



**Grekkon Co Limited v County Secretary, County Government of Kakamega & another  
(Judicial Review E010 of 2025) [2026] KEHC 6187 (KLR) (7 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6187 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
JUDICIAL REVIEW E010 OF 2025**

**AC BETT, J**

**MAY 7, 2026**

**BETWEEN**

**GREKKON CO LIMITED ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF  
KAKAMEGA ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF FINANCE OFFICER/COUNTY TREASURER, COUNTY  
GOVERNMENT OF KAKAMEGA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Ex Parte Applicant is a Decree Holder against the County Government of Kakamega in respect to a Decree arising from a consent Judgement dated 5<sup>th</sup> November 2024, in which the County Government was to pay the Ex Parte Applicant the sum of Kshs. 2,633,440/= in full settlement of its claim in Kakamega MCCC No. E030 of 2024.
2. The County Government failed to settle the decree, and pursuant to leave of the court, the Ex Parte Applicant filed the judicial review proceedings in which it seeks an order of mandamus to compel the Respondents to satisfy the decretal sum arising from the aforesaid Judgement.
3. The Respondents filed an affidavit sworn by the Chief Officer, Agriculture and Irrigation in the County Government of Kakamega, one Emmanuel Kariuki. The deponent admitted that there existed the consent judgement pursuant to which the County Treasurer initiated internal processes of settlement, including:-
  1. Verification of the decree.
  2. Confirmation of outstanding sums, and
  3. Initiation of payment voucher.



4. It was the Judgement Debtor's averment that on 15<sup>th</sup> July 2025, a Memorandum was issued to the relevant Accounting Officer to prioritize settlement of the decree and prepare the requisite settlement voucher but that the County's payment is dependent on exchequer disbursements from the National Treasury through the County Revenue Fund in accordance with Article 207 of *the Constitution* and Sections 109-110 of the *Public Finance Management Act* and that as at November-December 2024, the County's FY 2024/2025 Budget lines for court decrees had been depleted and no lawful supplementary budget could be generated at the time without breaching Section 104 (1) of the County Government Act.
5. It was the Judgement debtor's case that settlement of the decree had been initiated and awaited the next tranche of Exchequer disbursements.
6. The application was canvassed through written submissions, with the Applicant submitting that it had met the legal threshold for an order of mandamus to issue. It submits that, since the Respondents admit the judgement and decree but cite fiscal delays, which excuse is untenable, the orders should issue to compel them to settle the Decree, as there is a clear duty which the Respondents have failed to perform and no alternative remedy. The Applicant relies on the following cases:- Republic v. Kenya National Examination Council Ex Parte Gathenji & Others [1997] eKLR, Republic v. Attorney General & Another Ex Parte Odero [2013] eKLR, Council of Governors v. Lake Basin Development Authority & others [2017] eKLR and Republic v. Principal Secretary, Ministry of Interior Ex Parte Sony Holdings Ltd [2015] eKLR.
7. On their part, the Respondents submit that the fourteen (14) day timeline sought by the Applicant is not practical or reasonable given the Country's fiscal processes. They submit that once the FY2025/2026 budget was approved by the County Assembly and uploaded by the Controller of the Budget, the County Treasury reactivated the payment process for outstanding decrees, including the decree herein and awaits the release of the next tranche of exchequer disbursement from the National Treasury over which they did not have control. The Respondents urge the court to take judicial notice of recent instances of delayed disbursements of County Government Funds by the National Treasury.
8. Against this backdrop, the Respondents submit that they are acting in good faith and will prioritize settlement of the decree and urge the court to decline to issue the order of mandamus or, in the alternative, grant the Respondents a reasonable period to complete payment upon receipt of exchequer funds, and make no order as to costs.
9. The main issue that arises for determination is whether the Applicant has met the threshold for issuance of an order of mandamus.
10. Mandamus is a prerogative order that is normally issued to compel a public officer to perform a statutory duty, and in seeking the orders, an applicant is required to demonstrate a clear right to the performance of that duty and a corresponding right by the public office to discharge the duty.
11. The County Government is a state organ and therefore protected under Section 21 of the *Government Proceedings Act*. That being so, execution against a County Government can only ensue pursuant to the *Government Proceedings Act* as provided for under Order 29 Rule 2 of the Civil Procedure Rules.
12. It is common ground that the Applicant and the County Government of Kakamega entered into a consent. A consent once adopted by court becomes a valid judgement of the court and flowing from it is a decree that must be settled. Failure to settle the decree would render the court process a mockery and a mere academic process.



