

REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
MISC.CIVIL APPLICATION NO. E053 OF 2026

**IN THE MATTER OF: AN APPLICATION BY OPTIMA
SPORTS MANAGEMENT INTERNATIONAL
(UK) LIMITED & OPTIMA SPORTS
MANAGEMENT INTERNATIONAL
(NIGERIA) LIMITED SEEKING ORDERS OF
MANDAMUS**

-AND-

**IN THE MATTER OF: EXECUTION OF A DECREE OF COSTS
AGAINST THE MANAGING DIRECTOR OF
THE KENYA BROADCASTING
CORPORATION, ARISING FROM NAIROBI
ARISING FROM NAIROBI HIGH COURT
COMMERCIAL CAUSE NO. 686 & 687 OF
2009**

BETWEEN

**OPTIMA SPORTS MANAGEMENT INTERNATIONAL(UK)
LTD..... 1ST
APPLICANT**

**OPTIMA SPORTS MANAGEMENT INTERNATIONAL (NIGERIA)
LIMITED2ND
APPLICANT**

**THE MANAGING DIRECTOR, THE KENYA BROADCASTING
CORPORATION
RESPONDENT**

JUDGEMENT

Background;

1. This Judicial Review Application is about the execution of a decree and certificate of costs against the managing director of the Kenya Broadcasting Corporation, the Respondent herein by Optima Sports Management International (UK) Limited and Optima Sports Management International (Nigeria)Limited, the Applicants herein arising from **Nairobi Commercial Cause number 686 & 687 of 2009.**
2. The Application is instituted by way of Originating summons and Notice of Motion dated 25th February 2026 with grounds and supporting Affidavit of one *Antony Maruti Khamala* sworn on even date. The reliefs sought by the Application are that:
3. This court be pleased to issue a writ of *mandamus* compelling the managing Director of the KBC to pay the Applicants forthwith and without delay the decretal decretal sum with interest thereon as ordered in the judgement , decree and award of taxed costs as ordered in ***Nairobi High Court Commercial Cause number 686 & 687 (Consolidated) of 2009 Optima Sports Management International (UK) Limited and Optima Sports Management International (Nigeria)Limited vs Kenya Broadcasting Corporation as particularized below:***
 - i. The sum of Euro 120,000 being the aggregate of the sum of Euro 50,000 and the sum of Euro 70,000 as awarded in the judgement of the court.
 - ii. The interest at 14% from the 7th September 2008 on the sum of Euro 80,000 (being an aggregate of the sum of Euro 30,000 sand on the sum of Euro 50,000) on reducing balance till payment in full.

- iii. The interest at 14% from the 19th December 2008 on the sum Euro 40,000 (being an aggregate of the sum of Euro 20,000 and on the sum of Euro 20,000) on reducing balance till payment in full.
 - iv. The costs of Kshs.923,597.00with interest at 14% thereon from the 6th May 2021 being the date of the taxation of the costs till payment in full.
 - v. The sum of Kshs. 5 million paid by the Kenya Broadcasting Corporation to the Applicants be deducted from the sum payable to the Applicants.
4. The Applicants herein also seek that the Respondent herein be condemned to pay the costs of this Application.
5. The Applicants have relied on 21 paragraphs of grounds to the effect that they had obtained judgement and decree against the Respondent in 2020 pursuant to a suit on breach of contract way back in 2008. That judgement was entered in the total sum of Euro 120,000 with interest thereof to the full plus costs and interest. That interest was awarded at euro 80,000 of the judgement sum and interest running from 19th December 2008 on the sum of Euro 40,000 of the judgement sum on reducing balance to run until payment in full. That subsequently, vide a bill of costs lodged in court, the Exparte Applicants had their costs assessed at Kshs. 923,957.00.
6. It is stated that the respondent on 5th November.... lodged an application seeking to have the aforementioned judgement and decree stayed pending determination of appeal and leave to lodge the appeal out of time. An interim stay was allowed on condition that they were to deposit security on costs of Kshs. 5million. Upon hearing the substantive Application, the court ordered the Respondent to deposit a further Kshs. 30million in a joint interest account in the name of both

advocates for the parties. That the Respondent failed to meet the conditions even after the amount was reduced to kshs.10 million within a delineated time.

