



**Republic v Chief Office & Finance, Nairobi City County Government & 2 others;
Cherono (Suing as the personal representative of the Estate of Nyaosi Omondi
Geoffrey) (Ex parte Applicant) (Judicial Review Application E420 of 2025)
[2026] KEHC 5402 (KLR) (Judicial Review) (22 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5402 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E420 OF 2025

RE ABURILI, J

APRIL 22, 2026

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. 1381 OF 2022**

BETWEEN

REPUBLIC APPLICANT

AND

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

NAIROBI CITY COUNTY GOVERNMENT 2ND RESPONDENT

THE HON ATTORNEY 3RD RESPONDENT

AND



**PRUDENCE CHERONO (SUING AS THE PERSONAL REPRESENTATIVE OF
THE ESTATE OF NYAOSI OMONDI GEOFFREY) EX PARTE APPLICANT**

JUDGMENT

1. Vide a Notice of Motion dated 17th December 2025 filed pursuant to leave granted in HCJRMISC E156 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), 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. 1381 of 2022 in favour of the ex-parte Applicant.
 2. That the costs of this application be borne by the Respondents.
2. The Application is premised on the grounds on the face thereof and is further predicated on statutory statement and Verifying Affidavit dated 21st November 2025 filed alongside the Chamber Summons for leave.
3. The ex-parte Applicant's case is that she obtained judgment in her favour against the Nairobi City County Government and the Honourable Attorney General in Milimani CMCC No. 1381 of 2022 on 30th January 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 were duly served upon the Respondents on 15th August 2025 thereby triggering the statutory obligation of the Respondents to settle the decretal sum.
4. 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, that 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.
5. It is asserted that ex-parte Applicant is the lawful beneficiary of the judgment, which arose from a cause of action related to a fatal road traffic accident that led to the institution of Milimani CMCC No. 1381 of 2022. She deposes 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.
6. 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 her 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

7. In response to the Application, the 1st Respondent filed a Replying Affidavit dated 11th February 2026 sworn by ASHA ABDI, the Chief Officer - Finance, Nairobi City County 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.



8. 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.
9. It is deposed that the Nairobi City County is funded through allocations from the County Assembly and that the City County's expenditure is constrained by the Public Finance and Management Act, 2012, and other legislation and that it therefore cannot commit funds unless budgeted for and approved by the Assembly. As such, the City County can only pay decretal sums based on the allocated funds for the financial year.
10. 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.
11. Ms. Abdi deposes 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.
12. 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.
13. It is her deposition that granting the orders sought would be prejudicial to the Nairobi County Government and against the spirit of laws providing for prudent use of public funds. This Court is urged not to grant the orders as measures have been put in place to ensure all verified pending Decretal amounts are paid.
14. The 3rd Respondent Attorney General filed Grounds of Opposition dated 12th February 2026 in which it opposed the Application on several grounds. Firstly, that the prayer for Mandamus against the 3rd Respondent is untenable because it 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.
15. 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 Principal Secretary for the National Treasury as the accounting officer for ministries, state departments, or agencies.
16. It is contended 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, that granting mandamus to compel payment against an officer not constitutionally charged with that duty (the Accounting Officer) would be an exercise in futility.
17. The 3rd Respondent further contends that it has not been designated as required by Section 21 of the *Government Proceedings Act*. That instead, the 1st Respondent (Chief Officer Finance, Nairobi City County) and the 2nd Respondent (Nairobi City County Government) are the properly constituted respondents against whom the decretal sum can be recovered due to joint and several liability.



18. It is urged that this Court should make a finding that the 3rd Respondent is not a proper Respondent and dismiss the Notice of Motion as it is founded on incorrect provisions of law and constitutes an abuse of the court process.

