

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E420 OF 2025

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
MANDAMUS**

AND

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE LAW REFORM
ACT, CAP 26, LAWS OF KENYA**

AND

**IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE
RULES, 2010**

AND

**IN THE MATTER OF: THE COUNTY GOVERNMENT OF NAIROBI'S
REFUSAL AND/OR NEGLECT TO SATISFY A DECREE ISSUED IN
MILIMANI CMCC NO. 1380 OF 2022**

-BETWEEN-

**CHIEF OFFICE & FINANCE, NAIROBI CITY COUNTY
GOVERNMENT..... 1ST RESPONDENT**

NAIROBI CITY COUNTY GOVERNMENT 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

-AND-

GEORGE KIHURA MUTHEGU *EX- PARTE* APPLICANT

JUDGMENT

1. This Judgment determines the substantive notice of motion Application dated 17th December 2025 filed pursuant to leave granted in HCJRMISC E157 of 2025, and premised on Section 1A, 1B and 3A of the Civil Procedure Act and Order 53 Rule 3 (1) of the Civil Procedure Rules).

2. The *ex-parte* Applicant seeks the following **ORDERS**:
 - (1). ***THAT an Order of Mandamus to issue against the Respondents, compelling them to satisfy the decree and certificate of order issued in Milimani CMCC NO. 1380 of 2022 in favour of the ex-parte Applicant.***
 - (2). ***THAT the costs of this application be borne by the Respondents.***
3. The Application is predicated on the grounds on the face of it and is further supported by the Verifying Affidavit dated 21st November 2025 sworn by **George Kihura Muthegu** the *ex-parte* applicant, filed alongside the Chamber Summons for leave together with the Statutory Statement dated 21st November 2025.
4. The *ex-parte* Applicant's case is that he obtained judgment in his favour against the Nairobi City County Government and the Honourable Attorney General in **Milimani CMCC No. 1380 of 2022 on 12th June 2025**, thereby crystallizing the Respondents' liability. That the Decree and the Certificate of Order Against the Government were issued on 19th June, 2025 and 11th August 2025 respectively and duly served upon the Respondents on 15th August 2025 thereby triggering the statutory obligation of the Respondents to settle the decretal sum.
5. The *ex-parte* Applicant avers that on 28th October 2025, the Applicant's advocates issued a formal demand to the Respondents, calling for

settlement of the decretal amount as specified in the Certificate of Order Against the Government. However, despite proper service and continued follow-ups, the Respondents have failed, refused and/or neglected to discharge their statutory duty to satisfy the decretal sum, contrary to the mandatory provisions of the Government Proceedings Act.

6. It is asserted that *ex-parte* Applicant is the lawful beneficiary of the judgment, which arose from a cause of action related to a road traffic accident where the *ex-parte* Applicant sustained serious injuries that led to the institution of **Milimani CMCC No. 1380 of 2022**. It is asserted that the Respondents' continued non-compliance amounts to an unlawful withholding of a decree issued by a competent court, thereby necessitating the intervention of this Honourable Court.
7. It is further contended that under **Article 47 of the Constitution**, the Applicant is entitled to expeditious, efficient, lawful and procedurally fair administrative action, which the Respondents have failed to accord him by refusing to satisfy a valid court decree, which only this Honourable Court, in exercise of its supervisory jurisdiction, has power to issue appropriate orders compelling the Respondents to comply with the statutory requirements and settle the Claim.

Responses

8. In response to the Application, the 1st Respondent filed a Replying Affidavit dated 12th February 2026 sworn by Asha Abdi, the Chief Officer

- Finance, Nairobi City County Government in which she deposes that the Notice of Motion is defective, an abuse of court process, and incompetent because the *ex-parte* Applicant failed to specify how the 1st and 2nd Respondents failed to honour payment.

