

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO. E314 OF 2025

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

-BETWEEN-

REPUBLIC.....APPLICANT

-AND-

COUNTY GOVERNMENT OF NAIROBI.....1ST RESPONDENT

**COUNTY SECRETARY, COUNTY
GOVERNMENT OF NAIROBI.....2ND RESPONDENT**

**CHIEF FINANCE OFFICER, COUNTY
GOVERNMENT OF NAIROBI.....3RD RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE
MEMBER IN CHARGE OF FINANCE,
COUNTY GOVERNMENT OF NAIROBI.....4TH RESPONDENT**

-AND-

EX-PARTE.....RENE & HANS ADVOCATES LLP

JUDGMENT

1. The Ex-parte Applicant has moved this court through the application dated 19th September, 2025 wherein it seeks for orders that :-

1. This Honourable Court be pleased to issue an Order of Mandamus compelling the Respondents herein to pay the Ex-parte Applicant forthwith the sum of Kenya Shillings Two Hundred and Eighty-Eight Million, Seven Hundred and Fourty-Four Thousand, Four Hundred and Sixty-Seven Shillings (Kshs. 288,744,467.31) together with interest thereon as ordered in the Judgement delivered in Misc. Application No E947 of 2023 on 10th October, 2023; Ruling on Costs delivered on 10th March, 2025 and the Certificate of Order and Costs Against the Government issued on 8th April, 2025.

2. The costs of this Application be borne by the Respondents.

The Applicant's Case:

2. It is its case that on 3rd October, 2024 a judgment was entered in Misc. Application No E947 of 2023 in favour of the Applicant for the sum of Kshs. 239,347,600.00 being legal fees in favour of the Ex-parte Applicant.

3. Through a Ruling delivered on 10th March, 2025 in Misc. Application No E947 of 2023 Court assessed and taxed costs payable to the Ex-parte Applicant by the 1st Respondent in the sum of Kshs.

1,383,038.00. On 8th April, 2025 a Certificate of Order and Costs Against the Government.

4. The Decree was served upon the Respondents on 9th April, 2025, as issued in Misc. Application No E947 of 2023 together Certificate of Order and Costs Against the Government issued on 8th April, 2025 in compliance with section 21 of the Government Proceedings Act, Cap 40 Laws of Kenya.
5. Judgement, Decree, Ruling on Costs and Certificate of Order and Costs Against Government it is then applicants case that the Respondents have refused to settle the decretal sum plus accrued interest.
6. The Respondents have made no effort at all to settle the sums ordered by the Court.
7. This Honourable Court is clothed with the jurisdiction and power to issue the prerogative Order of Mandamus sought in this application.
8. In the further Affidavit the applicant in response to the Respondents' Replying Affidavit sworn on 29th October, 2025 by Asha Abdi – Chief Officer - Finance Nairobi County.
9. It is the applicant's case that The Respondents have taken an erroneous position that they cannot settle the Decree and Certificate of Order Against Government in this matter for the reason that the

Decretal sum has not been budgeted for and approved by the Nairobi City County.

10. The law does not condition settlement of decrees on budgetary allocations and that section 21(1)(2) of the Government Proceedings Act does not condition payment to budgetary allocations and parliamentary approval.

11. The Applicant takes issue with paragraph 17 of the Replying Affidavit, and argues that the letter drawn by the Applicant dated 22nd July, 2025 and received by the 1st Respondent on even date was not only conditional, but also, drawn on a “Without Prejudice” basis.

12. Section 23 (1) of the Evidence Act stipulates that:-

23. Admissions made without prejudice in civil cases

(1) In civil cases no admission may be proved if it is made either upon an express condition that evidence of it is not to be given or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

13. Paragraph 17 of the Respondents’ Replying Affidavit together with the reference to the contents and circumstances of issuance of the letter dated 22nd July, 2025.

The respondents’ case;

- 14.** They confirm that the ex-parte Applicant served the Certificate of Order issued on 8th April, 2025.
- 15.** It is their case that by then they had already fully budgeted all the amounts allocated for payment of legal fees and decretals for the Financial Year 2025/2026.
- 16.** The Nairobi City County can only be able to determine how much decretal sums it can pay based on the allocations that will be allocated for the Financial Year.
- 17.** The ex-parte Applicants decretal amount was not amongst the budgeted expenditure, they argue that in any event, the sued County Officers - 2nd 3rd and 4th Respondents are not individually liable under any law for payment by Government.
- 18.** The County as a public institution dealing with public funds, we are constrained by the Public Finance Management Act (PFM), 2012 among other legislation with regard to the County's expenditure and it cannot commit funds unless budgeted for and approved by the Nairobi City County Assembly.
- 19.** The decretal amounts involved herein has also been included for consideration for payment.

20. In good faith the office of the County Attorney wrote a letter to the Applicant requesting for waiver of the interest accrued.

21. It is the respondent's case that the Applicant responded to the letter for waiver of interest agreeing to waive a total of Kenya Shillings Forty Seven Million Four Hundred and Seven Thousand Six Hundred and Three Shillings (47,470,603.3) under two conditions that the Principal Decretal sum be paid in two installments being on or before 31st July,2025 and the final payment being on or before 30th August,2025.

