

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR. MISC.APPL. NO. E094 OF 2023

ANDERSON KIMANI NJOROGEAPPLICANT

VERSUS

**COUNTY GOVERNMENT OF MACHAKOS1ST
RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD OF
MACHAKOS.....2ND RESPONDENT**

JUDGMENT

1. The Application before the court for determination is the one dated 25th February, 2025 wherein the Applicant seeks orders that: -

- 1) That an order of mandamus do issue to the 1st and 2nd respondents, being the County Government of Machakos and The County Public Service Board of Machakos to pay the Applicant Anderson Kimani Njoroge the sum of Kshs. being the decretal amount in Milimani Chief Magistrate Court at Nairobi Employment Case No. 1133 of 2019 together with Kshs. 90,038/- being the certified cost thereon together with interest thereon at 12% per annum from 9th December, 2020 until payment in full.
- 2) Costs of this Application be borne by the Respondent.

2. It is that Applicant's case that the court awarded him a cumulative amount of Kshs 819,455 plus costs and interest as court rates on 9th December, 2020. He later appealed the decision in the Employment and Labour Relations Court at Nairobi Civil Appeal No. E002 of 2021.
3. The appeal was dismissed with the trial Court judgement being upheld. The judgment was entered 31st January 2023 and decree.
4. The County Executive Member of Finance was served with a Notice of Entry of Judgment on 14th March 2023, through the offices of the 1st and 2nd Respondents giving them 14 days to pay the decretal amount but the Respondents have nevertheless failed, neglected and/or ignored my demand for payment.
5. The County Government of Machakos and the County Public Service Board of Machakos is under a public duty to make the said payment to the Applicant and is unlawfully neglecting or refusing to do so.

The Applicant's Submissions;

6. Reliance is placed in the case of **Republic vs. Kenya National Examination Council Exparte Gathenji & Others (1997) eKLR**, the Court of Appeal held 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 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. In the present case, the Respondents were duly served with the judgment and demand notices but have persistently refused and/or neglected to make payment.
8. In the suit Nairobi Civil Appeal ELRC E002 of 2021, the respondent formally responded to the appeal. Despite there being legal representation, the Applicant made several attempts to engage with the Respondent's appointed legal counsel to address the outstanding issue of the payment of the decretal sum.
9. The Applicant wrote many emails and letters which were ignored ultimately leading to the filing of the current Application.
10. The appeal was unfortunately dismissed with the trial court judgement being upheld in the judgment dated 31st January 2023. The respondents were served with a notice of entry of judgement giving them 14 days to pay the decretal amount.
11. The respondent is fully aware of the court's judgement yet they have chosen to ignore it.
12. Section 21 (4) of the Government Proceedings Act, Cap 40, Laws of Kenya provides that,"No execution or attachment or process in the nature thereof shall be issued against the Government, but the court may, in lieu thereof, make an order directing the satisfaction of the judgment out of public funds.
13. Further, Section 109 of the Public Finance Management Act, 2012 places a statutory obligation on County Governments to make timely payments of all financial-obligations, including court decrees.

14. It submits that the failure by the Respondents to settle the decretal sum is a blatant violation of statutory provisions and an affront to the principles of justice enshrined in Article 10 and Article 159(2) of the Constitution of Kenya, 2010.
15. It is submitted that the Applicant has demonstrated that a valid judgment exists in his favor in Milimani Chief Magistrates Court at Nairobi Employment Case No. 1133 of 2019, that the Respondents have refused, failed, and/or neglected to satisfy the decretal amount despite demand, that the Respondents are legally bound to satisfy the decree but have ignored their obligation and that all other avenues for execution have been exhausted, leaving the Applicant with no alternative but to seek this Court's intervention through mandamus.
16. In **Republic vs. Nairobi City County & Another Ex Parte Wachira Nderitu Ngugi & Co. Advocates 120161 eKLR**, the court held:

“Apart from mandamus, a decree holder has no option of ensuring that the judgment awarded is realized. Unless something is done, the decree holder will forever be left babysitting a barren decree.”

Analysis and Determination:

The issue that falls for determination is whether the Applicant has satisfied the conditions precedent so as to warrant the grant of the orders sought.

17. Section 21 of Government Proceedings Act provides:

“(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an Application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the Applicant.

18. Section 21 (3) of the said Act on the other hand 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.

19. This court is further guided by the case of **Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR** while dealing with the said provisions 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.”

- 20.** The court cannot issue an order of Mandamus against the Respondent in cases where the Applicant does not comply with 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.

- 21.** The Applicant did not extract nor furnish the court with the certificate of order as a result of which the court cannot issue the prayers sought.

Costs;

- 22.** Halsbury's Laws of England, 4th ed Re-Issue (2010), Vol. 10, para. 16: "The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice" [emphasis supplied]. In *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR [13] it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, *Judicial Hints on Civil Procedure*, 2nd ed. (Nairobi: Law Africa, 2011), p. 94: "Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.
- 23.** The Applicant has failed to prove his case and shall Bear costs.

Disposition;

- 24.** It is this court's finding that the Applicant has failed to prove its case by within the requisite statutory standards and mandatory execution procedure as set out under Section 21 of the Government Proceedings Act.

Order

The Application is struck out with costs.

Dated, Signed, and Delivered at Nairobi this 19th day of February 2026.

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J. CHIGITI (SC)

JUDGE