



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI, NAIROBI

JUDICIAL REVIEW APPLICATION NO. E056 OF 2025

REPUBLIC.....

APPLICANT

-VERSUS-

CHIEF EXECUTIVE OFFICER, NATIONAL GOVERNMENT

CONSTITUENCY DEVELOPMENT FUND COMMITTEE..... .1ST

RESPONDENT

FUND MANAGER DAGORETTI SOUTH CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....2ND

RESPONDENT CHAIRMAN DAGORETTI SOUTH CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....3RD

RESPONDENT

EX PARTE

MARY WANJIKU NGARI.....EX PARTE

APPLICANT

JUDGEMENT

Introduction

The Ex parte Applicant has filed the notice of motion application dated 29th November 2024 seeking for Judicial review order of mandamus as against the respondents.

Prayers in the Notice of Motion

1. An order of mandamus be issued to compel the Respondents to pay the Ex parte Applicant, the decretal sum together with interest

thereon of Kshs. 38,217,552/= which is due to date on account of judgement delivered on 17th November 2017 against the Respondent's herein in ELC NO. 8 OF 2015 Samwel Ngari Githinji - vs- the National Constituency Development Fund Board & Dagoretti south constituency development fund committee.

2. An order be issued to compel the Respondents to pay the ex-parte Applicant, the taxed costs together with interest thereon of Kshs. 1,799,275/= which is due to date on account of the Certificate of Taxation dated 3rd September 2019 in ELC No 8 of 2015.
3. The Respondents be and is hereby ordered to comply by satisfying the Certificate of Order in the sum of Kshs. 38,217,552/= together with accruing Interest in ELC NO. 8 OF 2015 within fourteen (14) days from the date of service of the order of mandamus.
4. The costs of this application be borne by the Respondents.

The application was premised on grounds that the respondents being aware of the decree in ELC NO 8 of 2015 have neglected to settle the same despite the ex parte applicant serving the certificate of Order.

That no appeal had been preferred against the said order nor have any stay orders had been issued

Respondent's response

1st respondent

The respondents filed a replying affidavit sworn by one Simon M. Ndweka where he deponed that the application was defective as the party sued as the 1st respondent did not exist.

2nd and 3rd respondents

The 2nd and 3rd respondents in opposing the application filed a replying affidavit sworn by Job Tuta where he raised the same arguments as the 1st respondent that the certificate of order had not been served on the 2nd and 3rd respondents as required under section 21 of the Government proceedings Act .

That the committee operates on a budget which budget could not accommodate the decretal sum. That further the committee had been actively pursuing an appeal of the judgment and the delay in settling the decree was because it was still seeking the court's indulgence.

Ex parte Applicant's submissions.

The Ex parte applicant reiterated the averments as laid out the notice of motion application and statutory statement dated 29th November 2024.

That the argument raised of the certificate of order not served cannot be sustained as they have all been served as at the time of the submissions and still not settled the amount owed. That the settlement of a decree was not dependant on budgetary allocations. She relied on the cases of Republic vs Kenya National Examination Council Ex Parte Gatheni & Other [1997] eKLR, Republic Vs Attorney General ex parte Miriam Wambugu 7 Anor [2021] eKLR

1st Respondent's submissions

The 1st respondent's submissions reiterated the argument raised in its response that the party sued as the 1st respondent did not exist making the application defective and that the application had been made

prematurely being that the 1st respondent had not neglected to settle the decretal award rather they were constrained in terms of budget 2nd respondent's submissions.

Counsel submitted that the applicant had failed to show that reasonable efforts were made to serve the 2nd and 3rd respondents the certificate of order. He also submitted that as required the attorney general had not been served relying on the case of Republic Vs Permanent Secretary Ministry of State For provincial Administration and internal Security Ex parte Fredrick Manoah Egunza (2012)Kehc

Analysis and determination

Having looked at the application, responses and the submissions from all parties, the main issue for determination is;

Whether the Ex parte applicant's notice of motion application dated 29th November 2024 is merited has complied with the procedure necessary to apply for orders of mandamus.

The scope of an order of mandamus was discussed by the Court of Appeal in the case of **Kenya National Examination Council vs. Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR thus:**

"What is the scope and efficacy of an order of Mandamus? Once again, we turn to Halsbury's Law of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says: "The order of mandamus is of a 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; 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. "At paragraph 90 headed "the mandate" it is stated: "The order must command no more than the party against whom the application is made 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."

In **Republic v Attorney General & Another ex parte James Alfred Koroso [2013]** eKLR, it was held that where a judgment creditor has complied with Section 21 of the Government Proceedings Act and the Government fails to honour its obligation, an order of mandamus lies to compel the performance of that statutory duty.

The principles established in the aforementioned cases affirm that a mandamus order compels the execution of a public duty imposed by statute on an individual or entity, where such individual or entity has neglected to carry out that duty, thereby prejudicing a party with a legal entitlement to its performance.

The question is therefore whether Ex parte the applicant complied with the elaborate procedure for applying for mandamus under section 21 of the Government Proceedings Act?

