

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NAIROBI**  
**ELC JR MISC. APPLICATION NO. 004 OF 2025**

**ANTHONY NJOROGE.....1<sup>st</sup>**

**APPLICANT**

**SUSAN NYAWIRA MATHENGE.....2<sup>nd</sup>**

**APPLICANT**

**JANTO INVESTMENT LTD.....3<sup>rd</sup>**

**APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF NAIROBI.....1<sup>st</sup>**

**RESPONDENT**

**ACCOUNTING OFFICER NAIROBI COUNTY....2<sup>nd</sup>**

**RESPONDENT**

**JUDGMENT**

1. Before this court for determination is the 2<sup>nd</sup> Applicant's Notice of Motion dated 12<sup>th</sup> August, 2025 brought pursuant to the provisions of **Section 1A, 1B and 3A** of the **Civil Procedure Act, Section 8 and 9 Law Reforms Act** and **Order 53, Rule 3(1) (2)(3) & (4)** of the **Civil Procedure Rules 2010** seeking the following reliefs:

- i. That this Honourable Court be pleased to issue an order of mandamus against the Accounting Officer of the 1<sup>st</sup> Respondent to comply with the*

***judgment and decree issued in Nairobi ELC Petition No.4 of 2018 Anthony Njoroge & 2 Others vs County Government of Nairobi and the Attorney General for settlement of the decretal sum of Kes. 4,947,400.00 and costs of Kes. 497,882.00 to the 2<sup>nd</sup> Applicant.***

***ii. That the costs of this application be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.***

2. The Motion is supported by the affidavit of Susan Nyawira Mathenge, the 2<sup>nd</sup> Applicant, sworn on even date. She deponed that on 7<sup>th</sup> July 2020, judgment in **Nairobi ELC Petition No. 4 of 2018, Anthony Njoroge & 2 Others vs County Government of Nairobi & the Attorney General**, was entered in her favour as against the 1<sup>st</sup> Respondent in the sum of Kshs. 4,947,400, together with costs, for violation of her constitutional right to property.
3. According to Ms. Mathenge, through her counsel on record, several attempts were made to engage the 1<sup>st</sup> and 2<sup>nd</sup> Respondents with a view to settling the decretal sum, but no payment was forthcoming. Consequently, she proceeded to tax her costs against the 1<sup>st</sup> Respondent, and upon taxation, a decree and certificate of costs were issued in her favour in the sum of Kshs. 497,882, taxed on 20<sup>th</sup> July 2022.
4. Upon service of the decree and the certificate of costs, it was deposed that the 1<sup>st</sup> Respondent made oral

misrepresentations to her of its intention to settle the decretal sum after it allocated the same in its 2023/2024 supplementary budget for consideration as a pending bill and that following its failure to settle the decretal sum and costs, the 2<sup>nd</sup> Applicant proceeded to extract a certificate of order against the government dated 28<sup>th</sup> August, 2023 and served the same upon the 1<sup>st</sup> Respondent on 18<sup>th</sup> October 2023.

5. She deponed that, since the delivery of the judgment, the Respondents have deliberately neglected and/or failed to honour the trial court's decision, thereby frustrating and delaying her enjoyment of the rights accruing therefrom. She contends that, as public offices bound by the rule of law, the Respondents have demonstrated a blatant disregard of her constitutional rights as affirmed in Nairobi ELC Petition No. 4 of 2018, and have continued to subject her to undue hardship by failing to meet their legal obligations.
6. She urged that she holds a constitutionally protected legitimate expectation that administrative actions affecting her will be lawful, fair and timely, and that she should not be subjected to continued violation of her rights. She stated that as advised by Counsel, the Respondents' failure to comply with the judgment offends the doctrine of legitimate expectation and the rule of law as envisaged under the Constitution.

7. The Applicant further characterized the Respondents' delay in settling the decretal sum and taxed costs as intentional, inordinate, inexcusable, and gravely prejudicial to her right to fair administrative action, and contrary to the interests of justice.
8. Ms. Mathenge further deponed that, in light of the Respondents' continued failure to satisfy the judgment, she sought and obtained leave of the court on 23<sup>rd</sup> July 2025 to commence judicial review proceedings against them. She averred that despite service of the relevant processes, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to settle the judgment debt, thereby necessitating the present application for an order of mandamus to compel them to do so.
9. In response to the Motion, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through the 1<sup>st</sup> Respondent's County Chief Officer Finance, Asha Abdi, swore a replying affidavit on 14<sup>th</sup> November, 2025. She deponed that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are as public institution governed by the provisions of the **Public Finance Management Act, 2012** in all matters pertaining to the management of public finances and expenditure.
10. Ms Abdi explained that Part IV of the **Public Finance Management Act** provides that any financial commitments or payments, including the settlement of court decrees and debts by a County Government, must be subjected to the elaborate budgetary process established by law and that the

aforesaid processes include identification of priorities; listing all development plans and pending financial obligations, including short-term and long-term projects; priority setting; and establishing financial and economic priorities for the County over the medium term.

- 11.** She explained that the non-payment of the decretal sum arises not from wilful refusal or neglect by the 1<sup>st</sup> Respondent, but rather due to the complexities and procedural requirements inherent in the public financial management system, as outlined above.
- 12.** It was deposed that despite the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' genuine intention to settle the decretal sum, the multiplicity of stakeholders, government departments, and statutory requirements has caused delays in the payment process and that public funds can only be expended in accordance with the law and the approved budgetary framework.
- 13.** She stated that steps have already been initiated to include the Applicant's decretal sum in the 1<sup>st</sup> Respondent's upcoming budget cycle. However, this process requires time and must adhere to the statutory timelines and frameworks.
- 14.** She urged the court to exercise its discretion and grant the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sufficient time to ensure compliance with the law and facilitate the payment of the decretal sum

through the next budgetary allocation. The parties filed submissions and authorities which I have considered.

