

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLJR CASE NO. E049 OF 2025**

**IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL REVIEW**  
**ORDER OF MANDUMUS**

**AND**

**IN THE MATTER OF IN THE ENFORCEMENT OF COURT ORDERS &**  
**DECREES AGAINST A GOVERNMENT ENTITY**

**AND**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT**  
**AND THE RULES CONTEMPLATED PURSUANT THERETO**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT**

**BETWEEN**

REPUBLIC.....APPLICANT

**-VERSUS-**

CHIEF EXECUTIVE OFFICER,  
NATIONAL IRRIGATION AUTHORITY.....1<sup>ST</sup>  
RESPONDENT

NATIONAL IRRIGATION AUTHORITY.....2<sup>ND</sup>  
RESPONDENT

**AND**

EZRA OPIYO NGOJE.....EX-PARTE  
APPLICANT

**JUDGMENT**

1. Pursuant to leave granted on 4<sup>th</sup> July, 2025, the *exparte* applicant filed the notice of motion dated 7<sup>th</sup> July, 2025

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

- a. The judicial review order of mandamus be issued against (1) the 1<sup>st</sup> respondent, Chief Executive Officer and Accounting Officer, National Irrigation Authority and (2) the 2<sup>nd</sup> respondent, National Irrigation Authority to forthwith pay to the applicant, the sum of KShs. 50,000/- being the amount awarded to the applicant against the 2<sup>nd</sup> respondent, National Irrigation Authority a government entity vide the ruling and order of the Environment and Land Court dated 11<sup>th</sup> December, 2024 in Nairobi ELC Miscellaneous Civil Application No. E172 of 2024 between Ezra Opiyo Ngoje and National Irrigation Authority and in terms of the certificate of order against the government applied for, dated and issued on 9<sup>th</sup> June, 2025.***
- b. Costs of this application be provided for.***

- 2.** The substantive motion is premised on the grounds *inter alia* that the 2<sup>nd</sup> respondent, a government entity against whom an order has been made for payment of a sum of Kshs.50,000/- has refused and ignored to settle the decretal amount. The application is further supported by the statement of facts and the verifying affidavit of the *exparte* applicant sworn on

4<sup>th</sup> July, 2025. The *ex parte* applicant deposed that this court delivered a ruling on 11<sup>th</sup> December, 2024 in his favour against the 2<sup>nd</sup> respondent, a government entity that is capable of suing and being sued. Further, he was awarded costs in the sum of Kshs.50,000/- which amount remains unpaid.

3. The *ex parte* applicant deposed that these orders were issued in the presence of counsel for the 2<sup>nd</sup> respondent who had knowledge of the said orders but has chosen to deliberately ignore the same. Further, a formal order dated 8<sup>th</sup> January, 2025 was extracted and served upon the respondents. The *ex parte* applicant further deposed that he proceeded to obtain a certificate of order against the respondents dated 9<sup>th</sup> June, 2025 and served the same. That despite service, the respondents have neglected to pay the decretal sum.
4. It was further deposed that the order of mandamus sought can only be applied once leave has been granted, and the same needs to be employed to compel action against the respondents. Further, that he has no other way and or remedy to ensure compliance as it is the only avenue that can compel the respondents to comply with the orders of the court. The *ex parte* deposed that he has satisfied all the conditions precedent as

prior demand has been made for the performance, and payment of the decretal sum within a reasonable time. He urged the court to grant the said orders.

5. The respondents did not file their response to the application. This court directed that the application be canvassed by way of written submissions. The *ex parte* applicant filed his written submissions dated 9<sup>th</sup> October, 2025. The respondents did not file their written submissions. Be that as it may, I have considered the substantive motion, the grounds in support thereof and the written submissions filed. The issue for determination is *whether the orders of mandamus ought to issue in the circumstances compelling the respondents to pay the decretal amount.*
6. 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."*

7. **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."***

8. Pursuant to the ruling delivered by the court on 11<sup>th</sup> December, 2024, the *ex parte* applicant obtained a certificate of order against the government, the 2<sup>nd</sup> respondent herein dated 9<sup>th</sup> June, 2025 for the sum of Kshs.50,000/-. The same was served upon the respondents, and despite the said service, which is undisputed, the same remains unpaid. This court is thus satisfied that the *ex parte* applicant has demonstrated compliance with **Section 21 (3)** of the Act.

9. In the case of **Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR**, it was held as follows:-

***"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. This provision does not condition payment to budgetary allocation and parliamentary approval of government expenditure in the financial year***

***subsequent to which government liability accrues.”***

**10.** From the above, I have no reason to deny the ex parte applicant the orders sought in the notice of motion dated 7<sup>th</sup> July 2025 and the same is hereby allowed as follows:-

- i. The judicial review order of mandamus is hereby issued against the 1<sup>st</sup> respondent, the Chief Executive Officer and Accounting Officer, National Irrigation Authority and the 2<sup>nd</sup> respondent, to pay the ex parte applicant the sum of Kshs.50,000/- being the amount awarded to the ex parte applicant against the 2<sup>nd</sup> respondent vide the ruling delivered on 11<sup>th</sup> December, 2024 in Nairobi ELC Misc Appl. No. E172 of 2024.***
- ii. The ex parte applicant is awarded costs of this motion.***

It is ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.  
JUDGE**

**09/02/2026.**

**In the presence of:**

*Ms. Benson Arunga - Court assistant*

*Mr. Louis Johnson holding brief for Mrs. Winnie Awuor Paul for  
the Ex-parte Applicant*

*No appearance for the Respondent*

ORIGINAL