

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR. NO. E181 OF 2023**

**MARTIN CHEGE MAHIA.....EX-PARTE APPLICANT**  
**VERSUS**  
**THE ATTORNEY GENERAL .....RESPONDENT**  
**AND**  
**PERMANENT SECRETARY,**  
**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND**  
**CO-OPERATIVE .....**  
**RESPONDENT**

**RULING**

- 1.** The Application that comes up for Ruling is the one 23<sup>rd</sup> June 2025.
- 2.** On the 28<sup>th</sup> March 2025, this Court delivered its judgement in favour of the Applicant inter alia in the following terms;
  - (i) Order of Mandamus is hereby issued compelling the Principal Secretary of the Ministry of Agriculture, Livestock, Fisheries and Co-operatives to pay the Ex-parte Applicant within forty-five (45) days the sum of Kshs. 888,820.00 plus costs and interest thereon at the rate of 12% per annum from 27th October 2022 until payment in full.
  - (ii) In default, the Notice to Show Cause do issue against the Principal Secretary to show cause why he should not be cited for contempt of court.

3. The said judgement effectively served upon both the Attorney General and the Principal Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operative on the 1st day of July 2025.
4. On 13<sup>th</sup> October 2025, counsel for both the Respondents pleaded with the Applicant for more time to settle the matter since no funds had been availed to the Ministry.
5. The Order was clear, unequivocal and directed personally at the Principal Secretary in his official capacity as the Accounting officer of the Ministry of Agriculture.
6. Reliance is placed in **Republic -Vs- County Chief Officer, Finance & Economic Planning, Nairobi County Ex-Parte Stanley Muturi [2019] eKLR** where it was held as follows: -

*“Public officers who fail to Comply with court orders issued against them in their official capacity are personally liable for contempt.”*

7. In the case of **Teachers Service Commission -vs- Kenya National Union of Teachers & 2 Others [2013] eKLR** the court affirmed that disobedience of court orders is not optional and deliberate disobedience undermines the rule of law and the authority of the court.
8. In response to the application, Dr. Paul Kipronoh Ronoh, the Respondent points out that he is ready and willing to comply with the court order and settle the decretal sum as set out in his letter dated 10<sup>th</sup> February, 2025, addressed to the National Treasury requesting the necessary funds.

9. He argues that despite the willingness to comply, the Respondent is currently constrained by the lack of budgetary allocation from the National Treasury as seen in the letter from the National Treasury dated 19<sup>th</sup> February, 2025, confirming the unavailability of funds. The failure to comply with the court's orders is not willful or deliberate.
10. The delay is occasioned by financial constraints and bureaucratic processes inherent in government procedures; especially considering the existence of numerous similar claims awaiting settlement.
11. According to him it is in the interests of justice and fairness that the Respondent be granted reasonable time to process and effect payment. subject to the availability of funds.

### **Analysis and determination;**

The issues for determination are:

- (i) Whether the Application has merit.
- (ii) Who shall bear the costs.

### **Whether the Application has merit.**

12. The Respondent does not deny that he owes the Applicant the amounts claimed. The Respondents' argument that the treasury has not assigned him Funds
13. Decrees of this court must be settled. Failure to do so amounts to impunity which this court cannot countenance.

14. In the case of **Republic v Principal Secretary, Ministry of Defence Exparte George Kariuki Waithaka [2019] eKLR** held as follows on the issue of budgetary allocation;

*“The defence of non-allocation of funds by Parliament was also raised by the Respondent in the present Application in his replying affidavit. Odunga J. in his ruling of 12th February 2018 extensively dealt with the defence as follows:*

*“As regards lack of budgetary allocation, Githua, J in Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eKLR expressed herself as follows:*

*“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. 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.” [Emphasis mine].*

- 15.** I associate with the said decision and it is therefore my view that settlement of decretal sum by the Government whether National or County does not necessarily depend on the availability of funds.
- 16.** In **South Bucks District Council vs. Flanagan [2002] EWCA Civ. 690 [2002] WLR 2601** at [18] that:

*“Legitimate expectation involves notions of fairness and unless the person making the representation has actual or ostensible authority to speak on behalf of the public body, there is no reason why the recipient of the representation should be allowed to hold the public body to the terms of the representation. He might subjectively have acquired the expectation, but it would not be a legitimate one, that is to say it would not be one to which he was entitled.”*

17. When the Applicant secured a judgement, extracted a Decree, a Certificate of Order and a Certificate of Costs and the time for lodging an appeal lapsed, then the Applicant had a legitimate expectation that the Respondent would settle the claim during its next budgetary cycle at the minimum. Such is the case before me. The Applicant has a legitimate expectation that the Respondents will settle his claim.
18. The decree holder remains clinging on a decree that is yet to translate into funds. This has to come to an end. The procedure of the issuance of the Notice to Show Cause gives the Respondents a fair hearing.

#### **Costs;**

19. In determining the issue of costs, this court is guided by the case of **Party of Independent Candidates of Kenya versus Mutula Kilonzo a 2 others HC EP No. 6 of 2013**, the court stated as follows on the issue of costs:

*“It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place, the award of costs is a matter in which the trial judge is given*

*discretion but this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, is a rule which should not be departed from without the demonstration of good grounds for doing so.”*

**20.** The Respondent shall shoulder the costs.

**Disposition:**

**21.** The has merit.

**Order:**

The Application is allowed in the following terms.

- 1) A Notice to Show Cause is hereby issued to the Respondents.
- 2) The matter shall proceed with the Notice to Show Cause on 14.4.26 at 10.30 AM in open Court.

**Dated, signed and delivered at Nairobi this 20<sup>th</sup> day of February, 2026.**

.....

**J. CHIGITI (SC)**

**JUDGE**