Submissions

19. 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 which is similar to this matter against the same respondents, only the applicants and amounts and primary court suits were different.
20. 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* because they had a decree and Certificate of Order against the Government which were all duly served upon the Respondents and settlement demanded.
21. 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 (supra).
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 by the respondents, 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 of *the Constitution*. 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, that cannot render the Application defective as the issue is merely one of 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 fully relying on their Replying Affidavit dated 12th February 2026 and argued that the 1st & 2nd Respondents did not deny owing the money but were constrained by budget, adding that they did not object to the payment of money but stated 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 urged 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 through a process initiated by this Court.
27. Mr. Idris Counsel for the 3rd Respondent submitted adopting their Grounds of Opposition and argued that the Attorney General is mis joined because, she is not an accounting officer and that neither can she be compelled to settle decrees for the County Governments. He urged this Court to strike out the Attorney General from these proceedings.



Analysis and Determination

28. I have considered the Application as filed and argued. The main issue for determination is whether the Application is merited and therefore, 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 cases, 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, it is not in dispute that the ex-parte Applicant herein obtained judgment in her favour in Nairobi Milimani CMCC No. 1381 of 2022 on 30th January 2025 for the decretal sum of Kshs. 4,070,103/= together with costs and interests totalling to Kshs. 4,496,857/=. This Decree and Order were issued against the Attorney General and the Nairobi City County Government upon 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 accounting officer's statutory obligation to pay arose, as stipulated in Section 21 of the *Government Proceedings Act* which 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.
35. 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 accounting officer of the respondent government entity to pay, such that if the decree is not settled, then such a party may approach the court for redress as is in the present case.
36. The above Section 21 does not create a condition that mandamus will only issue subject to availability of funds or budget allocation or approvals, as was argued 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 to compel settlement.
37. Having set out the legal framework, the question is whether mandamus is available in this case, 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.”



38. 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.”

39. 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.”



40. Flowing from the above judicial pronouncements, it is clear that mandamus orders are compelling orders directed at a public body to fulfil their statutory duties. In this case, my finding is that the ex-parte Applicant has satisfied the granting of mandamus, since there is no other alternative remedy where the decree and certificate of order against the Government are issued and served upon the accounting officer of the judgment debtor but no settlement has been made.
41. I however take issue with the fact that the ex-parte Applicant enlisted all the three Respondents as the ones jointly and severally responsible for settling her decree. It is a well-established principle that Mandamus Orders can only be directed to party who bears the statutory responsibility of carrying out the intended action. In this case, it is only the accounting officer who can be called upon settle the decretal sum.
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 for designation of accounting officers in the following terms:
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 the above provisions, there is no indication that the Attorney General is an accounting officer for purposes of settling the decree in question. The Attorney General can only be a legitimate party



to proceedings against the national government or where her officers are or were responsible for the impugned acts leading to the institution of the primary suit. That is not the case here.

45. In my view, it matters not that the lower court entered judgment against the Attorney General, jointly and severally in favour of the *ex parte* applicant. A judgment that is made against a wrong party in law is a void judgment incapable of enforcement against a wrong party. I therefore must dismiss the application as far as it is against the 3rd Respondent. I however find that a case has been made out for granting the mandamus orders against the 1st and 2nd Respondents.
46. In the premises I allow the notice of motion dated 17th December 2025 and order as follows:
1. An Order of Mandamus be and is hereby issued compelling the 1st and 2nd Respondents to satisfy the decree and certificate of order against the government given in Milimani CMCC NO. 1380 of 2022 in favour of the *ex parte* Applicant on 30th January, 2025 and issued on 11th August, 2025 for a sum of Kshs 4,496,857 plus interest accruing thereto as allowable by law.
 2. The case against the 3rd Respondent is hereby dismissed for misjoinder and the 3rd respondent Attorney General is struck off these proceedings.
 3. The costs of this Application shall be borne by the 2nd Respondent, assessed at Kshs 50,000.
 4. Mention on 17th June, 2026 before the presiding Judge, Judicial review Division to confirm the status of settlement.

47. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF APRIL, 2026

R.E. ABURILI

JUDGE

