

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC JUDICIAL REVIEW NO. E069 OF 2025**  
***(Before Hon. Lady Justice Hellen Wasilwa, J)***

**REPUBLIC.....**  
**APPLICANT**

**VS**

**NAIROBI COUNTY PUBLIC SERVICE BOARD.....1<sup>ST</sup>**  
**RESPONDENT**

**THE COUNTY EXECUTIVE MEMBER, FINANCE...2<sup>ND</sup>**  
**RESPONDENT**

**AND**

**ARTHUR KONYE IGERIA**

**BENSON NJERI NGUGI**

**DAVID NGUMBU NJOROGE**

**JILLIAN MUTHONI NDIRANGU**

**IGERIA AND NGUGI ADVOCATES.....EX-PARTE**  
**APPLICANT**

**RULING**

1 The Ex-parte Applicant filed a Notice of Motion dated 10<sup>th</sup> November, 2025 seeking: -

1. *THAT an order for judicial review in the nature of mandamus do issue compelling the Respondents to satisfy the decretal amount of KES 11,290,491.71 being the taxed cost together with interest at 14% per annum that now stands at KES*

*12,143,619.71 as per the Ruling on taxation issued on 14<sup>th</sup> May 2025 in Misc. Civil Application EO23 of 2025: Igeria & Ngugi Advocates v Nairobi City County and the Certificate of Taxation dated 21<sup>st</sup> May 2025.*

- 2. THAT this Honourable Court be pleased to issue such other relief as it may deem just and expedient to grant.*
- 3. THAT costs of and incidental to this suit be awarded to the ex parte Applicant.*

### **Ex-parte Applicant's Case**

- 2 It is the Applicant's case that the firm was duly instructed through the Office of the County Attorney to render legal services on behalf of the 1<sup>st</sup> Respondent in *ELRC No. E068 OF 2022: Kenya County Government Workers Union (Nairobi Branch) And 2 Others -Vs- Nairobi City County And 5 Others*.
- 3 During the pendency of the suit, on 20<sup>th</sup> April 2023, the Ex-parte Applicant was struck off the suit and raised their final fee note with the 1<sup>st</sup> Respondent which the 1<sup>st</sup> Respondent refused, neglected and/or ignored.
- 4 Consequently, they filed a Bill of Costs dated 30<sup>th</sup> January 2025, which was taxed in their favour vide a ruling delivered on 14<sup>th</sup> May 2025 in Misc. Civil Application No. E023 of 2025 *Igeria & Ngugi Advocates v Nairobi City*

County, in the sum of KES 11,290,491.71 together with interest, bringing the total to KES 12,143,619.71.

- 5 The Applicant avers that following the ruling, they obtained a Certificate of Taxation dated 21<sup>st</sup> May 2025 and subsequently extracted a decree dated 17<sup>th</sup> July 2025. Prior to the extraction of the decree, they had filed an application dated 9<sup>th</sup> June 2025 seeking adoption of the Certificate of Taxation as a decree of the Court, which application was not opposed by the 1<sup>st</sup> Respondent.
- 6 The Applicant further avers that upon perusal of the extracted decree, they noted that the Court awarded costs of the application dated 9<sup>th</sup> June 2025, subsequently, they requested the Court that they intended to waive the said costs. The same were waived during court proceedings on 22<sup>nd</sup> September 2025.
- 7 It is the Applicant's case that they have since exhausted all available avenues of execution and now seeks the intervention of this Court. They assert that in line with the provisions the law, they have obtained and served the Certificate of Order against the Government dated 9<sup>th</sup> October 2025, which is necessary to facilitate the filing and canvassing of the instant proceedings.
- 8 On 21<sup>st</sup> October 2025, they proceeded to serve upon the County Solicitor and the Attorney General with the Certificate of Order against the Government for the sum of

Kes. 12,143,619.71, which sums remain unsettled to date and have caused significant financial distress to them.

