

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
JUDICIAL REVIEW NO. E001 OF 2026
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR AN ORDER OF MANDAMUS
AND
IN THE MATTER OF THE COUNTY GOVERNMENT OF GARISSA
AND
IN THE MATTER OF HIGH COURT CIVIL SUIT NO. 3 OF 2019
REPUBLIC.....
.....APPLICANT

VS

THE COUNTY GOVERNMENT OF GARISSA.....
RESPONDENT
VISION POINT.....EX PARTE
APPLICANT

RULING

1. The ex parte applicant herein filed an application by way of a Notice of Motion dated 21.01.2026 seeking Orders:
 - i. **An order of mandamus do issue to compel the respondent to pay the ex parte applicant decretal sum inclusive of interest and taxed costs all amounting to Kes. 60,584,193.16 which it refused to pay which claim arose out of the decree issued in HCCC No. 3 of 2019 - Garissa.**
 - ii. **Costs of the proceedings be provided.**

2. The application is founded on the grounds set out on the face of it, a Statement of facts dated 14.01.2026 and verifying affidavit sworn by Abdulhakim Hamdi on 14.01.2026.
3. The ex parte applicant averred that it filed Garrissa HCCC No. 3 of 2019, against the respondent seeking payment for the work and services rendered to the respondent at its request in the year 2014. That on 25.02.2019, judgment was entered against the respondent for Kes. 32,544,043.16 plus interest and taxed costs all amounting to Kes. 60,584,193.16 which amount has not been paid to date and continues to accrue interest from 01.01.2026 at the rate of 14% p.a. till full payment.
4. That the respondent was served with notices on 02.10.2020 and 09.12.2025. That despite being fully aware of the decree and certificate of taxed costs, the respondent has failed to obey the court decree and orders. That there has been no payment made by the respondent to the applicant's company to date.
5. The respondent did not participate in the hearing of the application herein despite being served. Consequently, the applicant urged the court to allow the application as it was not opposed. Counsel basically adopted the particulars of the application and the affidavit in support.
6. Upon analysing the application, the issue that germinates for determination is; *whether the ex parte applicant has established grounds for this Court to issue an order of mandamus.*

7. It is a settled principle of law that an order of mandamus may be issued to compel a person or body of persons who has/have failed to perform a public duty and where such failure has caused detriment to a party with a legal right to expect that duty to be performed. To that extent, the writ of mandamus is a judicial command requiring the performance of a specified duty which has not been performed.

8. Mandamus *order* is therefore a tool employed to compel the performance of a public duty. It is also employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way, nor to direct the retraction or reversal of action already taken in the exercise of either. [**See Wilbur vs. United States ex rel. Kadrie, 281 U.S. 206, 218 (1930)**].

9. The test for mandamus was set out in the case of **Dragan vs Canada (Minister of Citizenship and Immigration) 2003 FCT 211 (CanLII), [2003] 4 F.C. 189 (T.D.), aff'd 2003 FCA 233 (CanLII), 2003 FCA 233**) as constituting eight factors which must be present for the writ to issue:-
 - i. **There must be a public legal duty to act;**
 - ii. **The duty must be owed to the Applicants;**
 - iii. **There must be a clear right to the performance of that duty, meaning that:**
 - a. **The Applicants have satisfied all conditions precedent; and**
 - b. **There must have been:**

- I. **A prior demand for performance;**
- II. **A reasonable time to comply with the demand, unless there was outright refusal; and**
- III. **An express refusal, or an implied refusal through unreasonable delay;**
- iv. **No other adequate remedy is available to the Applicants;**
- v. **The Order sought must be of some practical value or effect;**
- vi. **There is no equitable bar to the relief sought;**
- vii. **On a balance of convenience, mandamus should lie.**

10. The court observes that the respondent has a public duty to act, and that this duty is owed to the ex parte applicant.

11. Under Section 21(1) and (2) of the Government Proceedings Act, any person or body seeking mandamus order for recovery of a debt against government, he or she is under obligation to serve order against government, degree and certificate of taxation of costs. For avoidance of doubt, I wish to reproduce the said provision as hereunder;

“ Satisfaction of orders against the Government

(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”.

12. It therefore follows that where a decree for the payment of money or costs has been issued against the Government in favour of a litigant, and the same remains unsatisfied, it 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. [See **Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) eKLR**].

13. In the instant case, the ex parte application has served the requisite documents upon the respondent a fact that was not challenged as no response was filed. See **Mutua & another (Suing as the Legal Representatives and Administrators of**

the Estate of Cosmus Mutuku Mutua) v Attorney General & another (Miscellaneous Application E018 of 2023) [2023] KEHC 20729 (KLR) (Judicial Review) (20 July 2023) (Judgment) where the court emphasized the importance of service of the order against government and certificate of taxation of costs as follows;

“From the record filed before this court, there is evidence of a Decree issued on February 10, 2023; and Certificate of Order against the Government was obtained as its dated February 16, 2023. Further, there it is evident that the Applicant has served the 1st Respondent with the same, as there is acknowledgment of receipt by the 1st Respondent by their stamp markings”

14. Having held that there is a judgment in place against the respondent and a decree duly extracted and served together with the order against government and certificate of taxation of costs, and there being no objection filed against the application, I am left with no option but to allow the application as prayed. Costs awarded in favour of the the exparte applicant.

Dated, signed and delivered virtually this 17th day of March 2026

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J.N.ONYIEGO
JUDGE