9. She deposes that when the *ex-parte* Applicant served the Certificate of Order dated 11th August 2025, there were no funds available to make the payment and asserted that all amounts allocated for payment of legal fees and decretals for the Financial Year 2025/2026 had already been fully committed.
10. It is deposed that the Nairobi City County Government is funded through allocations from the County Assembly and that the County's expenditure is constrained by the Public Finance and Management Act, 2012, and other legislation and it therefore cannot commit funds unless budgeted for and approved by the Assembly. That as such, the County can only pay decretal sums based on the allocated funds for the financial year.
11. The deponent asserts that settlement of monies owed must comply with Sections 117, 125, 129, 131, and 133 of the Public Finance Management Act PFM Act, including, County fiscal strategy paper adopted by 14th March; County budget estimates of revenue expenditure presented by 30th April and approved by 30th June, County Appropriations Act considered and enacted by 30th June and County Finance Act considered and enacted by 30th September each year.

12. Ms. Abdi states that the decision to pay involves multiple stakeholders, departments, and executive arms of the County Government and the County Assembly and it is denied that the 1st and 2nd Respondents refused or neglected to comply but rather, the non-payment is due to stringent governmental processes.
13. The deponent reaffirms the Respondent's desire to pay the pending decretal sums and that a Committee for verification of Decretals was constituted and began work on 12th May 2025. That by the time the Court Order was served, the Committee had concluded its work, and a new one was awaiting reconstitution to deliberate on subsequent requests, including the present matter. She confirms that once the Committee verifies decretals, payments are initiated depending on the available budget.
14. It is their position that granting the orders would be prejudicial to the Nairobi County Government and against the spirit of laws providing for prudent use of public funds. The Court is urged not to grant the orders as measures have been put in place to ensure all verified pending Decretal amounts are paid.
15. The 3rd Respondent relied on the Grounds of Opposition dated 12th February 2026 contending that, Firstly, the prayer for Mandamus against the 3rd Respondent is untenable because the Attorney General is not the accounting officer of the 2nd Respondent. Reliance is placed on the case of ***Republic vs. Permanent Secretary, Ministry of State for Provincial***

Administration and Internal Security Ex-Parte Fredrick Manoah Egunza [2012] eKLR.

16. In furtherance of this argument, it is the 3rd Respondent's position that **Section 67 (1) of the Public Finance Management Act 2012**, designates the Cabinet Secretary for the National Treasury as the accounting officer for ministries, state departments, or agencies.
17. It is asserted that Mandamus is a prerogative order directed at a particular public officer to compel specific public duty performance and cannot issue against an unnamed person or entity. Thus, granting mandamus to compel payment against an officer not constitutionally charged with that duty (the Accounting Officer) would be an exercise in futility.
18. The Application is also opposed because the 3rd Respondent has not been designated as required by **Section 21 of the Government Proceedings Act**. That instead, the 1st Respondent (Chief Officer Finance, Nairobi County) and 2nd Respondent (Nairobi City County Government) are properly constituted respondents against whom the decretal sum can be recovered due to joint and several liability.
19. It is urged that the Court makes a finding that the 3rd Respondent is not a proper Respondent and dismisses the Notice of Motion as it is founded on incorrect provisions of law and constitutes an abuse of the court process.

20. The parties took directions before this Court to canvass the Application by oral submissions. On 25th February 2026, parties consented to the court adopting the oral submissions made in JR E421 of 2025.

Submissions

21. Mr. Njoroge Counsel for the *ex-parte* Applicant submitted that their Application meets the legal threshold for mandamus. Under **Section 21 of the Government Proceedings Act**, they have a decree, Certificate of Order against the Government which were all duly served upon the Respondents and settlement demanded. It is submitted that the Respondents have a statutory duty to pay as determined in the case of ***R vs. Ministry of Provincial Administration Ex-Parte Manoah Egunza***.
22. Counsel submitted that the 1st and 2nd Respondents contend lack of funds and budgetary constraints which he argues against stating that the obligation to pay is a statutory duty, not conditioned by budgetary constraints. On this he relied on ***R vs. Permanent Secretary Ministry of Defence Ex-parte George Kariuki Waithaka [2019] eKLR*** and ***R vs. Permanent Secretary Ministry of State Ex-Parte Manoah Egunza***.
23. On alleged verification of decree, Counsel dismissed the same as untenable because the 1st and 2nd Respondents were parties to the lower court case and their non-payment violates **Article 48**. That in this regard, Mandamus is the only remedy.