- 9 The Applicant contends that the 2<sup>nd</sup> Respondent is under an obligation under Section 21(3) of the Government Proceedings Act to, without delay cause to be paid such amounts, as may, by the Judgement or Order, be awarded against the 1<sup>st</sup> Respondent.
- 10 It is the Applicant's assertion that it is just and fair in the circumstances that the Respondents be compelled to settle the decretal amount due and owing to her.

### **Respondents' Case**

- 11 In opposition to the application, the Respondents' filed a replying affidavit dated 23<sup>rd</sup> February 2026, sworn by the Chief Officer - Finance, Nairobi City County, Asha Abdi.
- 12 The Respondents aver that the ex-parte Applicant served the Respondent with the Certificate of Order issued on 9<sup>th</sup> October, 2025 which was way after the budget process had lapsed and therefore could not be considered in the current budget of this financial year. They have already fully budgeted all the amounts allocated for payment of legal fees and decretals for the Financial Year 2025/2026
- 13 It is the Respondents' case that the Nairobi City County is funded through allocation of funds by the County Assembly, thus, the County can only be able to determine

how much decretal sums it can pay based on its allocation for the financial year. Further, the County cannot commit funds unless budgeted for and approved by the County Assembly.

- 14 The Respondents aver that the County as a public institution dealing with public funds, is constrained by the Public Finance Management Act (PFM), 2012 among other legislation with regard to the County's expenditure. The County cannot commit funds unless budgeted for and approved by the County Assembly.
- 15 They aver that a Committee was constituted to verify and come up with a final list decree holder in order for budgeting and payment of debts owed by the County. The list was present to the County Finance Department showing that the total amount owed is Kshs 7,044,619,657.46 and the department was tasked to come up with a payment plan to all decree holders.
- 16 They assert that the prioritization is based on first in first out because of the County's financial constraints and that the decretal amount in the instant suit has been included for payment consideration.
- 17 It is the Respondents' case that the decision to pay involves various stakeholders and the County involves many departments responsible for financial and fiscal matters. They relied on Section 125 of the PFM which

provides for the budget making process and Sections 117, 125, 129 ,131 and 133 that provides the procedure to be followed on settlement of any monies owed by the County

- 18 The Respondent avers that the Applicant has not satisfied the requirements of execution as per the Public Finance Management Act. Further, the sued County Officers, the 1<sup>st</sup> Respondent is not liable under any law for payment by Government.
- 19 It is the Respondent's that the application as filed is an abuse of the court process and granting it would be prejudice to the Nairobi County Government.

### **Applicant's Submissions**

- 20 The Applicant submitted that it is an incontrovertible fact that a decree dated 17<sup>th</sup> July 2025 was issued in its favor, which the Respondents have failed, neglected and/or refused to honor. Consequently, as is procedure, the Applicant obtained a Certificate of Order dated 9<sup>th</sup> October 2025 for the sum of Kshs. 12,143,619.71, which was duly served upon the Respondents on 21<sup>st</sup> October 2025.
- 21 The Applicant submitted that upon service of the Certificate of Order, it is the Respondent's public duty to satisfy the same as provided for in Section 21(3) of the Government Proceedings Act: *"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."*

22 It was submitted that any failure by the relevant accounting officer to honour the decree constitutes a violation of the ex-parte Applicant's right to enjoy the fruits of their decree as they are entitled and as is their legitimate expectation. This position is anchored on the maxim *ubi jus ibi remedium* "there is no right without a remedy", as cited by Mutunga CJ in ***Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others [2013] eKLR***.

23 It was argued that unless the decree is satisfied, statutory and constitutional safeguards, including the Fair Administrative Action Act and Article 48 of the Constitution on access to justice, would be rendered a dead letter. Article 48 provides that: "*The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.*"

24 It was also submitted that Article 23(3)(f) of the Constitution makes provision for judicial review as one of the reliefs that an aggrieved party can invoke so as to compel a judgment debtor to comply with court orders and the same is available as an avenue to compel the

state (or county government) to settle decrees emanating from court. Therefore, where such an infringement on the applicant's rights occurs, the court's discretion to issue an order of judicial review as in Article 23(3)(f) above in the nature of mandamus is triggered.