7. That with no order for stay in place, the Applicants sought for the release of the Kshs. 5million already paid as part settlement of the decretal sum vide Application dated 31st October 2023 and same was granted pursuant to a consent order by the court on 2nd October 2024.
8. The Application before this court is for the enforcement of the payment of the decretal sum with costs and interests as was awarded by the High Court on 6th February 2020 less the kshs.5 million that was already released to the Applicants. The Application is supported by Supporting Affidavit with annexures of the judgement, Decree and all the attendant documents relevant to this Application.
9. The Respondent filed response by way of Replying Affidavit sworn on 1st April 2026 by one *Agnes Kalekye Nguna* deponing that this court should entertain this as it is vexatious and premature as the Applicants are seeking to relitigate a matter which was already addressed by Court in Nairobi HCJR/E117/2025. The deponent makes reference to the Respondent's internal financial procedures including approval of annual estimates for payment of debts and decretal sums. Reference is made to **Section 42(2), (4) and 47 (a) of the Kenya Broadcasting and Corporations Act** to buttress the position that such payments can only be made in accordance with the Respondent's Annual estimates.
10. The matter was canvassed by way submissions.

11. The Appellant submissions, which largely reflect the grounds in support of the Application raise three issues for determination by this court namely:
 - i. Whether the Originating summons dated 25th February 2026 is *res judicata*
 - ii. Whether the Respondent owes the Applicants a statutory obligation under the Fair Administrative Actions Act and;
 - iii. Whether alleged budgetary constraints can constitute grounds to oppose an order of mandamus.
12. The Applicants submit that a defence of *res judicata* is entirely misconceived in law and is intended to try and mislead the court. They maintain that the decision by Justice Chigiti on the 20th February 2026 was that the Notice of Motion Application dated 9th September 2025 was struck out for non-compliance with section 21 of Government Proceedings Act and that it was not determined on merit. As such, the doctrine of *res judicata* does not arise. Reliance was made on **Section 7 of the Civil Procedure Act** to emphasize that *res judicata* only applies where the decision in question was delivered on merit.
13. Further reliance was placed upon;
 - a) The Law is well-settled that for *res judicata* to attach, the former suit must have been adjudicated upon to finality on its merits. The Supreme Court in *John Florence Maritime Services Ltd & another v Cabinet Secretary transport & Infrastructure & 3 other* [2021] KESC 39 (KLR).

- b) We further fortify this position by relying on the Supreme Court’s decision in Communications Commission of Kenya & 5 others v Roya Media Services Ltd & 5 others [2014] KESC 53 (KLR)
- c) Moreover, we also rely on the case of James Gichuru v Philip Komu Wahome & another [2013] KEHC 5903 (KLR) where the court cited with authority the case of Samuel Kiiru Gitau vs. John Kamau Gitau HCCC no. 1249 of 1998 (1998) KLR.
14. Counsel Submits further that whereas section 47 of the Kenya Broadcasting Corporation statutory immunity to the Respondent from execution process arising from judgement of any court, the same statute also confers public duty upon the Respondent to perform administrative action of ensuring that the judgement creditors are paid.
15. They submit further that Fair Administrative actions Act 2015 confers upon the court the powers to review administrative action inter alia in the following circumstances; “...**there has been abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law.**” The Applicants reinforce the argument while relying on Article 47(b) of the Constitution that;
- “47(1) Every person has the right to administrative action that is expeditious, efficient, reasonable and procedurally fair. (emphasis added).**
16. Further reliance was placed in Supreme Court of Kenya decision in **National Rainbow Coalition of Kenya vs. Independent Electoral & Boundaries Commission & Others (2022) KESC 6**, the court explaining the role of the order of mandamus stated thus at para 33:

“An order of mandamus, as was held in the case of Kenya National Examination Council v Republic Exparte Geoffrey Gathenji Njoroge & 9 others (1997) eKLR, 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 to the detriment of a party who has a legal right to expect the duty to be performed. (Emphasis added)

