

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E375 OF 2025

**IN THE MATTER OF AN APPLICATION BY PANAFRICAN
EQUIPMENT (KENYA) LIMITED FOR JUDICIAL REVIEW ORDER
OF MANDAMUS**

AND

**IN THE MATTER OF SECTION 21 OF THE GOVERNMENT
PROCEEDINGS ACT, CHAPTER 40 OF THE LAWS OF KENYA**

BETWEEN

REPUBLIC APPLICANT

AND

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE, ICT AND
ECONOMIC PLANNING, COUNTY**

GOVERNMENT OF KIAMBU.....RESPONDENT

-VERSUS -

PANAFRICAN EQUIPMENT

(KENYA) LIMITED..... EX-PARTE APPLICANT

JUDGMENT

1. This Judgment determines the Notice of Motion Application dated 27th November 2025 filed under Order 53 Rule 3 (1) of the Civil Procedure Rules and all other enabling provisions of the law. The substantive Notice of Motion was filed pursuant to leave granted to the *ex-parte* Applicant by this Court on 6th November 2025 in JR. E345 of 2025.
2. The Application seeks the following orders:

(i) *An ORDER OF MANDAMUS do issue, directed to the Respondent compelling them to pay the ex-parte Applicant the sum of Kshs. Twenty-Seven Million, One Hundred and Forty –Four Thousand, Nine Hundred and Fifty-Five and Thirty-Two Cents (Kshs. 27,144,955.32/=) as at 18th February 2025 plus interests at court rates from the date payment became due until payment in full on account of the Judgment, Decree, Certificate of Taxation and Certificate of Order in Nairobi High Court Commercial Case No. E550 of 2020 Panafrican Equipment (Kenya) Limited vs. the Principal Secretary Ministry of Transport, Infrastructure, Housing and Urban Development (State Department for Public Works Supplied Branch) & 2 Others.*

(ii) *Costs to be awarded to the ex-parte Applicant.*

3. The Application is premised on the grounds on the face thereof, the facts set out in the Statutory Statement dated 2nd October 2025 and the supporting Affidavit sworn on the even date by Phillip Stander, the *ex-parte* Applicant's General Manager.
4. The *ex-parte* Applicant's case is that on 14th March 2024, the High Court at Nairobi, Milimani Commercial Division delivered a judgment in **High Court Commercial Case No. E550 of 2020 Panafrican Equipment (Kenya) Limited vs. the Principal Secretary Ministry of Transport, Infrastructure, Housing and Urban Development (State Department**

- for Public Works Supplied Branch) & 2 Others**, where the *ex-parte* Applicant was awarded the sum of Kshs. 12,610,989.48/= plus late payment interest at 12% p.a. from 29th March 2019 until 31st January 2022.
5. The applicant asserts that in a ruling delivered on 11th November 2024, the *ex-parte* Applicant was awarded costs of the suit taxed together with interest at Kshs. One Million, Five Hundred and Thirty-Eight Thousand, Two Hundred and Twenty-Four and Sixty-Three Cents (Kshs 1,538,224.63/=) consequent to which a Certificate of Order Against the Government was obtained, setting out the total amount payable as Kshs. 27,144,955.32/=.
 6. The *ex-parte* Applicant avers that on or about 20th March 2025, the respondent was duly served with the said Certificate of Order against the government, accompanied by a formal demand for payment, which the respondent has failed, refused and/or neglected to settle.
 7. It is the *ex-parte* applicant's contention that the Respondent's actions have occasioned undue hardship and prejudice to the *ex-parte* Applicant who remains deprived of the fruits of its lawfully obtained judgment despite compliance with procedural requirements for payment, thereby necessitating this Court's intervention to compel them through mandamus to settle the decree.
 8. The Respondent did not file any response to the Application and on 1st December 2025, this Court directed that the substantive Notice of motion

be canvassed by way of oral submissions. Both parties' counsel appeared on 26th January 2026 and orally canvassed the application.

Oral Submissions

9. On behalf of the *ex-parte* Applicant, counsel submitted, relying on **Section 21 of the Government Proceedings Act** which spells out the procedure for the enforcement of decrees and orders against the government, citing the decision in ***Republic vs. Permanent Secretary Office of the President Ministry of Internal Security and Another Ex Parte Nassir Mwandishi (2014) eKLR*** wherein the Court set out the aforesaid procedure. It was submitted that having obtained and served the Certificate of Order against the government; the next step was to seek an order of Mandamus compelling the relevant officer in the County Government to honour the Decree. The cases of ***Republic vs. County Secretary Nairobi City County & 3 Others; Koceyo & Co. Advocates (Ex-parte) (2020) eKLR*** and ***Judicial Review Miscellaneous Application No. 44 of 2012 between Republic vs. the Attorney General & Another ex parte James Alfred Koroso*** were relied on in support of the proposition.
10. Counsel for the applicant further submitted that it was never disputed in the present case that the *ex-parte* Applicant had duly complied with the requirements of **Section 21 of the Government Proceedings Act** and that the Respondent's continued failure, refusal and/or neglect to satisfy the

said certificate of order against the government was a violation of the *ex-parte* Applicant's right of access to justice as guaranteed under Article 48 of the Constitution of Kenya 2010. That consequently, this Court ought to grant the order of Mandamus as prayed in the Notice of Motion.

