

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E364 OF 2025

REPUBLICAPPLICANT

-VERSUS-

**THE CHIEF EXECUTIVE OFFICER OF THE INDEPENDENT
ELECTORAL AND BOUNDARIES COMMISSION... 1ST RESPONDENT**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION 2ND RESPONDENT**

AND

SOLOH WORLWIDE ENTERPRISES.....EX PARTE APPLICANT

JUDGMENT

1. The Notice of Motion dated 20th November 2025 is predicated on Order 53 Rule 1 (1), Rule 3 (1) and Rule 4 (1) of the Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of the Civil Procedure Act. The Application was filed pursuant to this Court granting leave on 10th November 2025 in High Court Judicial Review No. E348 of 2025.

2. The ex-parte Applicant seeks the following orders:

(1) THAT an Order of Mandamus be and is hereby issued to compel the Respondents herein to pay the ex-parte Applicant the sum of Kenya Shillings Five Million, Eight Hundred and Forty-Three

Thousand, Eight Hundred and Forty-Nine (Kshs. 5,843,849/=), being the principal amount of Kshs. 2,900,000/=, plus taxed costs of Kshs. 237,800/= and interests on the principal amount at 12% per annum from 6th August 2017 to 27th May 2025, and interest on taxed costs at 12% per annum calculated from 15th December 2023 to 27th May 2025 in Milimani CMCC E2587 of 2022 Soloh Worldwide Inter-Enterprises Limited vs. Independent Electoral Boundaries Commission together with further interest on Kshs. 5,843,849/= with effect from 28th May 2025, until payment in full.

(2) THAT this Honourable Court be pleased to give such further orders and directions as it may deem fit and just to grant.

(3) THAT the costs of this Application be borne by the Respondents.

3. The Application is supported by the Grounds enlisted in the Application and the verifying affidavit of Solomon Gitundu sworn on 6th November 2025. The background of this matter is set out in the Applicant's statutory statement also dated on 6th November 2025.
4. The ex-parte Applicant pleaded that they instituted a suit in *Milimani CMCC E2587 on 2022, Soloh Worldwide Inter-Enterprises Limited vs. Independent Electoral Boundaries Commission* on 12th May 2022 and obtained judgment in their favour for the sum of Kshs. 2,900,000/= from which a Decree in the sum of Kshs. 5,273,980/= was extracted and costs computed at Kshs. 237,800/=, all amounting to Kshs. 5,511,780/=. The ex-

parte Applicant pleaded that the Certificate of Order against the Government was issued on 17th July 2024 for Kshs. 5,843,849/= with interests and costs calculated until 27th May 2025, which judgment was duly served upon the Respondents on 12th August 2025 and delivered on 13th August 2025.

5. The ex-parte Applicant contends that the Respondents have neglected, declined, refused and/or ignored to settle the said amount which continues to accrue interests at 12% from 28th May 2025 until payment in full and avers that it would be in the interest of justice for the Respondents to be compelled to settle the same. It contends that the Respondents were the authorized accounting agents of the Commission and had a public duty to ensure that the Commission fulfilled its legal obligations. Further, that it would suffer prejudice if the orders sought are not granted.
6. The Respondents filed a joint response vide Replying Affidavit dated 26th January 2026, sworn by Chrispine Owiye, the Director of Legal Services at the IEBC. The deponent concedes on behalf of the Commission that judgment was indeed entered in favour of the ex-parte Applicant on 15th December 2023 in ***Milimani CMCC E2587 on 2022 Soloh Worldwide Inter-Enterprises Limited vs. Independent Electoral Boundaries Commission***, and that on 2nd April 2024, they were served with a copy of the Decree and the Certificate of Costs dated 26th March 2024 for the total sum of Kshs. 5,511,780/= That on 13th August 2025, the Applicant served

them with a Decree of Certificate of Order against Government dated 17th July 2025 totalling Kshs. 5,843,849.

7. He deposes that the Respondents relied on funds from the National Treasury to meet their budgeted expenses which are pre-approved by the National Treasury and since they had initially disputed the claim by the ex-parte Applicant, they had not budgeted from the amounts claimed in the suit. He averred that they, however, communicated the decretal sum following judgment of the court to National Treasury, which was yet to allocate them funds to settle the judgment debt.
8. Mr. Owiye further deposes that the National Treasury under Gazette Notice 13355 of 30th September 2023 established the Pending Bills Verification Committee to verify public pending bills to which the Respondents submitted the Decree in this matter for verification, and were yet to obtain a Report. It was their case that they acted promptly and in good faith and were making efforts to settle the decree and that since they were not in control of the funding process by Treasury, the non-payment was not arbitrary and the Court should grant them reasonable time to pursue the funds and settle the award.
9. The respondents urge this Court to decline to issue the order of Mandamus against them because the Applicant had not submitted any evidence before the court indicating that there was an inadvertent delay occasioned by the Respondents.

