



Republic v Medical Superintendent and Nursing Officer in Charge, Nyahururu District Hospital & 2 others; Karimi (Suing as the Legal Representative of the Estate of Eunice Wangui Waithaka) (Ex parte Applicant) (Miscellaneous Application E281 of 2023) [2026] KEHC 2347 (KLR) (25 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E281 OF 2023
PN GICHOHI, J
FEBRUARY 25, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

**MEDICAL SUPERINTENDENT AND NURSING OFFICER IN CHARGE,
NYAHURURU DISTRICT HOSPITAL 1ST RESPONDENT**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF
LAIKIPIA 2ND RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF
FINANCE COUNTY GOVERNMENT OF LAIKIPIA 3RD RESPONDENT**

AND

**JOSEPH MURIITHI KARIMI (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF EUNICE WANGUI WAITHAKA) EX PARTE APPLICANT**

JUDGMENT

1. Pursuant to leave granted by this Court to the Ex- Parte Applicant on 4th December, 2024, the Applicant filed the substantive Notice of Motion dated 17th December, 2024 and expressed under Order 53 Rule 1 of the Civil Procedure Rules, 2010, Sections 8(2) and 9 of the [Law Reform Act](#) and Section 21 of [Government Proceedings Act](#), seeking for Orders;-

1. That an Order of mandamus directed to the 2nd and 3rd Respondents compelling them to pay the sums specified in the Certificate of Order against the County Government of Laikipia



issued on the 13th April, 2023 following entry of judgment against the 1st Respondent in Nakuru Chief Magistrate's Court Civil Case No. 1138 OF 2016 on 26th February, 2021.

2. The costs of this Application be provided for.
2. The Application is premised on the grounds on the face of the Notice of Motion and supported by the Affidavit of the Ex -Parte Applicant, sworn on even date. He states that he filed a suit against the 1st Respondent in the Nakuru Chief Magistrate's Court being Nakuru Chief Magistrate's Court Civil Case No. 1138 Of 2016 in which he prayed for judgment against the 1st Respondent for ;
 - a. General damages under the Law Reform Act Cap 26 and the Fatal Accidents Act Cap 32 Laws of Kenya.
 - b. Special damages of Kshs. 454,550.
 - c. Damages for loss of consortium.
 - d. Costs of this suit,.
 - e. Interest on (a), (b), (c) and (d) above at court rates until payment in full and any other or further relief that the Court may deem fit and just to grant.
3. He states that in that suit, the Honourable Attorney General entered appearance for the 1st Respondent vide a Memorandum of Appearance filed on 29th November, 2016 and defended the suit. The matter was fully heard and determined by Hon. L. Arika(CM) and judgment entered on 26th February, 2021 in favour of the Ex-Parte Applicant.
4. Dissatisfied with that Judgement, the 1st Respondent instituted an Appeal against the judgment vide a Notice of Appeal filed on 10th March, 2021 and a Memorandum of Appeal dated 8th March, 2021.
5. He state that in the intervening period, the Ex- Parte Applicant extracted a decree and certificate of costs on 22nd March, 2023 as well as a Certificate of Order Against the Government on 13th April, 2023 and thereafter served the same on the Office of the Attorney General on 17th April, 2023. On 18th April, 2023, the 1st Respondent's Appeal was dismissed for want of prosecution.
6. He states that since the 1st Respondent hospital is one of the functions and entities devolved to the County Government of Laikipia under Part 2, Paragraph 2 of the Fourth Schedule of the Constitution of Kenya, 2010. The decretal sum ought to be paid by the 2nd and 3rd Respondents who are the accounting officers of the County Government of Laikipia charged with a duty to satisfy orders against the said County Government under the Government Proceedings Act.
7. That despite service of the Certificate of Order against Government, decree and certificate of costs upon the Office of the Attorney General on 17th April, 2023, there has been wilful and deliberate non-compliance with the Court's judgment by the 2nd and 3rd Respondents.
8. It is contended that the conduct of the 2nd and 3rd Respondents clearly show that they are not willing to satisfy the decree of the court and certificate of costs issued on 22nd March, 2023 unless they are compelled by this Honourable Court . This caused the Ex-Parte Applicant herein to institute these proceedings on 24th August, 2023, vide an Ex-Parte Chamber Summons under Certificate of Urgency dated 7th August, 2023 seeking for leave to file the current substantive Judicial Review Orders.
9. He states that Leave was granted to him on 4th December, 2024 and therefore, that the continued wilful and deliberate non-compliance with the Court's judgment is at the expense of the Ex Parte Applicant's



right to access the fruits of his litigation and at the risk of mounting interest on the Decretal award to be borne by the exchequer.

10. He states that he is statutorily barred from commencing execution proceedings against the County Government of Laikipia and the only remedy available to him is to seek an order of mandamus against the 2nd and 3rd Respondents to settle the Decretal sum.
11. It is his case that unless an order of mandamus is granted as prayed, the Ex-Parte Applicant stands to suffer greatly when he has a money decree in his favour and he is entitled to access the fruits of his litigation.
12. From the foregoing, the Ex -Parte Applicant argues that he has established a prima facie case that warrants this Court to issue an order of Mandamus against the 2nd and 3rd Respondents to settle the Decretal sum. He emphasised that the application has been brought timeously and therefore, it is in the interest of justice that the same be allowed as prayed.
13. The Respondents did not file any responses until when the matter was schedule for Judgement that they sought to arrest the Judgement and file their responses. That in the Ruling delivered on 28th July, 2025, this Court dismissed the Respondents' application to arrest judgment, finding that the County Government of Laikipia was properly served with the substantive Notice of Motion through the office of the CEC for Finance and the County Secretary.
14. The Applicant states that this Court rejected the Respondents' argument that service was invalid because it was not effected directly on the County Attorney, ruling that the CEC for Finance is the statutory Accounting Officer responsible for satisfying court decrees and that internal failures to transmit pleadings between County offices cannot be used to the prejudice of the Applicant.