11. On behalf of the respondent, it was submitted that the County Executive Committee Member for Finance, ICT and Economic Planning was not an accounting officer under the Public Finance and Management Act and that instead, it was the Chief Officer Finance.
12. The *Ex-parte* Applicant's Counsel argued that the Decree in question giving rise to the certificate of order against the government cannot be settled because the procurement process giving rise to the debt was flagged by the Auditor General as there were irregularities. It was submitted that the funds were opposed and that the officer concerned was facing criminal charges over the subject procurement. This Court was urged to dismiss the Application and give directions on the audit that was ongoing which was the reason for the failure to satisfy the Decree.

Analysis and Determination

13. Having considered the application and the oral submissions, the only issue for my determination is ***whether the Application seeking the orders of Mandamus is merited as against the respondent Country Executive Committee member for Finance, ICT and Economic Planning***

14. The scope and nature of Mandamus was long settled in the case of **R vs. Kenya National Examinations Council Ex-parte Geoffrey Njoroge and others Civil Appeal 266 of 1996** where the Court of Appeal at page 47 aptly explained thus:

“The next issue we must deal with is this. What is the scope and efficiency of an ORDER OF MANDAMUS? Once again, we turn to HALBURY’S LAWS OF ENGLAND 4th Edition Volume 1 at page 111 from paragraph 89. The 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.”

90. “mandate”

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, gives discretion 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.”

15. In this case, judgment was entered in favour of the *ex-parte* Applicant against the County Government of Kiambu 14th March 2024. This was followed by issuance of a Certificate of Order against the Government on 18th February 2025 which was served upon the said County Government on 20th March 2025 with a formal demand for payment of the decretal sum. I note that interest keeps on accruing as the Respondent is yet to settle the decretal sum.
16. Concerning satisfaction of orders against the Government, **Section 21 of the Government Proceedings Act** provides thus:

21. 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.

(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.

17. In *Muciimi Mbaka & Co. Advocates vs. Town Clerk, City Council of Nairobi* [2012] eKLR, Githua J. explained an order of Mandamus as follows:

“An order of mandamus is issued to compel performance of a public duty or a duty imposed by statute where there has been

failure to perform the said duty to the detriment of an aggrieved party. A local authority has a legal obligation and a public duty to satisfy decrees issued against it and the person entrusted with this task is the Clerk to the Local Authority who according to section 129(1) of the Local Government Act is the Chief Executive and Administrative Officer in-charge of coordinating the operations of a Local Authority...Section 263A of the Local Government Act requires the Clerk of a Local Authority to pay without delay sums awarded in a judgement or order to the person entitled out of the revenue of the Local Authority. As the Respondent has failed or refused to pay the Applicant the monies decreed...it is evident that he is in blatant breach of the express duty imposed on him by statute to satisfy decrees issued against the City Council of Nairobi out of the revenue generated by the Council. I do not see any reason why the respondent should not be compelled to pay the Applicant without delay, the decretal sums due out of the revenue of the City Council of Nairobi”.

18. Similarly, in **Republic vs. The Attorney General & Another ex parte James Alfred Koroso, High Court Judicial Review Miscellaneous Application No. 44 of 2012** Odunga J. expressed himself *inter alia* concerning mandamus order:

“...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 realised. Unless something is done he will forever be left baby-sitting 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. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of

Kenya, and for their well-being and benefit.....It is in fact the State, the Republic, on whose behalf he undertakes his duties, that is compelling him, a servant, to do what he is under a duty, obliged to perform. Where therefore a public officer declines to perform the duty after the issuance of an order of mandamus, his/her action amounts to insubordination and contempt of Court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but are meant to show the Court's displeasure at the failure by a servant of the state to comply with the directive of the Court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court.”

19. Applying the above decisions, I find that the exparte applicant has satisfied all conditions precedent for being granted an order of Mandamus because-
- (a) there exists a validly obtained decree from High Court Commercial Case No. E550 of 2020 Panafrican Equipment (Kenya) Limited vs. the County Government of Kiambu
 - (b) That a Certificate of Order against the Government was issued on 18th February 2025.
 - (c) That the said Certificate was served upon the County Government of Kiambu.

(d) That the County Government of Kiambu was aware of and acknowledged the said debt.