13. Section 21 (1), (4) and (5) of the *Government Proceedings Act* upon which these proceedings are founded provide:-

“(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.

(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.”

14. The prerequisites for an order of mandamus were considered by the court in *Republic v. Chief Secretary, Tharaka Nithi County & 2 others, Mugetwa (Ex Parte Applicant)* [2025] KEELC 5594 (KLR) when the court enumerated the general criteria for granting the order and stated that:-

“11. The general criteria for granting an order of mandamus against a public officer or a public entity was outlined in the Canadian case of *Apotex Inc v Canada (Attorney General)*. The criteria was also discussed in the Canadian case of *Dragan v Canada (Minister of Citizenship and Immigration)*. The key elements that must be present for the order of mandamus to issue were outlined as follows:

- “a) There must be a public legal duty to act;
- b) the duty must be owed to the applicant;
- c) there must be a clear right to the performance of that duty, meaning that:
  - i. The applicant must have satisfied all conditions precedents; and
  - ii. There must have been: A prior demand for performance; A reasonable time to comply with the



demand, unless there was outright refusal; and An express refusal, or an implied refusal through unreasonable delay;

- d) there should be no other adequate remedy available to the applicant;
- e) the order sought must be of some practical value or effect;
- f) there should be no equitable bar to the relief sought.”

12. In addition to the above general criteria, a party seeking to enforce a judgment or an award of costs against an accounting officer within a department of the National Government or within a County Government by way of an order of mandamus is required to first comply with the mandatory requirements of the *Government Proceedings Act* (hereinafter referred to as “the Act”). Among the mandatory requirements is that the decree holder should obtain and serve a certificate of order under Section 21 of the Act. The certificate of order serves as a formal demand for the performance of the legal duty of settling the award by the accounting officer.”

15. In *Five Star Agencies Limited & Another v. National Land Commission & 2 others* [2024] KECA 439 (KLR), the Court of Appeal held that:-

“...An application that seeks to compel the Government to satisfy a decree is subjected to a very elaborate procedure. Before the court issues such an order, there must be proof that the provisions of section 21 of the *Government Proceedings Act* have been complied with. In the case of *Republic v Permanent Secretary Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandishi* [2014] eKLR, Odunga, J (as he then was), held as follows:“...It must be remembered that an application for an order of mandamus seeking an order compelling the Government to satisfy a decree is a very elaborate procedure. Before the Court issues such an order, there must be proof that the provisions of the *Government Proceedings Act* have been complied [with] with respect to issuance of certificate of costs and certificate of order against the Government. After the issuance of the aforesaid documents, just like in any application for mandamus, there must be a demand for payment made by or on behalf of the decree holder to the relevant department seeking payment since in an application for an order of mandamus, the law as a general rule requires a demand by the applicant for action and refusal as a prerequisite to the granting of an order, though there are exceptions to the rule...The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view, is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court.” [Emphasis added]

16. The reason for the requirement of strict adherence to the procedure laid out in the *Government Proceedings Act* as a decree holder seeks to execute a decree is borne of the need to shield the government from indiscriminate attachment of its properties by providing it with adequate safeguards and notice to make arrangements to settle the decree although in *Joseph Nayanamba & 4 others v. Kenya Railways Corporation* [2015] eKLR, the Court of Appeal held that Section 21 of the *Government Proceedings Act* impedes access to justice as provided by Article 48 of *the Constitution*.