10. The Notice of motion was argued orally. Ms. Njeri, Counsel for the ex-parte Applicant submitted that the applicant had complied with Section 21 of the Government Proceedings Act which imposes a statutory duty on the accounting officer, the 1st Respondent, to comply with court orders and settle a decree once a Certificate of Order is served.
11. counsel for the applicant submitted on the issue of budget allocation arguing that payment of government liabilities was not conditional on budget allocation as they were expected to make contingency provision for payment of liabilities. She relied on the case of **R vs. Permanent Secretary Ministry of State of Provincial Administration and Internal Security ex-parte Fredrick Manoah Egunza (2012) eKLR.**
12. On behalf of the Respondents, Mr. Shikanga submitted that the Respondents had made several efforts to communicate with the Treasury to give them funds to settle decrees which were close to Kshs. 4.3 billion, but that the National Treasury had been unwilling to advance the said funds which the respondents still awaited. He urged this Court to decline to issue the orders of Mandamus in order to enable the parties enter into a payment plan. He requested the Court to grant the respondents two months to engage with the Applicant.

Analysis and issues for Determination

13. Having considered the Notice of Motion and supporting affidavit together with annexed documents and the response by the respondents as well as the oral submissions by the respective parties' counsel, the only issue for determination is ***whether the Application is merited and whether the prayers sought ought to issue.***
14. The applicant seeks mandamus order to compel the respondents to settle decree and certificate of order against the government issued in Milimani CMCC 2587 of 2022 between the same parties hereto. In **Republic vs. Principal Secretary, Ministry of Internal Security & Another, Ex-Parte Schon Noorani & Another [2018] KEHC 9433 (KLR)**, the court outlined the threshold for Mandamus as follows:
- “29. Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty, and it is a remedy that controls procedural delays. The test for mandamus is set out in Apotex Inc. vs. Canada (Attorney General),[23] and, was also discussed in Dragan vs. Canada (Minister of Citizenship and Immigration).[24] The eight factors that must be present for the writ to issue are:-***
- (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:
 - 1. A prior demand for performance*
 - 2. A reasonable time to comply with the demand unless there was outright refusal; and*
 - 3. 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”*

15. Further, in **Republic vs. Nairobi City County Government Ex parte Crown Motors Group Limited [2021] KEHC 889 (KLR)**, the Court pronounced itself on when the court may issue mandamus thus:

“14. An order of mandamus will therefore issue when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed. In addition, execution proceedings against a government or public authority under the Government Proceedings

Act 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.”

16. In this case, it is undisputed that the Applicant obtained judgment in its favour, in ***Milimani CMCC E2587 on 2022 Soloh Worldwide Inter-Enterprises Limited vs. Independent Electoral Boundaries Commission***, and subsequently a Decree was extracted and Certificate of Order against the Government issued on 17th July 2025.
17. It is also trite that an order of Mandamus can only issue against an entity which is vested with a statutory or legal obligation and is expected to perform a certain duty. In this case, the 1st Respondent who is the accounting officer for the 2nd Respondent was under an obligation to ensure that the judgment debt owing to the Applicant was fully settled. The respondents contend that the funds required to settle the decretal sum, costs and interests which had now accrued to Kshs. 5,843,849/= and was continuing to accrue interest would only be released upon approval by the National Treasury, which is the entity mandated with the process of funding Government entities such as the Commission herein.
18. The respondents also contend that there is no evidence adduced by the ex-parte Applicant to demonstrate that the non-payment was occasioned by any fault on the part of the 1st Respondent.

19. The contentions by the respondents notwithstanding, it is not in dispute that the Respondents have a statutory and legal obligation under Section 21 of the Government Proceedings Act to settle the decree of the ex-parte Applicant who is a rightful decree holder and ought not to be unduly prejudiced by being denied the fruits of his judgment.

20. Furthermore, the applicant has no other legal remedy against the respondents for enforcing decree against the 2nd respondent commission whose assets are protected from attachment and sale as would be the case for private entities or persons. Section 17 (2) of the IEBC Act provides that:

(2) Any legal proceedings for execution of judgments against the Commission shall be subject to the Government Proceedings Act, (Cap. 40.)

21. Section 25 of the Government Proceedings Act protects assets of the Government from being attached and sold to recover a debt. The section provides:

25. Exclusion of proceedings in rem against the Government

(1) Nothing in this Act shall authorise proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of any Government ship or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on any such ship, aircraft, cargo or other property.

22. Accordingly, I find that the Application dated 20th November 2025 seeking the orders of Mandamus against the respondents is merited and is hereby allowed.
23. Judicial Review Order of Mandamus is hereby issued compelling the Respondents to settle the Decree and Certificate of Order against the Government and Certificate for Order for costs issued in *Milimani CMCC E2587 on 2022 Soloh Worldwide Inter-Enterprises Limited vs. Independent Electoral Boundaries Commission.*
24. Each party to bear their own costs of the application.
25. Decree to issue.
26. Mention on 27th April, 2026 to confirm settlement
27. Orders accordingly.

Dated, Signed & Delivered virtually at Nairobi this 11th Day of March, 2026

**R.E. ABURILI
JUDGE**