25 The Applicant argued that the Court's jurisdiction to issue an order of mandamus has been triggered, particularly because execution against Government is barred under Sections 21(4) and (5) of the Government Proceedings Act. They cited **JA v Principal Secretary Ministry of Education [2019] eKLR**, "*By virtue of Section 21(4) of the Government Proceedings Act, Cap 40 Laws of Kenya, the applicant has no other appropriate remedy except mandamus. That was the position held in the English case of **R (Regina) vs. Dudsheath, ex parte, Meredith [1950] 2 ALL E.R. 741, at 743**, Lord Goddard C. J. said: "It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it."*

26 It is the Applicant's submission that this learned Court's jurisdiction to issue an order of mandamus has been triggered. Reliance was placed in **Republic v Attorney General & another Exparte James Alfred Koroso**

**[2013] eKLR:** “ In 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..”

27 It is the Applicant’s submissions that satisfying itself that it should grant the order of mandamus sought, the court in **Multiline Services Limited v Nairobi City County Government [2025] KEHC 9325 (KLR)** applied the following test: “In the instant case, the applicant has satisfied all conditions precedent to the grant of the order: a. A valid decree has been obtained. b. Certificate of Order against the Government was issued on 30<sup>th</sup> October 2024. c. The certificate was served upon the respondents. d. The respondent acknowledges the debt and even attempted (albeit unsuccessfully) to make some payment via cheque.” They further cited **Republic v Secretary/Chief Executive Officer, National Land Commission; Tom Ojienda & Associates (Ex parte) [2025] KEHC 15275 (KLR)**.

28 On the strength of these authorities, the Applicant submitted that they hold a certificate of order dated 9<sup>th</sup> October 2025 which constitutes an actionable and enforceable claim vested and due to the ex-parte Applicant. This certificate, having been duly issued and properly served following the taxation process prescribed

under the Advocates Act and the procedure as in the Government Proceedings Act represents a crystallized debt owed by the county government to the ex-parte Applicant for professional services rendered.

- 29 The Applicant submitted that the sole issue for determination is whether the Public Finance Management Act or alleged budgetary constraints can bar the Respondents from settling the decretal sum as required under Section 21(3) of the Government Proceedings Act.
- 30 It was submitted that the Respondents' reliance on budgetary and procedural constraints is legally unsustainable and amounts to an attempt to frustrate a clear statutory duty. The Applicant argued that the Respondents admitted service of the Certificate of Order in their Replying Affidavit dated 23<sup>rd</sup> February 2026, thereby confirming compliance with the procedural requirements under Section 21(3), yet failed to discharge their obligation.
- 31 The Applicant further submitted that the Respondents' reliance on budgetary constraints is disingenuous, given that they knowingly engaged the Applicant on 15<sup>th</sup> June 2022 for professional legal services on a fee-paying basis. This engagement, which predates all enforcement steps, confirms they were fully aware that legal services were not being rendered on a pro bono basis.

- 32 It is the Applicant's submission that having had the opportunity to provide for this lawful compensation across several budgetary cycles since 2022, the Respondents' current attempt to evade payment by citing financial constraints is baseless and amounts to an abuse of process. They cited ***Republic V Permanent Secretary, Ministry Of State For Provincial Administration And Internal Security Exparte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR)***: *"The Respondent's claim that the Applicant should have waited until the start of the next financial year to enforce payment of the decree issued in his favour cannot be sustained firstly because it has no legal basis and secondly because it is the responsibility of the Government to make contingency provisions for its liabilities in tort in each financial year so that successful litigants who obtain decrees against the Government are not left without remedy at any time of the year."*
- 33 The Applicant also submitted that while internal policies may guide administrative decisions, they cannot override a mandatory statutory duty or constitutional rights, as affirmed in ***Multiline Services Limited v Nairobi City County Government [2025] KEHC 9325 (KLR)***.
- 34 It was further submitted that this Court has dismissed similar verbal assurances and promises of settlement that were strung along over successive financial years, therefore, the Applicant argued that this court should dismiss the Respondents' current attempts to delay or

deny payment. Their reliance on unfulfilled promises and procedural hurdles is a mere echo of the tactics already condemned by the courts, and it warrants the same decisive rejection.