17. They submitted that the Respondent owes the Applicants an administrative action as a public duty conferred by statute which duty if not performed, the Respondent can be compelled by an order of mandamus as sought by the Applicants herein.
18. Thirdly, the Applicants submit that the Respondent’s only response to the Application is that the decretal sums which the Applicants seek to enforce cannot be settled because they were not included in the current year financial estimates. Counsel negates the view taken by the Respondent that their obligation to comply only arose after Certificate of Order Against the government was issued and submits that the requirement only applies to Government under the Government Proceedings Act and as a condition prior to lodging an application for mandamus as a step towards enforcing judgement. It was therefore submitted that the obligation to pay the decretal sum settles once the judgement debtor is aware of the judgement sand the decree.
19. Reliance was placed upon the High Court of Kenya at Machakos in **The Republic vs. Salaries & Remuneration Commission Exparte Sollo Nzuki (2020) KEHC 1074.**
20. Based on the above, the Applicants urged the court to find in their favour and to grant the mandamus orders as prayed.

21. The Respondent did not file any written submissions but opted to rely on their Replying Affidavit to which reference has been made herein above.
22. I have considered the Originating Motion as filed, the opposition thereto and argued by both parties Counsel. The main issues for determination are:
- a. Whether the Originating Motion is *res judicata*
 - b. *Whether the applicant has satisfied this Court that it is entitled to the orders sought*
 - c. *What orders should this Court make*
 - d. *Who should pay costs of the originating motion?*
23. **HCJR E117 OF 2025** and judgment of Chigiti J, was rendered on 20th January, 2026 striking out the application for judicial Review Orders of Mandamus sought by the applicant against the respondents herein with costs for non-compliance with section 21 of the Government Proceedings Act.
24. The issue at hand is whether this matter is *res judicata* with respect to the judgment of 20th January 2026 by Justice Chigiti SC in HC JR E117 of 2025. The principle of *res judicata* applies in law to bar subsequent proceedings when there has been adjudication by a court of competent and concurrent jurisdiction which conclusively determined the rights of the parties with regard to all or any matters in dispute: see **Mandavia -v- Rattan Singh [1965] EA 118**.
25. The doctrine is intended to ensure the protection and propagation of the public policy that “*parties to a judicial decision should not afterwards be allowed to re-litigate the same question*”: see **Miller J in Crown Estate**

Commissioners -v- Dorset County Council [1990]1 All E R 19,23.

26. The elements of *res judicata* are hinge on the principle of “**A Final Judgment on the Merits.**’ The earlier case must have ended with a final judgment that addressed the substance of the dispute, and not a procedural issue. A verdict after trial is the clearest example. A settlement that results in a dismissal functions the same way, because both parties agreed the matter is permanently resolved.
27. However, what does not count in *res judicata* are dismissals based on procedural defects such as a dismissal for lack of jurisdiction, for filing in the wrong court, or for failure to include a required party. These are not treated as decisions on the merits. Those dismissals leave the door open for the claimant to refile the case correctly.
28. The second element of *res judicata* is the principle of “**the Same Parties or Parties in Privity**”. This element requires that the parties on both sides of the new lawsuit are the same as those in the original case, or are legally connected to them. That legal connection is what is called “privity.”
29. The third element of *res judicata* is that “**the subsequent claim must be The Same Claim or Cause of Action**”. This element asks whether the new lawsuit grows out of the same set of facts as the original. Under this test, a “claim” includes all legal theories a plaintiff had against the defendant arising from the same transaction or series of connected events. Courts look at whether the facts are related in time, origin, and motivation, and whether they would logically be tried together.

30. **Thus, parties are not permitted to** split a dispute into separate lawsuits based on different legal theories.
31. These elements are set out in **section 7 of the Civil Procedure Act** as follows:

7. Res judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. — (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have

been a matter directly and substantially in issue in such suit.

Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

32. This court has an inherent jurisdiction even where it is not expressly conferred to invoke this principle of *res judicata* in appropriate circumstances and to ensure that the process of court is not abused.
33. In the instant case, and having read the judgment in **HCJR E117/2025**, I note that the learned Judge struck out the judicial review application on the ground that the applicant had not complied with the provisions of **section 21 of the Government Proceedings Act** which mandate that a certificate of Order against Government must be obtained and served upon the accounting officer with a demand for settlement of the primary decree and only upon failure to pay would the applicant seek mandamus orders to compel settlement of the said decree. More so, a certificate of order against the government is a procedural document which is very critical in matters enforcement of decrees against the government or government entities against whom no execution by way of attachment and sale of their assets is allowed by law.