Ex -Parte Applicant's Submissions

15. The Ex- Parte Applicant focussed on two issues for determination:-
 1. Whether he is entitled to the orders sought.
 2. Who should bear the costs.
16. He submits that he is entitlement to the orders arguing that a successful party is entitled to the fruits of their judgment. He relies on Section 21 of the [Government Proceedings Act](#) in regard to the procedure for mandamus; Section 21(1) on the issuance of a Certificate in the prescribed form after 21 days from the date of a Court Order against the government; and the mandatory provision under Sections 21(3)& (4) that the Accounting Officer shall pay to the person entitled or his advocate the amount appearing by certificate to be due to him together with interest.
17. In addition, he submits that the law provides that no execution or attachment shall be issued against the government. In support of this, the Applicant cites Republic vs Attorney General & Another Ex-Parte Stephen Wanyee Roki [2016] eKLR, where Odunga J. (As he then was) held:-

“Although the provisions of the [Government Proceedings Act](#) do not expressly refer to county Governments, section 7 of the sixth Schedule to [the Constitution](#)(Transitional And Consequential Provisions) provides that:- All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with [the constitution](#). 21 It follows that the provisions of the [Government Proceedings Act](#), a legal instrument enacted before the effective date, must be construed with the alterations, adaptations,



qualifications and exceptions necessary to bring it into conformity with *the Constitution*. One such construction would be the reality that Government is now at two levels and Article 189(1) (a) of *the constitution* requires that the Constitutional status and institutions of government at both the National and County levels be respected. In my view such respect cannot be achieved unless both levels of Government are treated equally and one such area would be with respect to execution proceedings."

18. It is his submissions that execution against a government can only be against the accounting officer who has a statutory duty to satisfy the judgment. He cites Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012]) eKLR, where Githua J. held:

"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 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(10) 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 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."

19. The Ex- Parte Applicant submits that the roles of the County Secretary and the County Executive Committee Member (CECM) for Finance are established under the County Government Act and *Public Finance Management Act* respectively. That the 1st Respondent Hospital is a function devolved to the County Government of Laikipia and therefore, the 2nd and 3rd Respondents are jointly responsible for satisfying Court Orders for money owed by the hospital.
20. He reiterates that he has satisfied all conditions for an Order of Mandamus for the decretal sum of Kshs. 21,190,595 and the costs of Kshs. 714,826.
21. On the costs of this application, he submits that costs are discretionary and typically follow the event. In support of this, reliance was placed on the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant vs Ihururu Dairy Farmers Co-operative Society Ltd Judiciary Review Application No 6 of 2014, where the court held:-

"The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is the discretion of cost is that costs follow the event.... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case".

Determination

22. After considering the Notice of Motion, Supporting Affidavit, together with the annexures and the submissions filed by the Ex-Parte Applicant, the only issue for determination hereon is whether the



Applicant is entitled to an Order of Mandamus to compel the Respondents to pay the decretal sum under Section 21 of the Government Proceedings Act. Section 21 of the Government Proceedings Act provides that:-

“(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.”

23. The circumstances under which judicial review order of mandamus is issued was discussed in the case *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] KECA 58 (KLR), where the Court of Appeal cited with approval, Halsbury’s Law of England, 4th Edition. Vol. 7 p. 111 para 89 thus:-

“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. 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.”(Emphasis added).

24. In this case, Judgement was delivered on 26th February, 2021 for the cumulative award of Kshs 16,340,550 together with costs and interest. A Certificate of Order against the Government was issued on 13rd April, 2023 for the sum of Kshs 21, 190, 595. The same was served upon the Respondents as evidenced by the various Affidavits of Service on record. Despite service of this Decree, Certificate of costs and Certificate of Order against Government, the decretal sum remained unpaid to date.
25. The law is clear that once a 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.
26. From the material provided in this matter, this Court is satisfied that the Ex-Parte Applicant has complied with all the statutory conditions in regard to subject matter and therefore, find that the Ex-Parte Applicant has discharged the burden of proof required by securing a valid decree, obtaining a Certificate of Order against the Government, and effecting proper service upon the Respondent’s Accounting Officer.
27. Furthermore, with the Respondents’ Appeal being High Court Civil Appeal No. 22A of 2021 having been summarily dismissed on the 18th of April, 2023, by Muhochi J, for want of prosecution, any purported stay or legal hurdle has been extinguished. And therefore, the payment of the decretal sum is due.
28. Consequently, the Notice of Motion dated 17th December, 2024, is merited and is allowed in the following terms;-
 1. An Order of Mandamus is hereby issued, directed to the 2nd and 3rd Respondents, compelling them to pay the sums specified in the Certificate of Order against the County Government of Laikipia issued on the 13th April, 2023 following entry of Judgement against the 1st Respondent in Nakuru Chief Magistrate Court Civil Case No. 1138 of 2016 on 26th February, 2021.
 2. Costs of these proceedings are awarded to the Applicant .

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF FEBRUARY, 2026.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Muramba holding brief for Mr. Mukira for the Applicant

N/A for Respondents

Erickson, Court Assistant

