

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E390 OF 2025

REPUBLIC.....APPLICANT

VERSUS

**THE PRINCIPAL SECRETARY, MINISTRY
OF ENVIRONMENT AND NATURAL RESOURCES..1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT**

EXPARTE

**LILIAN KATITI MUNYAO.....1ST APPLICANT
ALEX JOSEPH MUIA.....2ND RESPONDENT**

JUDGMENT

1. In this case, it is not in doubt that the applicant is a lawful decree holder in CMCOMM Case No. E4090 of 2020, which decree was issued pursuant to judgment rendered in favour of the applicant on 22nd March, 2024 and decree issued on 23rd May, 2024.
2. A certificate of order against the government was issued on 11th September, 2024 for the decretal sum plus costs, further costs together with interest amounting to Kshs 6,657,373.95.

3. It is also not in dispute that the aforesaid judgment, decree and certificate of order against the Government was served upon the respondents herein, with a demand for settlement on 13th September, 2024 as shown by the receipt stamp of the Office of Attorney General, Civil Litigation Department, as required under section 21 of the Government proceedings Act, with the applicant's counsel supplying bank details for disbursement of the decretal sum.
4. The applicant's counsel further send reminder demands for settlement of the decree and certificate of Order on 6th November, 2024 and 14th January, 2025 vide letter dated 13th January, 2025 as well as 27th March, 2025 vide letter of 26th March, 2025. An amended decree dated 21st July 2025 was served on 22nd July 2025 while another certificate of order against the government dated 21st July 2025 was served on 22nd July 2025 inclusive of interest up to 21/7/2025 and which interest continues to accrue on the awarded damages.
5. The primary suit in the lower court, giving rise to these judicial review proceedings, was fully defended by the respondents before judgment was rendered. The applicant has annexed to the notice of motion all the documents filed in the primary suit as evidence of what transpired in the matter where the deceased husband died as a result of a road traffic accident. He was a military Officer who was knocked down by a motor vehicle belonging to the Ministry of Environment and Natural Resources. He suffered fatal injuries.

6. It is also not in doubt that the 1st respondent is the accounting officer of the Ministry, being the Principal Secretary as envisaged under section 67 of the Public Finance Management Act and therefore the person envisaged under section 21 of the Government Proceedings Act, as being under a statutory duty to settle decree and certificate of order against the government.
7. There is no evidence that since judgment was delivered on 22nd March 2024 in the presence of all parties' representatives. and all the documents named in this judgment served on the Attorney General as required under section 21 of the Government Proceedings Act, the 1st respondent has responded to the demands or made efforts to settle the decree.
8. The applicants have no other remedy available in law. They cannot carry a barren decree forever, noting that interest accrued is only payable for a period of six years of the Court judgment. The shilling continues to lose ground through inflation. The 1st applicant lost a bread winner, a husband and a father to her children.
9. The respondent accounting officer has not filed any affidavit to indicate the reasons for non-settlement of the decretal sum as per the certificate of order against the government. Counsel for the respondents attempted to state from the bar that he has instructions to tell the court that he reached out to the Ministry which is the primary respondent and that its response is that ***“they are currently not in funds and they kindly request to settle the decree in the next financial year”***.

10. The next financial year begins from 1st July 2026. Mandamus does not issue on account of availability of funds. It is based on a decree of the court which is pending settlement and there being no sign on the part of the respondent settling the same. Mandamus compels performance of a public or statutory duty and that duty in this case is imposed by section 21 of the Government Proceedings Act on the accounting officer.

11. In **Republic v Chief Executive Officer, National Irrigation Authority & another; Nyaoke (Ex parte Applicant) (Judicial Review Application E052 of 2025) [2026] KEELC 170 (KLR) (22 January 2026) (Judgment)** my brother Judge Kullow J stated as follows regarding 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

aforsaid 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.”

The same reasoning was adopted in Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR, where the Court held thus:

“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.”

12. The 1st respondent has all along known of the existence of the decree which continues to accrue interest. It is his statutory duty to settle decrees of the court against the Ministry by budgeting early, the moment judgment is rendered and requisitioning for funds from the National Treasury, and not to wait until these kinds of proceedings are initiated thereby escalating costs, to the detriment of the taxpayer.

13. With all the above in mind, I am satisfied that the notice of motion dated 8th December, 2025 filed pursuant to leave granted on 24th November, 2025 in JR E238 OF 2025 is merited. The same is allowed.

14. Accordingly, judicial review order of mandamus is hereby issued compelling accounting officer being the Principal Secretary. Ministry of Environment and Natural Resources or its predecessor or successor in title to satisfy decree and certificate of order against the government in the sum of Kshs 7,485,583.20 plus further lawfully accruing interest at court rates as decreed in Milimani COMCC E4090 of 2020 on 22nd March, 2024.

15. The applicants will also have costs of this application assessed at Kshs 50,000 to be included in the final amount to be settled by the 1st respondent accounting Officer on behalf of the Ministry as mandated by section 21 of the Government Proceedings Act.

16. This matter shall be mentioned on 13/4/2026. To confirm the progress on settlement of the certificate of order against the government, in compliance with this judgment.

17. I so order.

Dated, Signed and Delivered at Nairobi this 10th Day of February, 2026

**R.E. ABURILI
JUDGE**