34. For the reason that the judicial review application was struck out for non-compliance with a procedural step and not on the merits of the application, the applicant herein was not barred by law to initiate fresh proceedings to enforce the decree and certificate of order against the government which has not been set aside. **Accordingly, the respondents' plea of *res judicata* fails.**
35. The second and key issue is whether the applicants are entitled to the judicial review orders sought. The applicants essentially seek for judicial review orders of mandamus to compel the respondent accounting officer of KBC to settle the decree and Certificate of Order Against the government as issued in the primary suits being **HC COM 686 and 687 of 2009 [consolidated]** in favour of the applicants. Following that judgment, the court ordered for depositing of part of the decretal sum in court as a condition for stay of execution. That judgment and decree has never been set aside or reviewed.
36. **Section 21 (1) and (3) of the said Act** on the other hand provides for satisfaction of orders against the Government as follows:

“ (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.”

(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.”

37. From the above statutory provision, a party wishing to realize the fruits of a judgment or decree against the government or government entity must obtain a certificate of order against the government or that entity. The government or government entities pay against the certificate of order issued against them. A certificate of order against the

government is such an essential accounting instrument for the purpose of government and or public finances and accounts.

38. In **Permanent Secretary Office of the President Ministry of Internal Security & Another exparte Nassir Mwadhihi (2014) eKLR**, the court stated as follows, on the centrality of the certificate of order against the government:

“33. ... the rules applicable to normal execution proceedings by way of committal to civil jail are not necessarily applicable to enforcement of an order of the Court arising from an order of mandamus by way of committal. 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 respect to issuance of certificate of costs and certificate of order against the Government ...

34.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...”

39. Earlier on in **Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR**, the court stated:

“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.”

40. It is settled law that the statutory duty on the part of government to settle a judgment or decree of a court arises only after the government has been served with the certificate of order against it. Without being served with the said certificate, government does not incur the duty to pay or satisfy the judgment or decree, and, as a consequence, a *mandamus* order would not be available, since *mandamus* is meant to compel performance of a statutory or legal duty. That is the purport and effect of section 21(3)(4) of the Government Proceedings Act.

41. In **Republic vs. County Secretary Migori County Government & another [2019] eKLR**, the Court stated:

“12. Once a party obtains the Certificate of Order and the Certificate of Costs, in the event the

Certificate of Costs is obtained separately, together with the Decree, then such a party must satisfy the Court of service of those documents upon the party named in the Certificates. In this case there is neither evidence of issuance of the Certificates nor service thereof on the Respondents or their Advocates.

13. I therefore have no difficulty in finding that the Ex parte Applicant has not fully complied with the legal requirements for an order of mandamus to be availed. The application is premature and cannot stand.”

42. In the case of **Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No. 234 of 1996**, the Court of Appeal cited with approval, ***Halsbury’s Law of England, 4th Edition. Vol. 7 p. 111 para 89*** thus concerning the order of mandamus and when it issues:

“The order of mandamus is of most extensive remedial nature and is in 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 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 ineffectual."

...These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body 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."

43. Therefore, as to whether the Respondent herein ought to be compelled to settle the sums due, in the certificate of order against the Government, **section 3 of the Kenya Broadcasting Corporation Act** establishes the Kenya Broadcasting Corporation, a body corporate with a common seal and perpetual succession and whose managing Director, the Respondent herein is the accounting officer.
44. **Section 47 of the KBC Act** restricts execution against the property of the Corporation as follows:

47. Restriction on execution against property of Corporation Notwithstanding anything to the contrary in any law—

(a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any property of the Corporation; but the Managing Director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgement or order, be awarded against the Corporation;

(b) no property of the Corporation shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Managing Director.

45. The Kenya Broadcasting Corporation, the judgment debtor in the primary suit is government Corporation or agency. The High Court in the case of **Association of Retirement Benefits Scheme vs. Attorney General & 3 Others [2017] eKLR** aptly cited with approval the Indian Supreme Court case of **International Airport Authority of India & Others (1979) SC. R 1042** in which the test for determining whether an entity was a government body or not, was stated as follows:

“(a) Consider whether any share capital of the corporation is held by the Government and if so that would indicate that the corporation is an instrumentality or agency of Government.

