

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW APPLICATION NO E401 OF 2025**

**BENSON KANGÁRA TA**

**PINKSTONE**

**ENTERPRISES.....**

**.....APPLICANT**

**VERSUS**

**THE ACCOUNTING OFFICER**

**NAIROBI CITY COUNTY.....1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE**

**MEMBER FOR FINANCE, NAIROBI COUNTY.....2<sup>ND</sup>**

**RESPONDENT**

**JUDGMENT**

1. Pursuant to leave to apply granted in JR MISC Application No. E153 of 2025, the applicant herein Benson Kang'ara Trading as Pinkstone Enterprises seeks judicial review order of mandamus to compel the respondents herein to settle decree and certificate of order against the government in Nairobi HCCOM No. 502 of 2016, issued pursuant to a judgment rendered on 20<sup>th</sup> November, 2019 by Majanja J, (RIP) and certificate of order against the government issued pursuant to section 21 of the Government Proceedings Act on 24<sup>th</sup> march, 2025.
2. The decretal sum sought to be recovered is a sum of Kshs 50,787,308.83 being the principal and interest plus costs of the suit arising from a claim for supply and delivery of construction and assorted materials as per the

Local purchase Orders and delivery notes produced in the commercial court as evidence.

3. The applicant annexes copies of the judgment in the primary suit, decree, certificate of Order against the government and demand for settlement dated 16<sup>th</sup> 4/2025. All these documents were served upon the respondents with demands for settlement.
4. The respondents filed grounds of opposition dated 3/2/2026 conceding that there is a valid judgment against the City County Government, that there is a statutory duty to settle decree on demand made on 16/4/2025 but that there are many decrees pending against the respondents and that plans are underway to settle the same only that the County Government has no budget line sufficient enough to settle all decrees at once. That therefore it would be against public policy to issue mandamus against the respondent County Government.
5. The application was argued orally with the respective parties' counsel reiterating their respective positions as pleaded.
6. I have considered the application and the grounds of opposition together with oral submissions. As was held in **Republic -Vs- Kenya National Examinations Council ex parte Gathenji & 8 Others [1997] eKLR**, the Court of Appeal cited with approval **Halsbury's Laws of England (4th Edn. Vol. 7 p.111 para 89)** where it is stated that:

***“At paragraph 90 headed “the mandate” it is stated:***

*“ 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.”*

*24. The next issue we must deal with is this: 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 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.”*

*25. What do these principles mean? They mean that an order of mandamus will compel 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. In the above case of **Republic -Vs- Kenya National Examinations Council ex parte Gathenji & Others** the Court further stated as follows on what mandamus order does:

*“The order must command no more than the party against whom the application 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...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. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...”*

8. It is an undisputed fact that Mandamus is the sole legal remedy for enforcing the settlement of decrees against the Government and without its issuance, the judgment and decree granted in favour of the Applicant would remain ineffective, reducing the Applicant to a pious explorer in the judicial process.
9. Section 25 of the Government Proceedings Act prohibits execution against the Government and therefore the only avenue available is vide mandamus which order can only issue to compel performance of a public duty to remedy the defects of justice for the ends of justice to be done, where there is such failure to perform a public duty and, in this case, to satisfy decree issued by the court in the primary suit HCCCOM 502 of 2016 in favour of the Applicant. In **Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza [2012] eKLR**, the Court stated:

***“An order of mandamus is a command issued by the High Court to compel the performance of a public duty which is imposed by statute, where the person or body has failed to perform that duty. Once a judgment is entered against the Government and a certificate of order is issued, the obligation to pay becomes a statutory duty.”***

10. Since the Applicant has no alternative remedy to enforce his lawfully obtained judgment against the respondents, with the judgment debtor being the County Government of Nairobi, I am persuaded that the applicant merits the orders sought and as to when the respondents will settle decree, they can engage into negotiations with the applicant, which is another process acceptable in law. For now, the court cannot deny the applicant orders of mandamus based on allegations of insufficient budget line of the respondent.

11. In the end, I am satisfied that the applicant is entitled to the relief sought, I issue judicial review order of mandamus compelling the 1<sup>st</sup> respondent accounting officer, Nairobi City County Government to settle decree and certificate of order against the Government as rendered in HCCCOM 502 of 2016.

12. The applicant shall have costs of this application which is formal in nature and the said costs are hereby assessed at Kshs 50,000 payable

together with the outstanding decretal sum as per the judgment rendered on 20<sup>th</sup> November, 2019, decree issued on 15<sup>th</sup> November 2023 and certificate of order against the government issued on 24<sup>th</sup> March, 2025 all in HCCOM 502 of 2016 and served upon the respondents on 17<sup>th</sup> March 2025 as acknowledged on the demand letter dated 16<sup>th</sup> April, 2025.

13.I however order that the interest accrued and payable shall be accurately calculated and paid only in accordance with the law.

14.I so order.

**Dated, Signed and Delivered at Nairobi this 3<sup>rd</sup> Day of March, 2026**

**R.E. ABURILI  
JUDGE**