



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**MISC APPLN NO. E130 OF 2023**

**BETWEEN**

**REPUBLIC  
APPLICANT**

**VERSUS**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER,  
FINANCE & ECONOMIC AFFAIRS,  
NAIROBI CITY COUNTY ..... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY SECRETARY,  
NAIROBI CITY COUNTY ..... 2<sup>ND</sup>  
RESPONDENT**

**CHIEF OFFICER, FINANCE/ COUNTY TREASURER,  
NAIROBI CITY COUNTY ..... 3<sup>RD</sup>  
RESPONDENT**

**PROF. TOM OJIENDA & ASSOCIATES ..... *EX- PARTE*  
APPLICANT**

**JUDGMENT**

**Background and Introduction**

**1.** This Court is called upon to determine whether an order of Mandamus should issue compelling the

Respondents to pay the decretal sum of Kshs. 5,539,749.80 plus interest at the rate of 14% until payment in full, arising from an Advocate-Client Bill of Costs taxed and subsequently reduced into a decree of this Court.

- 2.** The Applicant contends that they filed a Bill of Costs dated 29<sup>th</sup> March 2023 against Nairobi City County. The Bill was duly taxed, and a Ruling was delivered on 31<sup>st</sup> January 2024, culminating in the issuance of a Certificate of Taxation for the sum of Kshs. 5,539,749.80 together with interest at 14% per annum until payment in full. Subsequently, judgment on the Certificate of Costs was entered on 11<sup>th</sup> July 2024, followed by the issuance of a decree on 24<sup>th</sup> July 2024 and the extraction of a Certificate of Order on 26<sup>th</sup> July 2024.
- 3.** It is further contended that despite service of the Certificate of Order against Government and repeated demands, the Respondents have failed to settle the decretal sum, necessitating this application.

4. The application is opposed through the affidavit of **Asha Abdi, Chief Officer-Finance Nairobi County**. The Respondents pray that this Court takes judicial notice of the fact that the City County of Nairobi is a public institution governed by the provisions of the **Public Finance Management Act, 2012 (PFMA)**, which regulates all matters concerning the management of public finances and expenditure. They contend that, under Part IV of the PFMA, any financial commitments or payments including the settlement of court decrees must be subjected to the elaborate budgetary process established by law.
  
5. The Respondents confirm that the Certificate of Order dated 26<sup>th</sup> July 2024 was duly served upon them but contend that the same can only be paid after the ascertainment of how much is allocated for the fiscal year to cater for such payments. They contend that the County cannot commit funds unless budgeted for and approved by the Nairobi City County Assembly. Finally, the Respondents contend that the Applicants have not complied with the requirements of **Section 21 of the Government Proceedings Act (GPA)** and that

the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are not individually liable under any Order for payment by Government.

## **Analysis and Determination**

- 6.** I have considered the application, response as well as the written submissions of both parties. The Respondents' first contention concerns whether the 1<sup>st</sup> to 3<sup>rd</sup> Respondents can be held liable under the Certificate of Order issued against the Nairobi City County. In addressing this issue, the Applicants have drawn the Court's attention to the decision in **Republic V County Secretary, Nairobi City County & 3 Others; Koceyo & Co. Advocates, (Ex Parte) [2020] KEHC 8751 (KLR)**. In that case, the Court considered a similar argument and determined that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, who occupy roles equivalent to those named in the present application, bear joint responsibility for satisfying court orders and decrees relating to monetary obligations of the Nairobi City County, by virtue of their official duties and functions.
- 7.** This proposition is supported in other decisions including **Soloh Worldwide Inter-enterprises V**

**County Secretary Nairobi County and Another, (2016) eKLR**, where the Court emphasized that execution proceedings against a government or public authority under the GPA can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body.

8. My reading of the application before me as well as the submissions from the Applicants is that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are sued not in their personal capacities. Their liability arises from the responsibilities attached to those positions, and I am satisfied on the strength of the decisions that I have referred to, that this approach is both legally sound and firmly grounded in established principles of law.
9. I have taken note that the Respondents have not denied the claim raised in the Certificate of Order. Their position rests instead on the assertion that the County Government is unable to satisfy the claims due to insufficient budgetary allocations and the bureaucracies of budgetary preparation. In **Republic V Principal Secretary, Ministry of**

**Defence & Another ex parte David Gitau Njau & 9 Others**, this Court (Odunga J as he then was), emphasized that the settlement of decretal sums by the Government and its agencies is not contingent upon the availability of funds. Put differently, the learned Judge held, and I concur, that financial constraints may influence the manner in which a decree is satisfied, but they cannot serve as a justification for refusing to compel a Respondent to discharge a decretal obligation lawfully imposed by the Court.

- 10.** In light of the foregoing, the sole prerequisite for the satisfaction or enforcement of monetary decrees against the Government is as set out under **Section 21(1) and (2) of the GPA**. From a review of the record I am satisfied that the ex parte Applicant has duly complied with these statutory requirements, culminating in the issuance of a Certificate of Order against the Government. No evidence has been presented to demonstrate that the said Certificate has been settled or appealed against.
- 11.** That being the case, **Section 21(3) of the GPA** places a statutory obligation on the accounting

officer to settle the amounts stated in the Certificate of Order, inclusive of any accrued interest. In **Republic V Permanent Secretary, Ministry of State for Provincial Administration & Internal Security ex parte Fredrick Manoah Egunza, [2012] eKLR**, the Court affirmed that upon service of the certificate, the accounting officer is bound to make payment. This obligation is absolute and does not depend on the availability of budgetary allocation or the approval of Parliament.

- 12.** Put differently, Government liability crystallizes upon the entry of judgment and the issuance of a Certificate of Order, and the duty to satisfy that liability is immediate and unqualified. Any contrary position would render decrees against the government illusory, thereby undermining the constitutional guarantee of access to justice under **Article 48**. The Constitution does not envisage a situation where successful litigants are left holding barren decrees, dependent upon the vagaries of fiscal cycles or bureaucratic processes.

## **Disposition**

**13.** For these reasons the application dated 23<sup>rd</sup> June 2025 is therefore allowed with the result that:

- i. An order of mandamus is hereby issued compelling the Respondents to pay to the Applicant forthwith and without delay, the decretal sum of Kshs.5,539,749.80 together with accrued interetes on the decretal sum from 22<sup>nd</sup> September 2023 up to 26<sup>th</sup> July 2023 at 14% per annum (309 days), equivalent to Kshs 869,808/=, making a total amount of Kshs 6,409,557.86.***
- ii. That in default of payment under prayer 1 the applicant be at liberty to take out a Notice to Show Cause why the Respondents should not be committed to civil jail for contempt of Court Orders.***
- iii. Each party shall bear their costs of the application.***

**DATED, SIGNED AND DELIVERED IN NAIROBI  
THIS 6<sup>TH</sup> DAY OF MARCH 2026.**

**F. MUGAMBI**  
**JUDGE**

**Delivered in presence of:**

Ms Ndinya for the applicant

Court Assistant: Lillian

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