24. Counsel for the *ex-parte* Applicant conceded that the 3rd Respondent the Attorney General is not an accounting officer but that cannot render the Application defective as the same is merely a misjoinder. That the argument cannot be used to defeat the Application. He cited **Article 159 (2) (d)** of the Constitution on procedural technicalities and stated that there is no prejudice occasioned on the 3rd Respondent and the Government of Kenya has to pay the decree.
25. Mr. Achola, Counsel for the 1st and 2nd Respondents submitted that they fully relied on their Replying Affidavit dated 12th February 2026 and submitted that the 1st & 2nd Respondents did not deny owing the money but were constrained by budget. He submitted that they did not object to the payment of money but that it has to be budgeted for.
26. He submitted that the decree has been referred to Finance Department and shall be budgeted for in the next financial year as they are bound by the **Public Finance Management Act, 2012**. He argued that a committee completed verification of decrees and there is good faith in payment of decrees which are pending as they have been submitting lists to the Court.
27. Mr. Idris Counsel for the 3rd Respondent submitted that they adopt their Grounds of Opposition and argued that the Attorney General is mis joined because, it is not an accounting officer and it cannot be compelled to settle decrees. He urged the Court to strike out the Attorney General from the suit.

Analysis and Determination

28. I have considered the Application as filed, opposed and the submissions for and against the orders sought. The main issue for determination is whether the Application is merited and whether the prayers sought ought to be granted.

29. The Government Proceedings Act Cap 40, which sets out a special procedure for suits involving the Government. Under Section 21 of the Act, once a judgment is entered against the Government, the successful party is required to obtain a certificate of order against the Government and serve it upon the relevant accounting officer for payment. Notably, the law does not permit the usual methods of execution such as attachment of property or seizure of assets. This position is not accidental, as it reflects a deliberate policy choice to protect public resources and ensure that essential Government functions are not disrupted.

30. Section 25 of the Government Proceedings Act bars execution against the Government. 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.

31. Order 29 of the Civil Procedure Rules too, prohibits execution against the Government. It provides:

2. Rules to apply to proceedings by or against the Government [Order 29, rule 2]

(1) Except as provided by the Government Proceedings Act (Cap. 40) or by these Rules—

(a) these Rules shall apply to all civil proceedings by or against the Government; and

(b) civil proceedings by or against the Government shall take the same form as civil proceedings between subjects and shall, if no special form is applicable, take the form of a suit instituted by a plaintiff.

(2) No order against the Government may be made under—

(a) Order 14, rule 4 (Impounding of documents);

(b) Order 22 (Execution of decrees and orders);

(c) Order 23 (Attachment of debts);

(d) Order 40 (Injunctions); and

(e) Order 41 (Appointment of receiver).

32. In such a case, the proper procedure is to institute separate proceedings for judicial review by way of mandamus to compel payment since there is no other remedy available to the decree holder.

33. In **Republic v Permanent Secretary, Ministry of State for Provincial Administration & Internal Security ex parte Fredrick Manoah Egunza**, (supra), the Court stated that while the Government is under a legal obligation to satisfy a decree, a decree holder cannot enforce payment through execution. Thus, the Government property is shielded from attachment and the remedy lies within the statutory framework under section 21 of the Government Proceedings Act. Essentially, what this signifies, is that a party who has obtained judgment in their favour against the Government must follow the procedure laid down in the Act. If payment is delayed or withheld, the remedy is not execution, but to move the Court appropriately to compel compliance with the law.

34. In the instant case, the *ex-parte* Applicant herein obtained judgment in her favour **in Nairobi Milimani CMCC No. 1380 of 2022** on 12th June 2025 for the decretal sum of Kshs. 1,205,100/= together with costs and interests totalling to Kshs. 1,501,304/=. This Decree and Order were issued against the Attorney General and the Nairobi City County Government after which the *ex-parte* Applicant obtained the requisite Certificate of Order Against the Government issued on 11th August 2025 which was duly served upon

the Respondents on 15th August 2025. It is at this point that the Respondent's statutory obligation to pay arose.

