



**Republic v Attorney General & another; Mweri alias David Wilson Baya Mweri (Legal Representative of the Estate of Moses Baya Yaa Deceased) (Ex parte Applicant) (Judicial Review Application E021 of 2025) [2026] KEHC 6357 (KLR) (8 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6357 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
JUDICIAL REVIEW APPLICATION E021 OF 2025**

**M THANDE, J**

**MAY 8, 2026**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE HON. ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
OFFICE OF THE PRINCIPAL SECRETARY FOR THE STATE DEPARTMENT  
FOR CORRECTIONAL SERVICES ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DAVID S. WILSON BAYA MWERI ALIAS DAVID WILSON BAYA MWERI  
(LEGAL REPRESENTATIVE OF THE ESTATE OF MOSES BAYA YAA  
DECEASED) ..... EX PARTE APPLICANT**

**JUDGMENT**

1. This Court is tasked to determine the Application dated 5.8.25 in which the Ex parte Applicant seeks the following orders:
  1. That the Honourable Judge be pleased to issue orders of mandamus compelling the Respondent to honor the decree issued in, MalindiCMCC 91 OF 2019 between David S.Wilson Baya Mweri Alias David Wilson Baya Mweri (legal Representative Of The Estate Of Moses Baya Yaa (deceased) -v The Hon. Attorney General And Charles Kyalo.
  2. That the Respondents be condemned to pay the costs of the application.
2. The Application is premised on the grounds that the Applicant obtained a judgment in his favour of Kshs.2,484,527/= against the Respondent in MALINDI CMCC 91 OF 2019. Despite all relevant efforts to actuate the judgment and obtain the certificate of order against the Government have been



made but the 1<sup>st</sup> Respondent continues to ignore the demand for payment. The Applicant thus asserts that the 1<sup>st</sup> Respondent has failed and/or neglected to perform his statutory duty to make good on the lawfully obtained judgment by the Applicant. He has now approached this Court to intervene and order the Respondents to satisfy the said decree through the grant of an order of mandamus sought herein.

3. The Respondents opposed the application vide a replying affidavit sworn on 24.10.25 by Martin Mwarome Munga, Principal State Counsel in the office of the 1<sup>st</sup> Respondent. He averred that the by a letter dated 29.7.22, the Applicant demanded payment of the amount awarded by the trial court together with costs and interest. The Respondent did respond by a letter dated 3.8.22 seeking to be supplied with documents provided under Section 21 of the *Government Proceedings Act* and Order 29 Rule 3 of the Civil Procedure Rules to facilitate payment; that the Plaintiff never extracted the certificate of order against the Government as required by law until 4.4.25 despite the Office of the Attorney General having requested the documents to process payment. It was further averred that the said documents including the certificate of order against the Government were annexed to the present Application which was filed on 6.8.25 and served on the 1<sup>st</sup> Respondent on 28.8.25. Upon receipt of the said documents, the 1<sup>st</sup> Respondent notified the 2<sup>nd</sup> Respondent of the judgment and requested that the funds be remitted for payment.
4. It is the Respondent's case that the main reason for delay in payment is that the payment process can only be initiated upon receipt of the documents provided for by law. The 1<sup>st</sup> Respondent asserted that the Respondents have not declined or refused to pay the amount due but that the matter is at the point of review and planning to budget for the same. Having demonstrated the willingness to pay and the circumstances leading to the delay, the orders sought by the ex parte Applicant cannot be granted.
5. The writ of mandamus is a discretionary remedy, the purpose of which is to compel a public authority, which has failed to perform its public legal duty, to do so and to address procedural delays. In *Republic v. County Secretary - Nairobi City County & another Ex Parte Tom Ojienda & Associates [2019] eKLR, Mativo, J.* (as he then was) set out the following factors that must be present for the writ of mandamus to issue:
  - i. There must be a public legal duty to act;
  - ii. The duty must be owed to the Applicants;
  - iii. There must be a clear right to the performance of that duty, meaning that:
    - a. The Applicants have satisfied all conditions precedent; and
    - b. There must have been:
      - I. A prior demand for performance;
      - II. A reasonable time to comply with the demand, unless there was outright refusal; and
      - III. An express refusal, or an implied refusal through unreasonable delay;
    - iv. No other adequate remedy is available to the Applicants;
    - v. The Order sought must be of some practical value or effect;
    - vi. There is no equitable bar to the relief sought;
    - vii. On a balance of convenience, mandamus should lie.



6. The demand by the Applicant arises from a decree issued against the Respondents by a court of competent jurisdiction. It is not disputed that the Respondents have a legal duty to pay the decretal sum which is owed to the Respondent. The Court will only compel the satisfaction of the public duty to make payment, if the conditions precedent have been satisfied.
7. The documents on record show that the ex parte Applicant made a demand for payment vide a letter dated 29.7.22. The Respondent then by a letter dated 3.8.22 sought to be supplied with documents required under section 21 of the *Government Proceedings Act* and Order 29 Rule 3 of the Civil Procedure Rules. The certificate of order against the government, one of the requisite documents was issued on 4.4.25, almost 3 years after the request was made. The Respondent stated that the documents were served on the 1<sup>st</sup> Respondent on 28.8.25 as annexures to the instant judicial review application. This was not controverted by the ex parte Applicant. There was a delay on the part of ex parte Applicant in supplying the documents. Indeed, the present application was filed before complying with the condition precedent, namely, supplying the Respondents with the requisite documents for payment.
8. The Respondents have expressed willingness to settle the decretal amount. It was stated that the requisite documents were upon receipt forwarded to the 2nd Respondent for payment processing. Reasonable time must thus be accorded to the Respondents to comply. Given the delay on the part of the ex parte Applicant and the nature of government structure, procedures, red-tape and large number of claims which often cause delays, I am of the view that this Application was filed prematurely. On this point I associate with Ibrahim, J. (as he then was) who in *Kisya Investments Ltd v Attorney General & another* [2005] KEHC 3226 (KLR) stated:

The second situation which arises from the above is that once a decree or judgment is obtained against the Government, it would require some reasonable time to have it forwarded to the Ministry of Finance, Treasury, the Comptroller and Auditor General e.t.c. for scrutiny and approvals for it to be paid from the Consolidated Fund. The Ministries and Departments do not have their “own” funds to settle such decrees or payments.

Considering the nature of Government Structure, procedures, red-tap and large number of claims, this could take a long time.
9. Mandamus can only issue in situations where there is wilful refusal or implied and or unreasonable delay in compliance. This is not the case herein. The record shows that upon receiving the requisite documents required for processing payment, the 1<sup>st</sup> Respondent forwarded the same to the 2<sup>nd</sup> Respondent for processing of payment which is indicative of a willingness to pay. In the premises, there is no basis at all for the Court to grant the order of Mandamus.
10. For the foregoing reasons, I find that the Application is not merited and the same is dismissed with costs to the Respondents.

**DATED SIGNED AND DELIVERED IN MALINDI THIS 8<sup>TH</sup> DAY OF MAY 2026**

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**M. THANDE**

**JUDGE**

