2024, the Honourable Mr. Justice Prof. (DR.) Sifuna Nixon in **Nairobi HCCOMM No. E391 of 2022; J.M. Njenga & Co. Advocates LLP vs. Nairobi City County** directed Nairobi City County to pay the Applicant a sum of Kshs.91,457,159/- plus interest thereon, being agreed legal fees in matters wherein the City County instructed the applicant to represent the City County. The court also awarded costs of the application to the Applicant.
5. The events leading up to the ruling delivered by Honourable Sifuna J were that the Applicant had provided legal services to Nairobi City County in **Nairobi ELC Judicial Review No. 30 of 2018; Afrison Export Import Limited & Another vs. The Ethics and Anti-Corruption Commission & 2 others**, and in **Nairobi ELC Reference No. 295 of 2018; National Land Commission vs. Afrison Export Import Limited & others** however, that despite the parties agreeing on the legal fees to be paid for both matters Nairobi City County failed, refused and/or neglected to settle the said amount.
6. According to the Applicant, pursuant to the court's ruling delivered on 19th December 2024 the Party and Party costs were subsequently taxed in the sum of Kshs. 1,729,377/= vide a ruling delivered on 30th June 2025 by Hon. Noelle

Kyanya (DR). It is asserted that the court subsequently issued a decree, certificate of taxation and eventually a certificate of order and costs against Nairobi City County, all which have been duly served on the Respondents but to date, no payment has been made

7. The Applicant annexed copies of the demand letter, ruling of the court in the Commercial Case, decree, certificate of taxation and certificate of order against the Government.
8. The respondents were served with the Notice of motion and the hearing notice but they did not file any response. Neither did they appear on the hearing date and therefore the applicant was allowed to proceed and argue its application on 15th December, 2025, with Mr. Wachanga advocate representing the applicant, submitting orally.
9. I have considered the notice of motion application for Judicial Review orders of mandamus and the annexures thereto. The annexed documents include a ruling and decree in **HCCOMM No. E391 of 2022; J.M. Njenga & Co. Advocates LLP vs. Nairobi City County**, the demand letter for settlement, certificate of taxation and certificate of order against the Government as well as the evidence of service of the demand letter and certificate of order against government upon Nairobi City County on 22nd July 2025.

10. There is evidence of demand for settlement but no response has been forthcoming from the Respondents who did not even oppose the suit before the Commercial Court seeking payment of agreed legal fees.
11. Mandamus is the sole legal remedy for enforcing the settlement of decrees against the Government and without its issuance, the judgment and decree granted in favor of the Applicant would remain ineffective, reducing the Applicant to a mere pious explorer in the judicial process. This is so, considering that the law under the Government Proceedings Act bars execution against the Government.
12. Section 21(4) of the Government Proceedings Act prohibits execution against the Government, and therefore the only avenue available is *vide mandamus* which order can only issue with leave obtained from court to apply for performance of a public duty directed at the accounting officer to remedy the defects of justice for the ends of justice to be done, where there is such failure to perform a public duty and, in this case, to satisfy decree issued by the court in favour of the Applicant.
13. However, from the definition of accounting officer, under the Public Finance and Management Act, and the role of the accounting officer under section 21 of the Government proceedings Act, the question is whether a Chief Finance Officer can be said to be an accounting officer and therefore a proper party to these judicial review proceedings. Off course, there is no material to suggest

that the County Secretary is an accounting officer or that he or she is bound to settle the primary decree.

14. Section 148 of the Public Finance and Management Act provides for how accounting officers of County Governments are appointed or designated by the County Executive Committee Member [CECM]for Finance.

15. This Court in a similar situation, after citing section 148 of the PMFA where a Chief Finance Officer of the County Government had been sued for mandamus orders to compel settlement of a decree had this to say in the case of **Kangara t/a Pinkstone Enterprises v Chief Financial Officer Nairobi City County (Judicial Review Miscellaneous Application [2025] KEHC 14776 (KLR) (Judicial Review) (22 October 2025) (Ruling):**

“22. Clearly, from the above statutory provision, an accounting officer in a county government is one that is designated by the County Executive Committee Member for Finance. Their primary responsibility under section 149 of the Public Finance Management Act is the proper management of public resources within their department, including public procurement and asset disposal. They are accountable to the County Assembly for the management of their entity's resources. They must ensure all public funds are used properly and report on financial performance. 23. In the instant application, the person or office holder cited to be the accounting officer of the judgment debtor is Chief Financial Officer. There is a whole difference between a chief financial officer in an establishment and the statutory Chief Officer responsible for finance or an accounting officer designated by the County Executive

Committee member for finance. The former is simply a junior staff who has no specific statutory mandate as would be, for example, a Chief Officer responsible for finance where such designation as an accounting officer is done by the County Executive Committee member for finance. 24. It would therefore not serve any purpose or assist the applicant if this court were to make an order against the financial of finance officer of the county Government directing them to settle decree yet the law under section 21 of the Government Proceedings Act as read with sections 148 and 149 of the Public Finance Management Act are clear that only accounting officers are responsible for ensuring that decrees are settled. There is more than sufficient jurisprudence on this and the applicant can benefit from the same as it is readily accessible from Kenyalaw as he is ably represented by Counsel.”

16. The position of the Court in the above case still stands as it accords with the law and practice that accounting officers for national government Ministries are Principal Secretaries while those for county Governments are appointed under section 148 of the PFMA through designation by the CECM Finance depending on the sector and there is no contrary view. Section 149 of the PFMA also provides for Responsibilities of accounting officers designated for county government entities.

17. Therefore, where a party elects to bring to court any other officer or staff of a National Government Ministry or county government, without asking themselves as to whether that person, for purposes of section 21 of the Government Proceedings Act, is the accounting officer with the statutory

mandate to settle decrees, they cannot blame the court for striking out proceedings for misjoinder of parties.

18. In this case, the misjoinder and non-joinder of the accounting officer renders the proceedings fatally incurable since a **chief finance officer** cannot be a substitute for the **accounting officer** and vice versa, in view of the statutory provisions under section 21 of the Government Proceedings Act and section 148 of the Public Finance Management Act.

19. Accordingly, for want of the correct party against whom a statutory duty falls to settle decree on behalf of the primary judgment debtor, City County Government of Nairobi, this Court finds that granting leave to apply for mandamus against a wrong party will not aid the applicant in the enforcement of a decree against the County Government.

20. The application dated 16th October, 2025 is hereby struck out with no orders as to costs and the applicant is at liberty to file an appropriate competent application in fresh proceedings for consideration.

21. This file is closed.

Dated, Signed and Delivered at Nairobi this 10th Day of February, 2026

**R. E. ABURILI
JUDGE**