A court will only issue an order of mandamus if it is shown that the requirements under Section 21 of the Government Proceedings Act have been fulfilled. In the case of **Republic vs. Permanent Secretary Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandishi [2014] eKLR, Odunga, J.** (as he then was), held as follows:

"...It must be remembered that an application for an order of mandamus seeking an order compelling the Government to satisfy a decree is a very elaborate procedure. Before the Court issues such an order, there must be proof that the provisions of the Government Proceedings Act have been complied with in respect to issuance of certificate of costs and certificate of order against the Government. After the issuance of the aforesaid documents, just like in any application for mandamus, there must be a demand for payment made by or on behalf of the decree holder to the relevant department seeking payment since in an application for an order of mandamus, the law as a general rule requires a demand by the applicant for action and refusal as a prerequisite to the granting of an order, though there are exceptions to the rule...The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view, is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court."

I hold the same view as the court above in Republic vs. Permanent Secretary Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandih

It is only after the procedure as laid down under section 21 of the Government Proceedings Act has been complied with and a demand for payment made that a cause of action accrues for the purposes of an application for an order of mandamus against the Government.

In the instant case, it is undisputed that the Ex parte Applicant served the certificate of order on the 1st respondent. The 1st respondent has however indicated the application has listed a different party that was not part of ELC NO 8 OF 2015 hence it is defective.

In its replying affidavit, the deponent swore that he is the corporation secretary of National Government Constituency Development Fund Board whereas in this application the applicant has addressed the CEO of National Government Constituency Development Fund Committee. The only mistake that can be adduced from the application is on the last word that is written as committee instead of Board. In my view and in the spirit of Article 159 (2) of the Constitution and Section 1A and 1B of the Civil Procedure Act, the wrong citation of a corporate body is not fatal and would not warrant a dismissal. In this case having established that service was effected then the order of mandamus can issue on the 1st respondent. The 2nd and 3rd Respondents are contesting service of the certificate of order. The applicant indicates that he found their offices closed and hence slipped the certificate order under their door and further stated in their further affidavit sworn by Erick Ochieng he indicates that service was

effected via email to all the respondent's advocates on the 16th September 2024. The said email threads has been attached to the further affidavit showing service to the 2nd and 3rd advocates email address being nairobi@mmkadv.co.ke which email address has been shared in all the respondents pleadings indicating it to be an active email address. The 2nd and 3rd Respondents have not controverted the existence of the email address indicating service. There is no evidence on the contrary that the email was not received by the respondents. In my view proper service was affected on the 2nd and 3rd respondents through their advocates.

On the issue of service on the attorney General I agree with the applicant that the respondents do not form part of any government ministry rather a body corporate on its own hence service to the attorney general was not necessary in this case. On several occasions the courts have acknowledged state corporations as bodies corporate capable of suing and being sued independently. It has been noted that it is not necessary to involve the Hon Attorney General to represent Government interests. I will refer to the decision of Hon Justice J. Onguto (now deceased) in the case of **Ikon prints media company limited Vs Kenya National Hhighways authority & 2 others [2015] eKLR** in which he held: -

"Foremost though, it is important to point out that it would not be tenable to invoke the Government Proceedings Act (Cap 40) as a bar to any execution herein. The 1st Respondent is a body corporate with perpetual succession and a common seal.

It is a corporate entity capable of subsisting independently. It is dependent on government funding but it is not government or servant of

or agent of Government for the purposes of the Government Proceedings Act. The 1st Respondent is an independent judicial person capable of being sued and suing. Its litigation does not involve the Government. Any judgments decreed against the 1st Respondent are not judgments against the government but against an independent juridical body.”

The above authority which is of persuasive value upholds the view that a state corporation or parastatal is not automatically subject to the Government Proceedings Act. Where proceedings are instituted under this Act the Hon Attorney General will be a party. The Hon Attorney General is not a party in the present proceedings.

Being that there is no evidence of any appeal, stay of execution or judicial review against the original judgment, the principles of justice and finality require that valid court orders be honoured and parties are required to comply with a lawful decree.

Based on the foregoing, I find merit in the application dated 14th October 2024 and make the following orders

1. An order of mandamus be issued to compel the Respondents to pay the Ex parte Applicant, the decretal sum together with interest thereon of Kshs. 38,217,552/= which is due to date on account of judgement delivered on 17th November 2017 against the Respondent's herein in ELC NO. 8 OF 2015 Samwel Ngari Githinji - vs- the National Constituency Development Fund Board & Dagoretti south constituency development fund committee.

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3. The Respondents be and is hereby ordered to comply by satisfying the Certificate of Order in the sum of Kshs. 38,217,552/= together with accruing Interest in ELC NO. 8 OF 2015 within fourteen (14) days from the date of service of the order of mandamus
4. The costs of this application be borne by the Respondents.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **6TH** day of **FEBRUARY 2026.**

MOHAMMED N. KULLOW
JUDGE

Judgment delivered in the presence of: -

No appearance for the Applicant

Ms. Njeru for the 1st Respondent

No appearance for the 2nd and 3rd Respondents

Mr. Ochieng for the Ex-parte Applicant

Philomena W. Court Assistant