(b) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the Corporation, that fact would afford some indication of the corporation being impregnated with Governmental character; c. It may also be relevant to consider whether the corporation enjoys monopoly status conferred by the State. d. Whether the body has deep and pervasive State control,

e. Whether the functions of the corporation are of public importance and closely related to Governmental functions then that would be a relevant factor in classifying the corporation as an instrumentality or agency of Government and

f. If a Department of a Government is transferred to a corporation, then it becomes an instrumentality or agency of the Government.”

46. **Section 5 of the KBC Act** provides for appointment of the Corporation’s **Managing Director and stipulates that:**

5(1) There shall be a managing director of the Corporation who shall be appointed by the Cabinet Secretary after consultation with the Board whose terms and conditions of service shall be determined by the Cabinet Secretary in the instruments of appointment or otherwise in writing from time to time: Provided that the first Managing Director shall be appointed by the Cabinet Secretary without the consultation under this subsection.

47. Section 16 also provides for secondment of government or public officers to serve in the Corporation.

48. From the above the above statutory provisions, it is clear that the KBC is a state corporation which at **section 37** include Government grants. The section provides that the Government may make grants to the Corporation as are necessary for the purposes of the Corporation and for carrying this Act into effect. Further section 41 on Investment of funds provides that:

i. The Board may invest any of the funds of the Corporation in securities in which for the time being a trustee may by law invest trust funds or in any other securities which the National Treasury may from time to time approve for the purpose.

ii. The Board may place on deposit with such bank or banks or financial institutions as it may determine any moneys not immediately required for the purposes of the Corporation.

iii. the sources of its funds derive part of its funding from the national Treasury.

49. With such a bar to execution against its assets and the restrictions imposed, a decree holder would be left with a barren decree against the Corporation with no other alternative mode of enforcing judgments made against the Corporation which is fully controlled by the Government such that even on investment in securities, the National treasury must approve while its sources of funding is shown to be among others, government grants.

50. **Section 47 of the Act** on restrictions to execution places upon the Managing Director who is the accounting officer, a statutory duty to, **without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgement or order, be awarded against the Corporation.**

51. Although subsection 2 appears to allow attachment of property of the Corporation, it places a condition being, that such attachment or distraint can only be done with permission of the Managing Director. As to whether the Managing Director can give such permission, absence a mandatory duty to grant such permission, it is a herculean task attaching property of the Corporation.

52. It follows, therefore, that only a mandamus order is the most efficacious way of causing the Corporation to settle decree and certificate of order against the government.

53. In the case of **Republic v Attorney General & another Ex-parte James Alfred Koroso [2013] eKLR** where Odunga J with approval cited **Shah vs Attorney General (No.3) Kampala HMC No. 31 of 1969 [1970] EA 543** where Goudie, J expressed himself, *inter alia*, as follows:

“Mandamus is a prerogative order issued in certain cases to compel the performance of a duty..... Thus, it is used to compel public officers to perform duties imposed upon them by common law or by statute and is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual. Mandamus is neither a writ of course nor of right, but it will be granted if the duty is in the nature of a public duty and especially affects the rights of an individual, provided there is no more appropriate remedy....

With regard to the question whether mandamus will lie, that case falls within the class of cases when officials have a public duty to perform, and having refused to perform it, mandamus will lie on the application of a person interested to compel them to do so.....

What the Applicant is seeking is not relief against the Government but to compel a government official to do what the Government, through Parliament, has directed him to do.”

54. Although the respondent has sworn an affidavit claiming that there are budgetary constraints, such budgetary constraints cannot be a bar to issuance a mandamus order to compel performance of a public duty of settling decree of the court. All that the respondent/judgment debtor was expected to do after judgment was entered against it, was to budget for

settlement of the decree. Judgment in this 2009 matter was rendered on 9th February, 2020. There is no evidence that the respondent has since 2020 not settled any other decree of this court because of budgetary constraints and neither can budgetary constraints be an excuse.

