

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW MISC APPLICATION NO. E414 OF 2025

SUSAN MUCHENE.....APPLICANT

VERSUS

HON. ATTORNEY GENERAL.....1ST RESPONDENT

CHIEF FINANCE OFFICER, MINISTRY OF DEFENCE.....2ND RESPONDENT

RULING FOR LEAVE TO APPLY

1. When the exparte Chamber Summons dated 18th December, 2025 came up for directions, this Court directed that the same be served upon the respondents as cited, for interpartes hearing on 26/1/2026. The applicant complied with this Court's directions and upon effecting service upon the respondents, the latter filed grounds of opposition dated 20th January, 2026. The application was heard by way of oral submissions on 26th January, 2026.
2. The Chamber Summons seeks leave of this Court to apply for judicial review orders of mandamus to compel the 2nd respondent Chief Finance Officer, Ministry of Defence to settle Decree and Certificate of Order against the Government issued on 4th June, 2025. The applicant prays that costs be in the cause.

3. The grounds upon which the application is predicated are on the face of the Chamber Summons and provide the historical background to the claim herein.
4. The applicant's case is that judgment was pronounced against the respondent in **CMCC No. 3538 of 2013** on 29th October, 2021 on liability at 100% and general as well as special damages upon which decree, certificate of costs and Certificate of Order Against the Government were issued on 14th March, 2021, 15th September 2023 and 4th June 2025 respectively for Kshs 8,146,603.51.
5. That the applicant has served the said decree and certificate of order against the government upon the respondents but that the respondents have refused to settle.
6. That the order for mandamus must issue in order to execute the said decree against the respondents. Further, that the inordinate delay in filing these proceedings was occasioned by prior application being HCJR Miscellaneous No. E243 of 2022 having been erroneously transferred to the lower Court to execute the decree against the respondents following the 1st respondent's request on 28th April, 2022. That the lower court lacked jurisdiction to hear and determine mandamus application number E104 of 2022 hence the matter was referred back to the High Court for proper administrative action.

7. Finally, that it is in the interest of justice that the orders sought are granted.
8. In the supporting affidavit sworn by the applicant on 18th December, 2025, she deposes, reiterating the grounds, save that she now cites the primary suit being **High Court Civil suit No. 418 of 2011** which was allegedly later transferred to the lower court as shown by copies of pleadings annexed. The applicant also explains that despite filing applications for leave to apply, in three other matters before this Court, the same were struck out for failure to serve decree and certificate of costs upon the accounting officer of the Ministry of Defence hence this application which, if not allowed, will occasion an injustice to the applicant and render the trial court's pronouncement, nugatory.
9. Opposing the chamber summons, the respondents filed grounds of opposition dated 26th January 2026 contending that they are not the accounting officers of the Ministry of Defence hence mandamus cannot issue against them. They cited section 67 of the Public Finance Management Act, 2012 which provides for the Cabinet Secretary for the National Treasury to designate an accounting officer for each government Ministry, State Department or Agency.
10. That the 2nd respondent was not a designated accounting Officer for the Ministry of Defence, under section 21 of the Government Proceedings

Act hence the application is incompetent, without merit, brought in bad faith and ought to be dismissed with costs.

11. The parties' counsel argued the application orally on 26/1/2026 with Ms Lilande submitting on behalf of the applicant whereas Mr. Kariuki submitted on behalf of the respondents. Counsel reiterated their respective pleadings as summarized above with Ms Lilande submitting that the court can give directions on who the accounting officer, Ministry of Defence is.
12. Mr. Kariuki counsel for the respondents submitted relying on the grounds of opposition dated 20/1/2026. He maintained that the Chief Finance Officer, Ministry of Finance is not a designated Accounting Officer, Ministry of Defence. That Section 21 of the Government Proceedings Act provides for Accounting Officer responsible to settle decree and those are Principal Secretaries. He relied on **Republic vs Cabinet Secretary Ministry of Defence** exparte **John Cheruiyot Rono [2020] eKLR**, where the Court is said to have held that liability rests with accounting officers of the Ministries concerned. He submitted that the application is without merit and the same should be dismissed.
13. In a rejoinder, Ms. Lilande submitted that the relevant Ministry is Ministry of defence. That they had sued the person concerned with observing any orders while the Attorney General is the institute that advises Government and Ministry of defence. According to counsel for the applicant, the Chief Officer is the right officer pursuant to Article 159 of the Constitution. That

this Article grants this Court power to grant justice to persons irrespective of their status and technicalities in proceedings.

14. She submitted that previously, the Respondent has always opposed their applications using different sections of the law. She prayed that grounds of opposition be dismissed and the application dated 18/12/2025 be allowed, contending that the spirit of the Constitution is not to delay justice and deny justice.

Analysis and Determination

15. I have considered the application as presented, the grounds of opposition and as argued by the parties' respective counsel orally. The issue for determination is whether the application for leave is competently before this Court.

