



**Nthiga & another v Principal Secretary, Ministry of Interior and Co-ordination of Government & another (Miscellaneous Civil Application E006 of 2020) [2026] KEHC 2331 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2331 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS CIVIL APPLICATION E006 OF 2020  
RM MWONGO, J  
FEBRUARY 25, 2026**

**BETWEEN**

**ELIJAH KITHAKA NTHIGA ..... 1<sup>ST</sup> APPLICANT**

**SOSPETER MUTURI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND CO-ORDINATION OF GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**The Application**

1. The applicants filed notice of motion dated 20<sup>th</sup> May 2024 seeking the following orders:
  - a. That the current serving Principal Secretary, Ministry of Interior and Co-ordination of national Government be punished for contempt of court; and
  - b. That the costs for this application be paid by the respondent.
2. The applicants' case is that after they were awarded costs in this suit on 25<sup>th</sup> July 2023, to date, the 1<sup>st</sup> respondent has unjustifiably failed, refused and or neglected to pay such taxed costs. That the respondents were privy to all the orders of the court made in this matter and the specific certificate of order was served upon them. They stated that the orders are necessary to ensure that the orders of the court are not made in vain. The applicants sent a letter dated 05<sup>th</sup> December 2023 to the 1<sup>st</sup> respondent informing him of the intention to cite its agents. Even though the letter was acknowledged as received, no action has been taken towards payment of the taxed costs.



## Responses and Submissions

3. The respondents did not oppose the application. The applicants stated that they would not be filing written submissions but would rely on the application and the supporting affidavit thereof. The respondents did not file any written submissions.

## Issue for Determination

4. The issue for determination is whether the application has merit.

## Analysis and Determination

5. Section 21 of the *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.
  - (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
  - (3) 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.
  - (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
  - (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.” [Emphasis added]
6. The 1<sup>st</sup> respondent is a public officer who is represented by the 2<sup>nd</sup> respondent, who received service of the relevant Certificate of Order in accordance with Section 21(2) of the Act cited hereinabove. The 1<sup>st</sup>



respondent was ordered to pay costs of the suit in the sum of Kshs.169,936/= to the applicants but this has not been done. However, before resorting to hold the 1<sup>st</sup> respondent in contempt, the applicants ought to have sought judicial review orders compelling the 1<sup>st</sup> respondent to pay the ordered sum. This is the position taken by Courts in this Country.

7. Superior Courts in Kenya have held that the mode of execution against the government is through seeking orders of mandamus. The Court of Appeal in the case of Five Star Agencies Ltd & another v National Land Commission & 2 others [2024] KECA 439 (KLR) stated, where the court was faced with the question of, inter alia, whether the applicant could execute against the respondent, a public body, by way of garnishee proceedings, that:

“ 88. Having stated the foregoing, and since decrees will from time to time be issued against the Government, what then is the option available to a party who holds a decree against the Government? The only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus to compel the Government to settle the decree in question. This position has been pronounced in several decisions of the High Court such Republic v Attorney General & Another Exparte James Alfred Koroso [2013] eKLR wherein Odunga, J (as he then was), held thus:

“In the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realized. Unless something is done, he will forever be left babysitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of *the Constitution* which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers...”

89. Similarly, in Republic v Attorney General & Another ex- parte Stephen Wanyee Roki [2016] eKLR, it was held thus:

“That being the position, execution under the Civil Procedure Rules is barred in so far as the County Governments are concerned. What then is the option available to a party in whose favour judgement has been decreed? ...It follows that the only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus compelling the County Government to settle the decree in question...” [Emphasis added]

90. In Republic v County Secretary, Nairobi City County & Another ex parte Wachira Nderitu Ngugi & Co. Advocates [2016] eKLR, the court held a similar view thus:

“...the law as it stands presently is that no execution can be levied against the property of a Government in settlement of a decree in a civil case and hence the only recourse available to a decree holder is to apply for mandamus against the Chief Officer of the



Government, and upon obtaining such orders, the decree holder will be at liberty to apply for committal of the Chief Officer if the order of mandamus is not complied with.” [Emphasis added]

91. It is clear beyond any peradventure that the procedure to be followed in execution against the government is to seek an order of mandamus to compel the relevant person in the Government to settle the decree in question. This finding, in our view, readily answers the question posited by Five Star whether its right to prompt compensation and equality under the relevant provisions of *the Constitution* and the *Land Act* can exist in the absence of a legal remedy.

92. The scope of an order of mandamus was discussed by this Court in the case of *Kenya National Examination Council v 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.”

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.” (emphasis added)

8. The applicants have produced as evidence, warrants of attachment against the 1<sup>st</sup> respondent in respect of the decretal amount. This flies in the face of section 21(4) of the *Government Proceedings Act* which forbids execution or attachment or process in the nature thereof against the government.

### **Conclusions and Disposition**

9. As discussed herein, since no execution can be levied against the government, the usual process is for a party seeking execution to instead apply for a judicial review order of mandamus to compel



the payment by the Government. The government may be compelled to pay the taxed costs through judicial review proceedings following issuance of an order of mandamus.

10. In the absence of judicial review proceedings (or proof of such), it is inept for the applicants to claim that the 1<sup>st</sup> respondent has refused to pay the taxed costs. It would, therefore, be unconscionable to seek orders holding the 1<sup>st</sup> respondent in contempt before proper execution has actually been attempted.
11. Accordingly, the application lacks merit, and is hereby dismissed with no order as to costs.
12. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Gachoki holding brief for E. Njiru for Applicants

Kiongo for AG – Respondent

Francis Munyao - Court Assistant

