



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLC MISC. APPLICATION NO. E135 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 13<sup>th</sup> JUNE 2025**

**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**

## **RULING**

1. Before this Court is a Notice of Motion application dated 6<sup>th</sup> August 2025 filed by the Ex-parte Applicant, Prof. Tom Ojienda & Associates, seeking an order of mandamus to compel the Respondents, being the County Executive Committee Member for Finance and Economic Affairs, the County Secretary, and the Chief Officer Finance/County Treasurer of Nairobi City County, to satisfy the decretal sum of **Kshs. 716,758.20** arising from the taxation of the Applicant's Advocate-Client Bill of Costs and the subsequent judgment entered on 30<sup>th</sup> April 2024.
2. The application is expressed to be brought pursuant to Articles 47 and 48 of the Constitution, Sections 8 and 9 of the Law Reform Act, Order 53 of the Civil Procedure Rules, and all enabling provisions of the law. The Applicant further seeks costs of the application.
3. The gravamen of the application is that despite the issuance of a Certificate of Taxation on 17<sup>th</sup> November 2023, judgment entered on 30<sup>th</sup> April 2024, and a Certificate of Order against the Government dated 13<sup>th</sup> June 2025, the Respondents have failed, neglected and/or refused to satisfy the decretal sum, thereby necessitating the present judicial review proceedings.
4. The application is supported by affidavits sworn on behalf of the Ex-parte Applicant detailing the taxation process, entry of judgment, extraction and service of the Certificate of Order against the Government, and the Respondents' continued non-compliance notwithstanding formal demand.
5. The Respondents opposed the application through a Replying Affidavit dated 6<sup>th</sup> November 2025 and written submissions, contending that

payment has been delayed due to statutory financial procedures, budgetary constraints and ongoing administrative processes, and that the application is premature.

6. The Court directed that the matter be canvassed by way of written submissions, which both parties duly filed and highlighted.

### **Issues for Determination**

7. The issues arising for determination are:
  - a) Whether the Ex-parte Applicant has satisfied the legal requirements for the grant of an order of mandamus.
  - b) Whether the application is merited.
  - c) Whether the Applicant is entitled to costs.

### **Legal Analysis**

8. The nature of the remedy of **mandamus** has been elaborated in a long line of authorities. In **Republic -Vs- Kenya National Examinations Council ex parte Gathenji & 8 Others [1997] eKLR**, the Court of Appeal cited with approval Halsbury's Laws of England (4<sup>th</sup> Edn. Vol. 7 p.111 para 89):

*"The order of mandamus is of most extensive remedial nature and is in form, 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..."*

9. In **R (Regina) -Vs- Dudsheath, ex parte, Meredith [1950] 2 All E.R. 741, at 743**, Lord Goddard C. J. said "*It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it. This is one of the reasons, no doubt, why, where there is a visitor of a corporate body, the court will not interfere in a matter within the province of the visitor, and especially this is so in matters relating to educational bodies such as colleges.*"
10. Similarly, the Court in **Republic -Vs- Town Clerk, Kisumu Municipality, ex parte East African Engineering Consultants [2007] 2 EA 441** underscored that mandamus is the means through which the State, in the name of the Republic, compels its officers to comply with the law. Execution proceedings do not apply to government or public bodies due to statutory limitations such as section 21(4) of the Government Proceedings Act, which prohibits attachment of government property. The only viable route to enforce payment of a decree against government is through mandamus.
11. The jurisprudence is consistent: the order will not issue where the duty sought to be enforced is uncertain, conditional or disputed. As observed in **Newton Gikaru Githiomi & Another -Vs- AG/Public Trustee Nairobi HC JR 472 of 2014**, where the court stated: "*It must be remembered that judicial review orders are discretionary. Since they are not guaranteed, a court may refuse to grant them even where the requisite grounds exist since the court has to weigh one thing*