35 It is the Applicant's submission that delaying the execution of a lawful decree on the basis of unsupported claims of budgetary constraints cannot bar the mandatory duty under Section 21(3) this reasoning is also appreciated in ***Multiline Services Limited (Supra)***.

36 It is the Applicant's submission that it has exhausted remedies, waived additional costs as per ground (e) of the Notice of Motion, and complied with prerequisites. Mandamus is the appropriate remedy where execution is barred this is seen under Section 21(4) Government Proceedings Act.

### **Respondents' Submissions**

37 The Respondents submitted that the issues for determination are whether the Ex-parte Applicant has met the legal threshold for the grant of an order of mandamus; whether the Respondents can lawfully be compelled to make payment outside the budgetary process; and whether the application is premature and an abuse of the court process.

38 On the first issue, the Respondents submitted that the circumstances under which an order of mandamus issues

were set out by the Court of Appeal in **Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR**: *“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....”*

- 39 It was submitted that these principles mean that an Order of Mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.
- 40 The Respondents submitted that they have not failed to pay the decretal sum. The Ex-parte Applicant served the Certificate of Order issued on 9<sup>th</sup> October 2025 after the budget process had lapsed and therefore the same could not be considered in the budget for the Financial Year

2025-2026, which had already fully allocated funds for legal fees and decretals. Further, the Nairobi City County is funded through allocations by the County Assembly.

- 41 The Respondents relied on ***Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR***, wherein it was held: *“Mandamus is employed to compel the performance, when refused, of a Ministerial duty, this being its chief use. 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.”*
- 42 On the second issue, the Respondents submitted that Section 125 of the Public Finance Management Act outlines the stages of the county budget-making process, and that funds for settlement of court decrees can only be expended once budgeted for and approved by the County Assembly through the Appropriations Act.
- 43 The Respondents submitted that they have already constituted a committee to verify all decree holders and prioritize payments based on availability of funds and the “first in, first out” principle. It was further submitted that

the total verified decrees against the County stand at Kshs. 7,044,619,657.46, demonstrating the financial strain faced.

- 44 It was submitted that the present application is premature, and that the Court should not issue an order of mandamus to compel a process that must lawfully be undertaken through the County's budgetary cycle.
- 45 The Respondents further submitted that Section 21(3) of the Government Proceedings Act provides that payment of decretal sums is to be made by the accounting officer upon approval through appropriate budgetary allocation. Reliance was placed on ***Republic V Permanent Secretary, Ministry Of State For Provincial Administration And Internal Security Exparte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR)*** wherein the court emphasized that an order of mandamus cannot issue to compel payment where no budgetary allocation exists.
- 46 On the final issue, the Respondents submitted that the application seeks to circumvent statutory procedures and interfere with the County's lawful financial operations, and that the Court should not be drawn into micro-managing county fiscal processes.

- 47 It is the Respondents' submission that granting the orders sought would prejudice the County Government and open the floodgates to similar claims, thereby frustrating the County's ability to prioritize essential services and other decree holders.
- 48 I have examined all the averments and submissions of the parties. From the response by the respondents, they aver that they have not refused to pay the decretal sum only contending that the amount in question had not been budgeted for in the 2025 budget cycle.
- 49 The response is actually an acknowledgment that the respondents owe the debt and are therefore liable to pay. I will therefore enter judgment for the applicant as prayed and issue an order of mandamus to compel the respondents to pay the debt owed to the tune of kshs 12,143,619.71 as per the ruling on taxation issued on 14<sup>th</sup> May 2025 in Misc. C.A No E023 of 2025. Costs to the applicants.

**Dated, Signed and Delivered Virtually at Nairobi  
this 23<sup>rd</sup> Day of April, 2026.**

**HELLEN WASILWA**

**JUDGE**