### **Analysis and Determination**

15. Having considered the motion, the sole issue that arises for determination is whether an order of mandamus should issue compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to satisfy the judgment and decree in Anthony Njoroge & 2 Others vs County Government of Nairobi & the Attorney General by paying the decretal sum of Kshs 4,947,400.00 and costs of Kshs 497,882.00 to the 2<sup>nd</sup> Applicant.
16. Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty. Speaking to the same, the Court of Appeal in the case of **Republic vs Kenya National Examinations Council ex parte Gathenji & others (1997) eKLR** noted 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.”*

*What do these principles mean? They mean that an order of mandamus will compel 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...”*

17. In a more recent exposition, the Court of Appeal in *Commission on Administrative Justice vs Kenya*

**Vision 2030 Delivery Board & 2 others [2019]**  
**eKLR** stated as follows:

**“As observed by the Judge and correctly so in our view, the principle that guides the High Court when dealing with the scope and efficacy of an order of mandamus was crystalized by the Court in Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others (supra) namely:**

**“The order of mandamus is of most extensive remedial nature and is in the form of 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 of 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 it may issue in cases where although there is an alternative remedy, yet the mode of redress is not convenient, beneficial and effectual.”**

- 18.** It is not in dispute that the parties herein were parties in **Nairobi ELC Petition No. 4 of 2018, Anthony Njoroge & 2 Others vs County Government of Nairobi & the**

**Attorney General**, wherein judgment was delivered on 7<sup>th</sup> July 2020 in favour of the 2<sup>nd</sup> Applicant. In that matter, the court awarded her, *inter alia*, damages in the sum of Kshs. 4,947,400 against the County Government of Nairobi for violation of her constitutional rights to property together with costs.

- 19. Section 21** of the **Government Proceedings Act** provides as follows as regards the requirements to be met in the enforcement of orders as against the Government in civil proceedings:

***“(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.”*

20. In the present case, the Applicant has demonstrated compliance with all conditions precedent to enforcement as set out in **Section 24(1)** of the **Government Proceedings Act**. Following the judgment of 7<sup>th</sup> July 2020, the 2<sup>nd</sup> Applicant taxed her costs on 20<sup>th</sup> July 2022 in the sum of Kshs. 497,882 and obtained a decree dated 13<sup>th</sup> January 2023 for the aforesaid sum together with the decretal sum. She thereafter extracted a certificate of order against the Government dated 28<sup>th</sup> August 2023 and served the same upon the Respondents on 18<sup>th</sup> October 2023.
21. According to the Applicant, despite the judgment having been delivered in her favour, and notwithstanding several demands having been made, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed and/or refused to settle the decretal sum.
22. The Respondents, for their part, do not dispute either the existence of the decree or their obligation to satisfy it. Indeed, they expressly concede that the decretal sum remains unpaid. Their explanation for the continued non-payment is that settlement is contingent upon the Government budgetary cycle, maintaining that they have neither refused nor neglected to discharge their obligation.
23. The courts have consistently held that budgetary constraints or lack of allocation cannot, by themselves, justify the failure by Government entities to satisfy lawful court decrees. In ***Republic v County Government of***

**Meru & 4 others; Mucheke (Exparte Applicant) (Judicial Review Application E003 of 2024) [2024] KEELRC 2764 (KLR)**, the County Government similarly sought additional time to settle the decretal amount during the next budgetary allocation cycle. The court nevertheless observed that a decree of the court is not a mere suggestion, but a command that must be complied with, and held that the Respondents had had sufficient time within which to mobilize resources and settle the decretal sum.

24. Earlier, in **Republic vs Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR**, the court similarly rejected the defence of non-allocation of funds. Relying on the decision in **Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR**, the court emphasized that once a Certificate of Order against the Government has been issued and served in accordance with **Section 21** of the **Government Proceedings Act**, a statutory duty arises requiring the accounting officer concerned to satisfy the decretal amount.
25. The court further underscored that payment of a lawful decree is not conditional upon budgetary allocation or parliamentary approval. While financial constraints may influence the mode or timeline of settlement, they do not

extinguish the obligation to comply with a court decree. The court further observed that non-allocation of funds cannot constitute a lawful excuse for non-payment, particularly where no evidence is placed before the court demonstrating efforts undertaken by the responsible Government officials to commence or facilitate the process of allocation and settlement.

26. In the present matter, despite the lapse of considerable time since the judgment was delivered and certificate of order against the government issued, there has been no demonstration of any concrete steps taken towards satisfaction of the decree.
27. Ultimately, the court finds the Motion dated 12<sup>th</sup> August, 2025 to be merited and grants the following reliefs:
- a) **An order of mandamus does hereby issue against the Accounting Officer of the 1<sup>st</sup> Respondent to comply with the judgment and decree issued in Nairobi ELC Petition No.4 of 2018 Anthony Njoroge & 2 Others -V- County Government of Nairobi and the Attorney General for settlement of the decretal sum of Kshs 4,947,400.00 and costs of Kshs 497,882.00 to the 2<sup>nd</sup> Applicant.**
  - b) **The 1<sup>st</sup> and 2<sup>nd</sup> Respondents shall bear the costs of this application.**

**Dated, signed and delivered virtually in Nairobi this 14<sup>th</sup> day of May, 2026.**

**O. A. Angote  
Judge**

**In the presence of;**

Mr. Muia for Applicant

Mr. Chabia Otieno for Respondents

Court Assistant: Tracy

ORIGINAL