*against another and see whether or not the remedy is the most efficacious in the circumstances obtaining. Further, as the discretion of the court is a judicial one, it must be exercised on the evidence of sound legal principles. The court does not issue orders in vain even where it has jurisdiction to issue the prayed orders and would refuse to grant judicial review remedy when it is no longer necessary; or has been overtaken by events; or where issues have become academic exercise; or serves no useful or practical significance. Since the court exercises a discretionary jurisdiction in granting prerogative orders, it can withhold the gravity of the order where among other reasons there has been delay and where a public body has done all that it can be expected to do to fulfil its duty or where the remedy is not necessary or where its path is strewn with blockage or where it would cause administrative chaos and public inconvenience or where the object for which application is made has already been realised.”*

12. Whereas the Court may compel the performance of the general duty where such duty exists, it will however not compel its performance in a particular manner for example by compelling the respondent to pay a particular amount unless that amount has been ascertained. This position was appreciated by the Court of Appeal in **Republic -Vs- Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996** as follows: “The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way...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. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...” [Emphasis added].*

13. Turning to the present case, it is undisputed that judgment was entered in favour of the Ex-parte Applicant on 30<sup>th</sup> April 2024 for the sum of Kshs. 716,758.20, arising from the taxation of the Advocate-Client Bill of Costs dated 9<sup>th</sup> December 2021. A Certificate of Taxation was duly issued on 17<sup>th</sup> November 2023 and thereafter a Certificate of Order against the Government was extracted on 13<sup>th</sup> June 2025. The decretal sum has been fully ascertained and remains wholly unsatisfied. The Respondents have not demonstrated that the judgment was stayed, appealed against, set aside or otherwise compromised.
14. The Respondents contend that payment has not been effected due to budgetary procedures, administrative processes and lack of immediate allocation of funds. In my view, those explanations cannot defeat the Applicant’s claim. Once a valid decree exists, the Respondents are under a legal and statutory duty to satisfy it. That duty flows from the judgment of the Court itself and not from internal financial arrangements or administrative convenience. The Ex-parte Applicant, as a decree-holder, is entitled to enjoy the fruits of its judgment. To deny the Applicant that right would amount to a denial of justice contrary to Article 48 of the Constitution which guarantees access to justice.

15. Furthermore, as the Respondents are officers of a County Government, execution in the ordinary civil process is expressly barred by Section 21(4) of the Government Proceedings Act which provides that: “No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs...”
16. Consequently, the only lawful and effective remedy available to the Applicant for enforcement of the decree is an order of mandamus compelling the responsible accounting officers of the County Government to satisfy the decretal sum.
17. I am satisfied that the Ex-parte Applicant has demonstrated a clear, specific and enforceable legal right; that the Respondents owe a statutory public duty to pay the decretal amount of Kshs. 716,758.20; and that no alternative effective remedy exists. This is precisely the situation for which the remedy of mandamus was designed.

### **Costs**

18. Section 27 of the Civil Procedure Act provides that costs follow the event unless the Court orders otherwise. The Applicant has succeeded in this application and no good reason has been shown to depart from the general rule. The Applicant is therefore entitled to costs.

### **Conclusion and Orders**

19. In the result, I find that the Ex-parte Applicant’s Notice of Motion dated 6<sup>th</sup> August 2025 is merited. Accordingly, I make the following orders:
- a) An order of mandamus is hereby issued compelling the Respondents to pay the Ex-parte Applicant the decretal sum of Kshs. 716,758.20, being

the amount due pursuant to the judgment entered on 30<sup>th</sup> April 2024 and the Certificate of Order against the Government issued on 13<sup>th</sup> June 2025.

b) The Respondents shall comply with this order and settle the decretal sum within one hundred and twenty (120) days from the date of this judgment.

c) The Ex-parte Applicant shall have the costs of this application.

**It is so ordered!**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on **3<sup>RD</sup>** day of **FEBRUARY, 2026.**

**MOHAMMED N. KULLOW**  
**JUDGE**

**Ruling delivered virtually in the presence of: -**

**Ms. Ndinya**..... for the Applicant

**Ms. Njoroge**..... for the Respondents

**Ms. Philomena W.**..... **Court Assistant**