55. I am fortified on this point by many judicial pronouncements. I will extensively cite one decision that incorporates all the others. In the case of **Republic v Principal Secretary, Ministry of Defence Exparte George Kariuki Waithaka [2019] ECLR** it was held as follows on the issue of budgetary allocation:

“The defence of non-allocation of funds by Parliament was also raised by the Respondent in the present Application in his replying affidavit. Odunga J. in his ruling of 12th February 2018 extensively dealt with the defence as follows:

“As regards lack of budgetary allocation, Githua, J in Republic v. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eCLR 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]. 26. 27.

I associate with the said decision and it is therefore my view that settlement of decretal sum by the Government whether National or County does not necessarily depend on the availability of funds.

This position was appreciated by this Court in Wachira Nderitu, Ngugi & Co. Advocates v. The Town Clerk, City Council of Nairobi Miscellaneous Application No. 354 of 2012 in which this Court pronounced itself as follows: "I have however considered the other issues raised by the Respondent with respect to its debt portfolio as against its financial resources. It is neither in the interest of this Court nor that of the ex parte Applicant that the Respondent should be brought to its knees. The Court appreciates and it is a matter of judicial notice that most of the local authorities are reeling under the weight of the debts accrued by their predecessors and that they are trying to find their footing in the current governmental set up. Accordingly, I am satisfied based on the material on record that the Respondent ought to be given some breathing space to arrange its finances and settle the sum due herein." In my view a party facing financial constraints is at liberty to move the Court for appropriate orders which would enable it to settle its obligations while staying afloat. That however, is not a reason for one to evade its responsibility to settle such obligations. In other words, financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree but is not a basis for declining to compel the Respondent to settle a sum decreed by the Court to be due from it.

That objection therefore fails."

Non-allocation of funds by Parliament is not an acceptable defence or justifiable excuse for non-payment of decretal sums ordered to be paid by Government officials, in the absence of any evidence of any attempts made by the responsible Government official to commence the process of

such allocation. In the present case, this is particularly relevant given that the present contempt of Court proceedings commenced in April 2017, and the Respondent did not indicate what steps if any, have been taken since then to effect payment of the monies due to the Applicant.”

56. Finally, I find that there is more than sufficient evidence on record that the applicant served the certificate of order against the government dated 20th March 2025 upon the respondent on 29th May 2025 and demanded for settlement of the same as required under **section 21 of the Government Proceedings Act** and **section 47 of the KBC Act**. There is no contrary evidence. These proceedings were initiated on 3rd March, 2026. The respondent has not made any payments apart from what was deposited into court as security for due performance of decree being a condition for stay which was varied by **Majanja J** in his ruling of 19th October 2024.
57. For the respondent to claim that the Corporation can only pay from its revenues and that it has not made any revenue as per its financial statements annexed is being uncaring and cynical. Is the Corporation insolvent? Does it have employees? Does it pay their salaries and Board or Committee members' allowances as per the terms of engagement? Does it enter into contracts which it fulfils its terms? In the budget annexed, does this decree and certificate of order against the government feature there? Has the respondent sought approval from the National Treasury to incur expenditure as stipulated in section 42(4) of the KBC Act? Has it exhausted all means of raising revenue for settlement of the primary decree herein? All these are questions which the respondent should have answered before mockingly deposing that she won't pay she can't pay.

58. It is however important to note that the interest awarded to the applicants shall be calculated taking into account the provisions of **section 4(4) as read with section 23(3) of the Limitation of Actions Act.**

59. Without belaboring so much, I am satisfied that the applicant has demonstrated to the required standard that they are entitled to the prayers sought. I allow the Originating Motion dated 25th February 2026 with costs to the applicants.

60. ***Final Orders:***

- 1. Originating Motion dated 25th February 2026 is allowed with costs to the Applicants.***
- 2. Decree for mandamus to issue compelling the respondent herein to settle decree and certificate of order against the Government dated 20th March, 2025 in HCCOM 686 and 687 of 2018-Consolidated.***
- 3. The Deputy Registrar to ensure compliance with provisions of Sections 4(4) and 23(3) of Limitation of Actions Act.***
- 4. Mention on to confirm the status of settlement.***

Dated, Signed and Delivered at Nairobi this 13th day of May, 2026

**HON. T. W. OUYA, OGW
JUDGE**

In the presence of:

Oanga for Mr. Marubi for Applicants

Awino for the Respondent

Kevin/Hamza - Court Assistants