35. **Section 21 of the Government Proceedings Act** provides for the procedure to be followed by a party who seeks settlement of a decretal sum from the Government as follows: -

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.

36. The above provisions create an expectation that once a successful decree holder has complied with the requirements of Section 21, an obligation is imposed upon the Government and more specifically, the accounting officer to pay and if the decree is not settled, then such a party may approach the court for redress by way of mandamus to compel settlement.
37. It is important to note that Section 21 of the Government Proceedings Act does not create a condition that payment will only be subject to availability of funds or budget allocation or approvals as per the reasons advanced by the 1st and 2nd Respondents. It is sufficient that a decree holder serves the Certificate of Order against the Government and this constitutes a demand for payment and in turn creates an obligation to pay. If there is non-payment for whatever reasons, the *ex-parte* Applicant must assert his right to enjoy the fruits of his judgment by assuming that the Respondent had neglected to or refused to pay and therefore seek the court's intervention.
38. Having set out the legal position, the question is whether mandamus order is available to the *ex-parte* applicant as prayed. I have considered the writ of

Mandamus for which the *ex-parte* Applicant seeks from the Court to compel settlement of the decree. The Court of Appeal in the case of **R vs. Kenya National Examination Council Ex-Parte Geoffrey Gathenji & 9 Others, Civil Appeal No.266 of 1996**, cited a passage in **Halsbury's Laws of England 4th Edition Vol. 1(1) Page 111 paragraph 89 and 90** in explaining Mandamus as follows:

“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.....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 leaves discretion as 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.”

39. In **Muciimi Mbaka & Co. Advocates vs. Town Clerk, City Council of Nairobi [2012] eKLR**, Githua J. aptly explained Mandamus in the following terms: -

“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.”

40. 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 (*as he then was*) stated *inter alia* thus:

“...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.”

41. From the above judicial pronouncements, it is clear that mandamus orders are compelling orders to direct a public body to fulfil their statutory duties. From my consideration of the material before me, I find that the *ex-parte* Applicant has satisfied the granting of the orders sought. However, I take

issue with the fact that the *ex-parte* Applicant enlisted the three Respondents as the ones jointly and severally responsible for settling his decree. It is a well-established principle that Mandamus Orders can only be directed at a party who bears the statutory responsibility of carrying out the intended action. In this case, it is only the accounting officer who can settle the decretal sum as per the issued certificate of order against the government.

42. The **Public Finance and Management Act, 2012** defines an accounting officer as:

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) _____

(d) _____

43. Further, **Section 148 of the Public Finance Management Act, 2012** provides as follows on designation of accounting officers:

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.*

44. From my reading of the above provisions, there is no indication that the Attorney General is an accounting officer for purposes of settling the decree in question. I therefore dismiss the application as against the 3rd Respondent Attorney General who is hereby struck off these proceedings. I

however find that a case has been made out for granting the orders against the 1st and 2nd Respondents.

45. In the premises I allow the Application as follows:

(1). An Order of Mandamus be and is hereby issued against the 1st and 2nd Respondents, compelling them to satisfy the decree dated 12th June, 2025 and certificate of order against the government issued on 11th August, 2026 in Milimani CMCC NO. 1381 of 2022 in favour of the ex-parte Applicant for a sum of Kshs 1,501,304 plus interest accruing thereto as allowable by law.

(2). The case against the 3rd Respondent Attorney General is hereby dismissed and the Attorney General is struck off these proceedings for misjoinder as no public legal duty is imposed on the Attorney General to settle decrees of County Governments.

(3). The costs of these proceedings shall be borne by the 2nd Respondent, assessed at kshs 50,000.

(4). Mention before W. Musyoka J on 17th June, 2026 to confirm status of settlement.

46. Orders accordingly.

Dated, Signed and Delivered virtually at Nairobi this 22nd Day of April, 2026

R.E. ABURILI
JUDGE