

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELCLMISC NO. E138 OF 2021**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW  
ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF: EXECUTION OF THE CERTIFICATE OF ORDER  
ISSUED ON 3<sup>RD</sup> JULY 2024**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER,  
FINANCE & ECONOMIC AFFAIRS,  
NAIROBI CITY COUNTY.....1<sup>ST</sup>  
RESPONDENT**

**COUNTY SECRETARY, NAIROBI CITY COUNTY.....2<sup>ND</sup>  
RESPONDENT**

**CHIEF OFFICER, FINANCE/COUNTY  
TREASURER NAIROBI CITY COUNTY.....3<sup>RD</sup>  
RESPONDENT**

**AND**

**PROF. TOM OJIENDA & ASSOCIATES.....EX PARTE  
APPLICANT**

**JUDGMENT**

1. Pursuant to leave granted on 18<sup>th</sup> June, 2025 the *exparte* applicant filed the amended notice of motion dated 28<sup>th</sup> October, 2025

expressed to be brought under **Order 53 Rule 3** of the **Civil Procedure Rules**, seeking the following orders:-

**1. That this honourable court be pleased to issue an order of mandamus compelling the respondents to pay to the applicant forthwith and without delay, the decretal sum delineated hereunder together with the accrued interest until payment in full, that is to say-**

**a. Decretal amount - Kshs.43,582,145.40/=.**

**b. Interest on decretal sum at 14% per annum (309) days Kshs. 17,938,411.00/ = totaling to Kshs.61,520,556.40/ =.**

**2. That in default, notice to show cause do issue against the respondents to show cause why they should not be cited for being in contempt of court orders.**

**3. That the costs of this application be borne by the respondents.**

2. The application is premised on grounds *inter alia* that the ex parte applicant filed an advocate-client bill of costs dated 22<sup>nd</sup> July, 2021 which bill arose out of a court judgment in the parent file ELC Case No. 819 of 2021; Afrison Export Import Limited & Another versus The City Council of Nairobi & Another.

3. The application was further supported by the amended supporting affidavit of Prof. Tom Ojienda SC, the managing partner of the ex parte applicant's firm sworn on even date. The learned senior counsel deposed that the deputy registrar of the high court taxed the bill of costs dated 22<sup>nd</sup> July, 2021 at Kshs.43,582.145.40/- and thereafter issued a certificate of taxation dated 3<sup>rd</sup> November, 2023. The learned counsel deposed that on 13<sup>th</sup> May, 2024 this court reviewed its orders following the judgment entered on 19<sup>th</sup> February, 2024 thus allowing the interest on the decretal sum.
4. The ex parte applicant further deposed that they extracted the amended decree issued on 3<sup>rd</sup> July, 2024 and a certificate of order against the government issued on 3<sup>rd</sup> July, 2024. Thereafter, they proceeded to serve the respondents with reminders vide the letters dated 6<sup>th</sup> November, 2023 and 6<sup>th</sup> July, 2024 requiring the settlement of Kshs.61,520,556.40/=. However, despite being aware of the sums due and owing to the ex parte applicant for legal services rendered, the respondents have failed and refused to settle the decretal sum which has been due for years. Further, that they have been left with no other option than to seek the orders in this application compelling the respondents to settle the sums due.

5. The respondents did not file their responses to the instant application. As it is, the application is unopposed. This court further directed that the substantive motion be canvassed through written submissions. The ex parte applicant filed its written submissions dated 28<sup>th</sup> October 2025. The respondents did not file their written submissions.

6. Be that as it may, I have considered the substantive motion, the documents relied on and the written submissions filed by the ex parte applicant. The issue for determination is *whether the orders of mandamus ought to issue compelling the respondents to settle the sums due and owing to the ex parte applicant.*

7. The circumstances under which judicial review order of mandamus are issued were discussed in the case of **Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996**, the Court of Appeal pronounced itself as follows:-

*“The order of mandamus is of most extensive remedial nature and is in form, of 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."...These principles mean that an order of mandamus compels 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."***

- 8. Section 21 (3) of the Government Proceedings Act on provides:**

***"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.”***

9. I have perused the documents being relied on by the ex parte applicant. Indeed, the ex parte applicant obtained the amended decree dated 3<sup>rd</sup> July, 2024 as well as the certificate of order against the government dated 3<sup>rd</sup> July, 2024. Both the amended decree and the certificate order were served upon the respondents on 11<sup>th</sup> July, 2024. From this record, I am satisfied that service of the aforesaid documents was effected, and the respondents have no reason to deny and refuse to pay the decretal sums owed.

10. I place reliance on the case of **Republic v Attorney General & 2 others ex-parte James Gitau Mwangi & another [2016] KEHC 7404 (KLR)** where it was held:-

***“An order of mandamus will therefore issue where a statutory duty is owed to an applicant and the public body or officer, after being asked to perform the statutory duty, has refused or failed to discharge that duty and there is no other efficacious remedy available to the applicant.”***

**11.** From the above, it is my finding that the ex parte applicant is entitled to the costs arising from the legal services rendered to Nairobi city county. The amended notice of motion dated 28<sup>th</sup> October, 2025 has merit and it is hereby allowed in the following terms:-

***i. An order of mandamus is hereby issued compelling the respondents to pay to the ex parte applicant within seven (7) days from the date hereof, the decretal amount of Kshs.43,582,145.40/= and the interest on the decretal sum at 14% per annum (309) days being Kshs.17,938,411.00/= totaling to Kshs.61,520,556.40/=.***

***ii. In default, notice to show cause to issue against the respondents to show cause why they should not be cited for being in contempt of court orders.***

***iii. The exparte applicant is awarded costs of this application. The same is to be borne jointly by the respondents.***

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 18<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
18/02/2026.**

**In the presence of:**

*Ms. Benson Agunga - Court assistant*

*Ms. Ndinya for the Ex-parte Applicant*

ORIGINAL