

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW NO. E030 OF 2026

INTRASPEED LOGISTICS LTD & 15 OTHERS.....
APPLICANTS

VERSUS

THE COMMISSIONER OF POLICE

also known as

INSPECTOR GENERAL OF POLICE.....1ST

RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

JUDGMENT

1. These Judicial Review proceedings were initiated under certificate of urgency, by way of an *ex parte* chamber summons, dated 2nd February 2026, in Milimani HCJR No. E015 of 2026, for leave to commence a Motion for a *mandamus* order, directed at the 2 respondents, to satisfy a decree, in Nairobi HCCC No. 398 of 2009, together with costs and interests.
2. The *ex parte* chamber application was placed before the Judge, on 4th February 2026, and the leave sought was granted, and it was directed that the substantive Motion be filed, in a separate file, within 7 days.
3. The contemplated Motion was filed herein, as directed, dated 6th February 2026. It is supported by what is described as a verifying affidavit, sworn on 6th February 2026, and a statutory statement of even date. The said Motion should not have been supported by any fresh affidavit and statutory statement, for, according to Order 53 rule 4 of the Civil Procedure Rules, the said Motion should be served together with the statement and the verifying affidavits filed at the leave stage. So, the statement and

verifying affidavit of 6th February 2026 are misplaced. Nonetheless, no harm has been done, since the filings of 6th February 2026 are a replica of those of 2nd February 2026.

4. According to both the statements, the applicants obtained a judgement in Nairobi HCCC No. 398 of 2009. A decree was subsequently extracted and served. The respondents challenged that decree at the Court of Appeal, in Nairobi CACA No. 271 of 2019, and their appeal was dismissed, in a judgement delivered on 24th October 2025. Since then, the decree has not been settled, and it is on that basis that the *mandamus* order is sought.
5. Several documents are exhibited in the applications, in support of the quest. These are the plaint lodged in Nairobi HCCC No. 398 of 2009, dated 7th July 2009; a copy of the said plaint as amended on 11th December 2009; the statement of defence, filed by the respondents, dated 29th September 2009; the judgement delivered, in Nairobi HCCC No. 398 of 2009, on 28th June 2018; the decree issued in Nairobi HCCC No. 398 of 2009, dated 1st August 2018; an amended copy of the said decree, dated 8th November 2018; a certificate of order against the Government, dated 21st January 2026; the decree amended a second time, dated 5th December 2025, the judgement of the Court of Appeal, in Nairobi CACA No. 271 of 2019, dated 24th October 2025; and a letter from the Advocates for the applicants, dated 13th November 2025, addressed to the 2nd respondent and the Permanent Secretary for the Ministry of Internal Security and National Administration.
6. The respondents were served with the Motion, and they filed a replying affidavit, sworn on 24th February 2026, by Joseph Ngumbi. The point made in it is that the suit was incompetent, for it was not brought against the accounting officer in the Ministry of Interior and National Administration, as provided for under section 21(3) of the

Government Proceedings Act, Cap. 40, Laws of Kenya, and that the respondents named in it were not accounting officers. It is also pointed out that an order against the Government had not been served. It is also averred that a notice of appeal had been served on the applicants, expressing an intention to lodge an appeal at the Supreme Court, with respect to the decision in Nairobi CACA No. 271 of 2019, and no public funds could be expended prior to the matter of the intended appeal being disposed of.

7. The application was canvassed by way of written submissions, filed by both sides.
8. The written submissions by the applicant, dated 23rd February 2026, were filed prior to the respondents filing their reply, and it is argued, in them, that there was no objection to grant of the orders sought in the application. *Justus Mugo Mathu vs. Ministry of Interior and Coordination of National Government* JR E133 of 2022, *Republic vs. Ministry of Land and Physical Planning & another* JR. No. 41 of 2023 and *Republic vs. Nairobi City County & ELMA Ltd* JR No. 143 of 2014 are cited.
9. On their part, in their written submissions, dated 10th March 2026, the respondents reiterate the averments made in their replying affidavit, that the accounting officer, in the Ministry of Interior and National Administration, ought to have been the appropriate party sued, as that was the relevant accounting officer, and not them; and that there was a pending appeal at the Supreme Court. It is also submitted that the Government had not been given adequate time to settle the decree, and, in any event, the respondents had not been served with the certificate of order against the Government.
10. The processes for levying execution of court decrees and orders, as set out in the Civil Procedure Act, Cap. 21,

Laws of Kenya, and the Civil Procedure Rules, are not available against the Government. Proceedings against the Government are governed by the Government Proceedings Act, in terms of how to initiate the proceedings, and what to do after a decree is obtained. The requirement is that, upon a decree or order being obtained against the Government, the party, desiring to have it satisfied or complied with, ought to obtain, from the court, a certificate of order against the Government, which should then be served.