17. In Republic v. Principal Secretary, Ministry of Interior Ex Parte Titus Barasa Makhanu [2020] KEHC 3348 (KLR), an order of mandamus was issued to compel the Respondent to settle a decree that emanated from a Judgment in a constitutional petition.
18. I have perused the Applicant’s application, the statement pursuant to Order 53 Rule 1 and 2 of the Civil Procedure Rules, and the Verifying Affidavit sworn by the Applicant in support of his motion. The Applicant has annexed copies of the consent judgment and the Decree issued on 8<sup>th</sup> November 2024 to its application. It has also furnished the court with copies of demand letters, to which the Respondents have responded by providing a copy of a memorandum requisitioning payment and a copy of an unprocessed payment voucher for the settlement of the debt.
19. In Republic v. Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR), Githua J. held:-
- “.....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.”
20. Notwithstanding the fact that the Applicant did not attach a certificate of order against the County Government, and bearing in mind the need to promote access to justice as demanded by Article 48 of *the Constitution*, I am satisfied that the Applicant has met the prerequisite conditions for the grant of the order of mandamus. It is evident that the County Government is under a public duty to settle the decree. Under Articles 48 and 129 of *the Constitution*, Public Officers are under a mandatory obligation to perform their statutory duties and enforce judgments, thereby ensuring access to justice and upholding judicial authority.
21. The Respondents have advanced the claim that an order of mandamus would require the County Officers to violate the *Public Finance Management Act*, commit illegal expenditure, and risk personal liability under Section 196 – 197 of the *Public Finance Management Act*. This, despite averring that they have initiated the payment process and only await the disbursement of the FY 2025/2026 funds by the Exchequer. The court holds the view that the Applicant’s right to access the fruit of its judgement should not be sacrificed at the altar of financial expediency and alleged budgetary constraints. A court order is a lawful order which must be obeyed at the pain of sanctions for disobedience. Failure to obey



- the order would invite sanctions such as contempt proceedings or civil jail against the errant officer. In any event, a public officer cannot be held liable for obeying a court order, as such an order is a judicial imperative that is independent of the Public Service and its code of conduct.
22. The court reiterates that Section 21 (3) of the *Government Proceedings Act* imposes a mandatory statutory duty on the Respondents to settle lawful decrees, financial difficulty notwithstanding. See Republic v. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza (Supra).
  23. In a nutshell, as has been held severally, financial constraints alone are insufficient to warrant failure by a public officer to settle debts that have been determined to be due. I agree with Aburili J. in Republic v. The Principal Secretary, Ministry of Interior Coordination and National Government & Another Ex Parte Mustafa Mwalim Musa [2025] KEHC 744 (KLR) that an order of mandamus cannot be tied to the availability of funds. It is my considered view that once the threshold for granting the order is met, the court should not be constrained by excuses of budgetary allocation and exchequer disbursements from the National Treasury.
  24. The court appreciates that the County Government operates with a budget and that its financial operations are anchored on the *Public Finance Management Act*. However, by virtue of Article 48 of *the Constitution*, the court is enjoined to ensure that the Applicant has access to justice and enjoys the fruits of its judgement. To that end, the court must be a doorway to justice, not a wall or an obstacle. Since the judgement is against the County Government, whose properties cannot be attached, the court is guided by the holding in Republic v. Kenya National Examinations Council Ex Parte Gathenji & others [1997] KECA 58 (KLR) where the Court of Appeal held that:-

“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 or 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...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.”
  25. The 2<sup>nd</sup> Respondent is the Chief Accounting Officer of the County Government of Kakamega, which is the Judgement debtor herein and is under statutory duty to settle the debt.
  26. The upshot is that the Notice of Motion dated 20<sup>th</sup> November 2025 is merited. The same is allowed, and an order of mandamus issued compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to settle the Decree in Kakamega MCCC. No. 030 of 2024 plus interest thereon until payment in full.
  27. Costs follow the event, and the Applicant shall have the costs of these proceedings.
  28. The matter shall be mentioned on 29<sup>th</sup> July 2026 to confirm compliance.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 7<sup>TH</sup> DAY OF MAY 2026.**

**A. C. BETT**  
**JUDGE**



**In the presence of:**

..... for the Applicant

..... for the 1<sup>st</sup> Respondent

..... for the 2<sup>nd</sup> Respondent

Court Assistant: Polycap

