

REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
JUDICIAL REVIEW APPLICATION NO. E016 OF 2025
(JR)

IN THE MATTER OF AN APPLICATION BY JEREMIAH MUBICHI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF M'MBUI KITHIKA ALIAS TITA M'MBUI) FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

AND

IN THE MATTER OF ARTICLES 20, 21, 22 (1), 47, 50 AND 239 (3) OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF ISIOLO MCCC NO. 14 OF 2012 (JEREMIAH MUBICHI SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF M'MBUI KITHIKA ALIAS TITA M'MBUI V COUNTY GOVERNMENT OF ISIOLO)

BETWEEN

REPUBLIC.....

.....APPLICANT

VERSUS

THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE AND ECONOMIC PLANNING ISIOLO COUNTY.....1STRESPONDENT

THE CHIEF OFFICER FINANCE AND ECONOMIC PLANNING ISIOLO COUNTY.....

.....2ND RESPONDENT

COUNTY GOVERNMENT OF ISIOLO.....3RD RESPONDENT

AND

JEREMIAH MUBICHI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF M'MBUI

KITHIKA ALIAS TITA M'MBUI).....EX PARTE APPLICANT

JUDGMENT

1. What is coming up for determination is the Ex-parte Applicant's Notice of Motion dated 11th November 2025. The Ex-parte Applicant (The Applicant) seeks an Order of Mandamus compelling the Respondents to pay a sum of Kshs. 348,320/= being the taxed costs, awarded in Isiolo MCCC No. 14 of 2012.
2. A Certificate of Costs was issued on 29th December 2022 and duly served upon the 3rd Respondent on 27th January 2023. The Applicant states that despite persistent demands and notifications, the Respondents have failed, refused, and/or neglected to settle the said costs.
3. The Application was canvassed by way of written submissions.
4. It is the Applicant's submission that since execution against the Government is prohibited under **Section 21(4) of the Government Proceedings Act**, the only effective remedy remaining is the issuance of an order of mandamus. Reliance was placed on the court's decision in the case of ***R vs Attorney General & Another Ex-parte James Alfred Koroso (2013) eKLR***, where the court emphasized that public officers must carry out their duties for the benefit of the people and cannot place roadblocks on the path of successful litigants.
5. The Respondents did not file any response.

Analysis and Determination

6. I have considered the application, the supporting affidavits, and the submissions filed by the Applicant. The only issue for determination is Whether the Ex-parte Applicant has established a basis for the issuance of an Order of Mandamus.
7. Mandamus is a prerogative order issued to compel the performance of a public duty. It is a remedy of last resort, granted where a specific legal right exists and no other equally beneficial or effectual remedy is available.
8. Execution proceedings against the Government is governed by **Section 21 of the Government Proceedings Act** and **Order 29 rule of the civil procedure Rules**. Section 21 of the Government Proceedings Act as follows:

“(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 of any such money or costs"

9. Thus Government proceedings Act at section 21(4) prohibits any attachment of Government property and the only remedy for an aggrieved litigant seeking costs or damages is to seek for an order of mandamus against a particular officer of the government whose duty is to effect payment of money demanded.

10.n ***Shah v Attorney General (No. 3) Kampala HCCM No. 31 of 1969 [1970] EA 543*** the Judge expounded on the nature of mandamus as follows: *“Mandamus is a prerogative order issued in certain cases to compel the performance of a duty. It issues from the Queen’s Bench Division of the English High Court where the injured party has a right to have anything done, and has no other specific means of compelling its performance, especially when the obligation arises out of the official status of the respondent..... Mandamus is neither a writ of course nor of right, but it will be granted if the duty is in the nature of a public duty and especially affects the rights of an individual, provided there is no more appropriate remedy.In cases where there is a duty of a public or quasi-public nature, or a duty imposed by statute, in the fulfilment of which some other person has an interest the court has jurisdiction to grant mandamus to compel the fulfilment..... Mandamus does not lie against a public officer as a matter of course. The courts are reluctant to direct a writ of mandamus against executive officers of a government unless some specific act or thing which the law requires to be done has been omitted. The Courts will not intervene to compel an*

action by an executive officer unless his duty to act is clearly established and plainly defined and the obligation to act is peremptory... The court should take into account a wide variety of circumstances, including the exigency which calls for the exercise of its discretion, the consequences of granting it, and the nature and extent of the wrong or injury which could follow a refusal and it may be granted or refused depending on whether or not it promotes substantial justice.”

11. Before an order of mandamus can issue however , the elaborate procedure set out under section 21 (1) to (3) of the Government proceedings Act must be complied. One of the requirements is the issuance of *certificate for order of costs*. The same provision is also found in Rule 3 of Order 29 of the civil procedure Rules. The said certificate is in prescribed form.
12. In the case of Permanent **Secretary Office of the President Ministry of Internal Security & Another Ex Parte Nassir Mwadhidi [2014] eKLR** Justice Odunga reiterated the need for compliance. He stated: “.... *It therefore follows from the foregoing discourse that the rules applicable to normal execution proceedings by way of committal to civil jail are not necessarily applicable to enforcement of an order of the Court arising from an order of mandamus by way of committal. It must be remembered that an application for an order of mandamus seeking an order compelling the Government to satisfy a decree is a very elaborate procedure. Before the*

Court issues such an order, there must be proof that the provisions of the Government Proceedings Act have been complied with respect to issuance of certificate of costs and certificate of order against the Government. After the issuance of the aforesaid documents, just like in any application for mandamus, there must be a demand for payment made by or on behalf of the decree holder to the relevant department seeking payment since in an application for an order of mandamus, the law as a general rule requires a demand by the applicant for action and refusal as a prerequisite to the granting of an order, though there are exceptions to the rule”.

13. Thus in terms of section 21 (3) of the Government proceedings Act, and the observation by Justice Odunga in the **permanent secretary office of the president , ministry of internal security (supra)**, which decision I associate with, the Applicant was required to serve three documents upon the Respondents , namely: *a certificate of costs , certificate of order against the Government and a demand letter.*
14. A perusal of the supporting Affidavit and the annexures to the petition shows that a certificate of costs and a demand letter were duly issued . However, there is no evidence that a certificate of order against the Government was issued against or served on the respondents. I also wish to point out that as per the provisions of order 29 of the civil procedure rules, aforesaid, the said certificate has to be in prescribed form.

15. Therefore, the Applicant has failed to to fully comply with the provisions of section 21(3) of the Government proceedings Act and Order 29 of the civil procedure Rules. On account of that failure, the petition herein is incompetent. The same is hereby struck off, with no order as to costs.

Dated, signed and delivered virtually, at Nairobi, this 31st day of march 2026.

S. Chirchir
Judge.

In the presence of :

Ismail Adow- Court Assistant

Ms. Mugwe - fro the Ex-parte Applicant

ORIGINAL