11. The law, on satisfaction of orders and decrees against the Government, is section 21 of the Government Proceedings Act. It is section 21(1) which requires extraction of the certificate of order against the Government from the court record. Section 21(2) requires service of that certificate on the Attorney General. It is section 21(3) which directs the Accounting Officer, for the Government department concerned, to pay, to the person entitled or to his Advocate, the amount appearing by that certificate. It is section 21(4) which declares that no execution or attachment, or any other process of that kind, should be issued by the court, for enforcement of payment by the Government of any money or costs decreed or ordered by a court against it.
12. The accounting instrument, for the purpose of Government operations, that unlocks payment of money from the Government, in satisfaction of a court order or decree, is the certificate of order against the Government. This document is critical. Without it, the process of payment cannot be unlocked. Any person desiring to be paid by Government, on account of a decree or order against it, must first obtain the said certificate. That certificate must then be served on the Attorney General; in case the decree or order is against the national Government. The Government should only be expected to settle or satisfy the decree upon being notified of the same, through that certificate being served

upon them, in accordance with the law. See *Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* [2012] eKLR (Githua, J).

13. *Mandamus* is available where a statutory or public duty exists, and it issues to enforce that duty. See *Kenya National Examinations Council vs. Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR (Omolo, Tunoi & Shah, JJA). The duty, on the part of the Government, with respect to court orders and decrees, to pay or settle a court decree or order, accrues, not upon the order or decree being passed, but upon the accounting document, known as certificate of order against the Government, being served on the relevant Government official. *Mandamus* can only be obtained on the strength of service of the said certificate, for it is upon that service that the duty to act accrues.
14. The question in this case then is, whether the duty to pay had accrued. The answer to that question would depend on whether a certificate of order against the Government was obtained, and if it was, whether it was served on the relevant Government functionary.
15. My perusal of the affidavits, filed herein by the applicants, sworn on 2nd February 2026 and 6th February 2026, reveals that a certificate of order against the Government, in this case the respondents herein, was obtained from the trial court, and was issued on 21st January 2026. The said certificate is a court instrument, in the same footing with a summons, notice, order or decree. Such court instruments are served upon the concerned parties, through a court process server, either personally, or through substituted service. I have seen no affidavit of service, in respect of the said certificate of order against the Government, annexed to the said 2 affidavits. I have equally not seen any other evidence, apart from an affidavit of

service, pointing to the said document or court process, that is the certificate of order against the Government, having been purportedly served on the relevant Government agent for the purposes of these proceedings.

16. What I have seen, in these affidavits, is a letter, dated 13th November 2025, addressed to the Attorney General and the Permanent Secretary for the Ministry of Internal Security and National Government, forwarding a further amended decree and a certificate of costs. It does not purport to forward the certificate of order against the Government, dated 21st January 2026. In any event, court process is not served upon or furnished to parties by ordinary post, but registered mail, upon leave to serve by way of substituted service being obtained. There is a due process for that purpose, that is of serving a certificate of order against the Government. There is no evidence that that due process was followed in this case.

17. As due process was not followed, to avail the all-important accounting document, known as the certificate of order against the Government, to the respondents herein, issued with respect to the decree in Nairobi HCCC No. 398 of 2009, to facilitate settlement of the decree, in accordance with the relevant Government accounting protocols, the duty upon them, to satisfy that decree, has not accrued, and there is, therefore, no basis upon which a *mandamus* order can issue against them. See *Kungu vs. County Government of Nairobi* [2024] KEHC 3265 (KLR) (Chigiti, J). The application, dated 6th February 2026, is, accordingly, premature.

18. Let me now advert to the other issues raised by the respondents. They are 2 issues. One is around whether the Principal Secretary, Ministry of Interior and National Administration, was not the proper party to sue, as the responsible accounting officer, rather than the Inspector

General of Police and the Attorney General. The second is about the purported intended appeal at the Supreme Court.