20. I however note that the County Government of Kiambu is not a party to these mandamus proceedings and neither did it nor the County Executive committee member for Finance, ICT and Economic Planning file any affidavit in response to the present Application. Instead, an advocate appeared in court and submitted orally, on behalf of the respondent, raising issues of misjoinder and non-joinder of the accounting officer to these proceedings and asserting that the named respondent is not the accounting officer of the County Government.
21. Counsel for the respondent also raised the issue of the procurement process giving rise to the commercial case wherein judgment was entered in favour of the *ex parte* applicant herein, stating that the process was subject of audit queries hence the country Government could not settle the decree. Counsel for the respondent, however, did not say that there was an appeal challenging the judgment in the commercial case where the primary decree was issued.
22. Having considered the submission that there were procurement irregularities. I am not persuaded that that submission is acceptable to displace the duty owed to the *ex-parte* Applicant by the Count government of Kiambu, being the duty to settle decree and certificate of order against the government. Neither is the issue of criminal charges facing the person

who held the relevant office in the County Government a bar to mandamus.

23. It must be appreciated that Judicial Review remedies are directed against the offices and office holders and not against the individual. Therefore, even if an officer of the judgment debtor was fraudulent as alleged, there being no stay of enforcement of decree of the court, nor an appeal challenging that decree in the primary suit, in which judgment and certificate of order against the government has not been settled, the submission from the bar by the respondent's counsel, without more, remains a bare allegation.
24. Further, this Court is concerned with the question of whether there is a statutory duty placed on the accounting officer to perform that duty of settling the decree and certificate of order against the government and whether that relevant accounting officer has failed to perform that duty.
25. The applicant sought leave to apply for judicial review orders of mandamus to compel the County Executive Committee Member for Finance, ICT and Economic Planning, County Government of Kiambu. In my view, the applicant must have believed that the County Executive Committee Member for Finance, ICT and Economic Planning is the accounting officer envisaged in section 21 of the Government Proceedings Act.

26. The question is, has the applicant enjoined the right party to these proceedings against whom mandamus can issue? Mandamus issues to compel a party who has a statutory duty to satisfy a decree of the court. The judgment in the Commercial Court of the High Court in HCCOM E550 of 2020 was against the County Government of Kiambu. When seeking leave of court to apply for mandamus, the applicant left out the County Government of Kiambu and enjoined the County Executive Committee Member for Finance, ICT and Economic Planning of the County Government of Kiambu.

27. Section 2 of the Public Finance Management Act (PFMA) defines who an accounting officer is as follows:

2.(1) In this Act, unless the context otherwise requires—

“accounting officer” means—

(a)an accounting officer of a national government entity referred to in section 67;

(b)an accounting officer of a county government entity referred to in section 148;

(c)in the case of the Judiciary, the Chief Registrar of the Judiciary; or

(d)...

(e)...

28. Section 148 of the said Public Finance Management Act provides for designation of accounting officers by the County Executive Committee Member for Finance and states that:

148. Designation of accounting officers for county government entities by the County Executive Committee Member for finance

(1)A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.

(2)Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.

(3)A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.

(4)The Clerk to the county assembly shall be the accounting officer of the county assembly.

(5)A county government may, in order to promote efficient use of the county resources, adopt, subject to approval by the county assembly, a centralised county financial management service.

29. Under Article 226 (2) of the Constitution, ***(2) the accounting officer of a national public entity is accountable to the National Assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management.***

30. The responsibilities of accounting officers are as set out in section 149 of the Public Finance Management Act which provides, inter alia, that:

149. Responsibilities of accounting officers designated for county government entities

(1) An accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—

(a) lawful and authorised; and

(b) effective, efficient, economical and transparent.

(2) In carrying out a responsibility imposed by subsection (1), an accounting officer shall, in respect of the entity concerned—

(a) ensure that all expenditure made by the entity complies with subsection (1);

(b)....

(r) ...

31. From the above provisions, it is clear that the County Executive Committee Member for Finance, ICT and Economic Planning is not by any means an accounting officer and that an accounting officer is defined and designated under section 148 of the Public Finance Management Act hence, not everyone can be an accounting officer. It follows therefore, that a non-joinder of an accounting officer in mandamus proceedings, whereas that may not be fatal where the County Government is named as the primary respondents/ judgment debtor, but where the applicant omits the primary judgment debtor and join another party who is not an accounting officer, such proceedings cannot stand for nonjoinder and misjoinder.
32. This court will similarly be acting in vain if it issued mandamus order compelling a party or office holder who is not mandated by statute to ensure settlement of decree. Since the County Executive Committee Member for Finance, ICT and Economic Planning cited is not an accounting officer, as the accounting officer would be the relevant chief officer for the relevant sector or entity of the Country Government, I am not persuaded that mandamus is properly sought as against the correct office holder. More so, it will be impossible to hold such a party to be in contempt of court decree for mandamus in the event of default and the applicant will start another cycle.

33. Consequently, I find that the *ex-parte* Applicant's notice of motion dated 27th November, 2025 cannot succeed and the same is hereby struck out for nonjoinder and misjoinder of parties.

34. I however make no orders as to costs and the applicant is at liberty to apply afresh for leave to apply against the correct parties.

35. This file is closed.

36. I so order.

Dated, Signed & Delivered virtually at Nairobi this 23rd Day of March, 2026

**R.E. ABURILI
JUDGE**