16. The applicant's counsel claims that her client has been denied justice through delay in settlement for the decree and certificate of order against the government, coupled with errors of transferring the matter to the lower court and finally, that the respondents have used different sections of the law to have the applications filed previously, seeing similar orders dismissed.

17. The applicant asserts that the Chief Finance officer Ministry of Defence is the accounting officer for the said Ministry, while the Respondents deny that assertion and contend that section 67 of the PFMA empowered the Cabinet Secretary for the National Treasury to designate an accounting officer for ministries, State Departments and Agencies of Government and that in the

case of Ministries, it is the Principal Secretaries who are the accounting officer that are statutorily mandated to settle decrees, not the 2nd respondent herein.

18. The question is, who is supposed to settle decree on behalf of the government Ministry or State Department?

19. The answer lies in section 21 of the Government Proceedings Act 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.

20. As to who an accounting officer is, section 2 of the Public Finance Management Act (PFMA) defines an accounting officer to mean:

“Accounting officer” means—

(a) an accounting officer of a national government entity referred to in section 67;

21. Section 67 of the said PFMA, provides for **Designation of accounting officers for national government** and states:

(1) The Cabinet Secretary, except as otherwise provided by law, shall in writing designate accounting officers to be responsible for the proper management of the finances of the different national government entities as may be specified in the different designations.

(2) Except as otherwise stated in other legislation, the person responsible for the administration of a Constitutional Commission or institution or Independent Office shall be the

accounting officer responsible for managing the finances of that Commission, institution or Independent Office.

(3) The Cabinet Secretary shall ensure that at any time there is an accounting officer in each national government entity.

22. The statutory provisions and judicial authorities support the position that liability for Government debts lies with the accounting officers of the Ministries or public bodies concerned, while the procedure to be followed is that the Attorney General must be served with the Certificate of order against Government, in his capacity as the principal legal adviser and representative of the national government in all civil proceedings.

23. Section 21(3) of the Government Proceedings Act provides that the person who is responsible for the payment of any damages or costs awarded against the Government is the accounting officer of the Ministry or public body or agency concerned, who is the one under a statutory duty to satisfy a judgment made by the Court against that Ministry, body or agency. This position was well articulated in **Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) e KLR** by my sister Githua J. as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the

Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. 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.”

24. The above position has never changed. The decree holder is in this regard only required to serve the Certificate of Order Against the Government on the Attorney General, as the legal representative of the accounting officer, who then advises the accounting officer to make the payment. This position was reiterated in **Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza (2012) eKLR**.
25. It is equally important to state that section 12 (1) of the Government Proceedings on parties to proceedings against the Government mandates that: *(1) Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Office of the Attorney-General, as the case may be.*
26. However, proceedings against the Attorney General, per se, unless the facts of the case reveal that the cause of action arose as a result of acts of officers of the Office of Attorney General, the Attorney General cannot be held liable or be compelled to settle a decree on behalf of another

government department. This is so, because Attorney general is not the Accounting Officer for other Government Ministries or department.

27. In the instant matter, wherein the applicant contends that the respondent has been opposing various applications using different statutory provisions, the applicant has sued the Attorney General and the Chief Finance officer, Ministry of defence seeking for mandamus orders to compel settlement of decree.

28. From the definition of accounting officer as given above, and the role of the Attorney General in litigation, being that of Principal Legal advisor to the National Government, and representing the National Government in all civil proceedings, 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.

29. Section 67 of the Public Finance Management Act is similar to section 148 of the same Act, the latter relating to County Governments and how Accounting Officers are appointed or designated. 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 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 the Kenyalaw.org as he is ably represented by Counsel.”

30. The position of the Court in the above case still stands as it accords with the law and practice that accounting officers for government Ministries are Principal Secretaries and there is no contrary view.

31. Therefore, where a party elects to bring to court any other officer or staff of a Ministry, 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 or the adverse party, in this case, the Attorney General for raising objections as to the misjoinder of parties.

32. Whereas misjoinder or non-joinder cannot defeat an ordinary suit, however, where the law mandates that only a specific office holder is by statute obligated to do certain things, then failure to enjoin that specific

office holder is fatal to the claim and in this case, since mandamus only issues to compel performance of a statutory duty, failure to enjoin such officer in their statutory capacity is fatal to the case.

33. In this case, the misjoinder 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 67 of the public Finance Management Act.

34. Accordingly, for want of the correct party against whom a statutory duty falls to settle decree on behalf of the primary judgment debtor Ministry of Defence, 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 Government. The court will continue striking out incompetent pleadings which cannot aid a justice seeker until counsel for the party gets it right because this court has no discretion to appoint an accounting officer and demand that its appointed person settles decree. These are matters of law that must be understood in that manner.

35. The application dated 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.

36. This file is closed.

Dated, Signed and Delivered at Nairobi this 17th Day of February, 2026

**R.E. ABURILI
JUDGE**

ORIGINAL