19. On that first issue, the joinder of the Principal Secretary, Ministry of Interior and National Administration, it will be noted that historically the Principal Secretary, Ministry of Interior and National Administration, was the accounting officer responsible for the said Ministry, and all the agencies of the State that fell under it, like the National Police Service. However, that is no longer the position.

20. It was recently held, in *Benjamin vs. Attorney General & 2 others; Lemedeket & 2 others (Interested Parties)* [2023] KEELRC 1768 (KLR) (Ongaya, J), that the person responsible for administration of the National Police Service is the Inspector General of Police, and he is, therefore, the accounting officer for the National Police Service, by reason of the wide statutory roles. It was stated that the Inspector General of Police ought to be designated, by the Cabinet Secretary, under the Public Finance Management Act, Cap 412A, as the accounting officer. It was pointed out that assigning the role of the accounting officer for the National Police Service, to an officer outside of the National Police Service, would undermine the design of the National Police Service, as envisaged by the Constitution and the National Police Service Act, Cap. 84, Laws of Kenya, under which the National Police Service is accorded financial capacity to formulate and implement its budget, with the Inspector General as the accounting officer. It was held that the National Police Service, under the constitutional design, is meant to operate with autonomy, and is not assigned to a Principal Secretary of some Ministry, instead the Inspector General of Police is vested with all the functions and authority to administer the service, and, accordingly, by operation of the constitutional and statutory provisions, the Inspector General of Police is the designated accounting officer of the National Police Service.

21. It should be in the public domain, that the designation, discussed in *Benjamin vs. Attorney General & 2 others; Lemedeket & 2 others (Interested Parties)* [2023] KEELRC 1768 (KLR) (Ongaya, J), had in fact been effected in 2022, by the Cabinet Secretary for the National Treasury, by a letter dated 15th September 2022, which invoked section 67 of the Public Finance Management Act. The effect of that designation was to make the Inspector General of Police the accounting officer, and, therefore, legally responsible for the financial management of the National Police Service. Under the Public Finance Management Act, the Inspector General of Police is personally and professionally accountable for ensuring that court orders and decrees against the National Police Service are honoured.

22. I am aware that the proceedings, in *Benjamin vs. Attorney General & 2 others; Lemedeket & 2 others (Interested Parties)* [2023] KEELRC 1768 (KLR)(Ongaya, J), were subject to an appeal, at the Court of Appeal, which was dismissed, and a further appeal was lodged at the Supreme Court, in *Benjamin vs. Attorney General & 55 others* [2026] KESC 5 (KLR) (Koome CJ&P, Wanjala, Njoki, Lenaola & Ouko, SCJJ), which determined, on 23 January 2026, on parameters other than on the issue of the designation of the Inspector General of Police as the accounting officer for the National Police Service. As it is, the holding, in *Benjamin vs. Attorney General & 2 others; Lemedeket & 2 others (Interested Parties)* [2023] KEELRC 1768 (KLR) (Ongaya, J), remains the law.

23. With regard to the intended appeal, at the Supreme Court, from the decision of the Court of Appeal, in Nairobi CACA No. 271 of 2019, it is trite that the mere intention to lodge an appeal against a decision of a lower court, at a higher court, does not operate as a stay of the order or

decree intended to be appealed against. Even where such an appeal is filed, the mere pendency of that appeal would not automatically stay proceedings at the courts below. A party, wishing to have proceedings or execution of an impugned decision stayed, must obtain an order of stay. I have seen no such stay order, with respect to the decree the subject of these proceedings. I have not even seen any material suggesting that the respondents are proceeding to the Supreme Court on appeal.

24. In view of the finding and holding at paragraph 17, here above, I hereby, accordingly, dismiss the Motion, dated 6th February 2026. There shall be no order on costs.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS,
AT MILIMANI, NAIROBI, ON THIS 24TH DAY OF APRIL 2026.**

**W MUSYOKA
JUDGE**

Mr. Abdirahman, Court Assistant.

Advocates

**Mr. Museve, instructed by JW Guserwa & Company,
Advocates for the applicants.**

**Mr. Ngumbi, instructed by the Hon. Attorney General, for the
respondents.**