22. The PFM Act Section 125 provides for the budget making process as follows:-

(1) The budget process for county governments in any financial year shall consist of the following stages- the settlement of any monies owed by the County must comply with the provisions of the PMF Act, Section 117, 125, 129, 131 and 133 as follows: -

(i) County fiscal strateu paper pursuant to section 117(1) and (6) of the PFMA representing the financial outlook of a County and be adopted by the County Assembly by 14th March of each year.

(ii) A county budget estimates of revenue expenditure pursuant to section 125, 129 and 131 of the PFMA and presented to the county assembly by the county executive member for finance by 3C-h April each year

for approval by the county assembly before 30th June each year;

(iii) A County Appropriations Act which the County Government must consider and enact by 30th June each year; and

(iv) A County Finance Act pursuant to section 133 of the PFMA, a County Assembly must consider and enact by 30th September each year.

23. They urge this Honorable Court to take Judicial Notice of the fact that the decision to pay involves various stakeholders and the County involves many departments responsible for financial and fiscal matters.

24. The Respondent submits that it has not failed to pay the Decretal sums.

25. It acknowledges that The ex-parte Applicant served it with the Certificate of Order issued on 8th April, 2025 and served upon the Office of the County Attorney on 9th April, 2025, which was after the budget process had lapsed and therefore could not be considered in the budget of the FY 2025-2026.

26. The budget for the financial year had already been allocated for payment of legal fees and decretals.

27. Further the Nairobi City County is funded through allocation of funds by the County Assembly.
28. It submits that the Respondent has not refused to pay the Applicant, but rather it is in the process of payment which as per section 125 of the Public Finance Management Act PFM (2012) provides for the budget making process.
29. It further submits that as per the PFM Act, sections and 133, the settlement of any monies owed by the County must comply With the said provisions.

Analysis And Determination;

30. From the application and the response thereto, the court has identified the following to be the issues for determination;
 - i) Whether the applicant is entitled to the orders of Mandamus against the Respondents.
 - ii) Who shall shoulder the costs.
31. The governing law that guide the determination of this issue is Section 21 of Government Proceedings Act which provides:

“(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.

Section 21 (3) of the said Act on the other hand provides:

“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.

- 32. In Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR** expressed herself as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the

relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine].

- 33.** The applicant has proven its case and the respondents do not deny owing the amount claimed. In the Ugandan case of ***Pastoli vs Kabale District Local Government Council & Others, (2008) 2 EA 300***, that:

*“In order to succeed in an Application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See **Council of Civil Service Union v Minister for the Civil Service [1985] AC 2**; and also, **Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR)**.*

Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

*Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: **Re An Application by Bukoba Gymkhana Club [1963] EA 478** at page 479 paragraph “E”.*

Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of

the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.

- 34.** The court is satisfied that the applicant has made out a case within the principles as enunciated in the Pastoli case (Supra.)
- 35.** The respondents acknowledge that The ex-parte Applicant served the Certificate of Order issued on 8th April, 2025 and served upon the Office of the County Attorney on 9th April, 2025, which according to the Respondents was after the budget process had lapsed and therefore could not be considered in the budget of the FY 2025-2026.
- 36.** The court further notes that the Respondents have not refused to pay the Applicant, but rather it is in the process of payment which as per section 125 of the Public Finance Management Act PFM (2012) provides for the budget making process.
- 37.** The law does not condition settlement of decrees on budgetary allocations and that section 21(1)(2) of the Government Proceedings Act does not condition payment to budgetary allocations and parliamentary approval.

38. The fact that there were letters and proposals made cannot form the basis of the avoidance of the settlement of the certificate of order against the government.

Costs;

39. The Law governing the issue of costs in suits is set out under Section 27 of the *Civil Procedure Act*. The Section provides;

"Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers"

40. In ***Republic vs. Rosemary Wairimu Munene, Ex-parte Applicant vs. Kururu Dairy Farmers Co-operative Society Ltd*** the court held;

"The issue of costs is the discretion of the court as provided under the above Section. The basic rule on attribution of costs is that costs follow the event it is well recognized that the principle costs follow the event is not to be used to penalize the

losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case"

Determination:

The application has merit.

Order:

- i. An Order of Mandamus compelling the Respondents herein to pay the Ex-parte Applicant the sum of Kenya Shillings Two Hundred and Eighty-Eight Million, Seven Hundred and Forty-Four Thousand, Four Hundred and Sixty-Seven Shillings (Kshs. 288,744,467.31) together with interest thereon as ordered in the Judgement delivered in Misc. Application No E947 of 2023 on 10th October, 2023; Ruling on Costs delivered on 10th March, 2025 and the Certificate of Order and Costs Against the Government issued on 8th April, 2025 is hereby issued.
- ii. The said amount shall be paid within 6 months. In default, a Notice to Show Cause shall issue against the Respondents to show cause why they should not be cited for being in contempt of Court Orders.
- iii. Costs to the applicant.

**Dated, signed and delivered virtually in Eldoret this 23rd April
2026.**

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**J. CHIGITI (SC)
JUDGE**