



**Republic v Principal Secretary Ministry of Agriculture and Livestock  
Development & another; Githinji (Ex parte Applicant) (Judicial Review  
Application E009 of 2024) [2026] KEHC 6263 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6263 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
JUDICIAL REVIEW APPLICATION E009 OF 2024**

**HM NYAGA, J  
MAY 7, 2026**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**PRINCIPAL SECRETARY MINISTRY OF AGRICULTURE AND LIVESTOCK  
DEVELOPMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JAMES KARIUKI GITHINJI ..... EX PARTE APPLICANT**

**RULING**

1. James Kariuki Githinji, the ex parte Applicant herein, has moved this Court in an application brought by way of an Notice of Motion application dated 20<sup>th</sup> November, 2024, wherein he is seeking the following orders: -
  1. That an order of mandamus be issued compelling the 1<sup>st</sup> Respondent herein to pay Ksh. 6,682,518.69 together with the interest thereon at court rates from the 25<sup>th</sup> August, 2022 until payment in full, being the decretal amount that was awarded to the ex-parte applicant herein against the 2<sup>nd</sup> Respondent herein in Meru-CMCC No.55 of 2019 & Ksh.381,376.96 being costs that was awarded to the ex-parte applicant against the 2<sup>nd</sup> Respondent herein in Meru-CMCC No.55 of 2019.
  2. The Honourable Court be pleased to issue such further relief as it may deem fit and just to grant.
  3. That costs of this Application be provided for.



2. The Application is predicated on grounds on its face and supported by an affidavit of Applicant, sworn on 20<sup>th</sup> November,2024
3. It is the ex parte Applicant's case that on or about 15<sup>th</sup> March,2013, he and the Ministry of Agriculture, Livestock and fisheries entered into a contract for construction for the said ministry's community-based grain drying and storage facility at Buuri District at Ksh.29,762,233.00 which was later enhanced to Ksh.34,990,925.56 due to additional construction work which was not captured in the original tender document.
4. He averred that he completed the said construction as agreed but the Ministry in issue failed to pay him Ksh.6,682,518.69 and he lodged a suit against the Respondents claiming the said amount in Meru CMCC No. 55 of 2019.
5. He deposed that on 25<sup>th</sup> August,2022 the judgement was entered in his favour for the said claimed amount and on 29<sup>th</sup> November,2022 he was awarded costs of Ksh.381,367.96 in the above lower court suit.
6. He deposed that a Certificate of costs against the Government was issued on 15<sup>th</sup> December,2022 and despite duly serving the Respondents with the decree, certificate of costs, certificate of order against the Government and demand notices, they have failed to pay him the aforesaid sums.
7. In opposition to the Application, the 2<sup>nd</sup> Respondent filed Grounds of opposition dated 11<sup>th</sup> February,2025 raising the following grounds: -
  - a. That the instant application is misadvised since the Respondents have not failed to pay the Ex-Parte Applicant the decretal sum awarded in Meru Chief Magistrate's Court Civil Suit No.55 of 2019.
  - b. That the 1<sup>st</sup> Respondent requested for budgetary allocation from the National Treasury to settle the decretal sum in this matter in the year 2024/2025 financial year but did not receive the allocation and has once again requested for allocation to settle the decree in this financial year 2025/2026.
  - c. That it is in the public domain that the government of the Republic of Kenya is currently in a financial crisis occasioned by many factors and therefore the allocation of funds for settlement of the decretal sum in the 2024/2025 financial year was impossible.
  - d. That the Respondents are ready and willing to pay the decretal sum once they receive the requisite budgetary allocations.
  - e. That the Notice of Motion is misconceived and an abuse of the court process.
8. The Application was canvassed through written submissions.

### **Ex-Parte Applicant's Submissions**

9. The Ex-parte Applicant largely reiterated the averments of his affidavit in his submissions. He submitted that 1<sup>st</sup> Respondent being the accounting officer in charge of Finance in the Ministry of Agriculture and Livestock development is statutorily bound to ensure he is paid.
10. He urged this court to allow his application. In buttressing his submissions, he placed reliance on the cases of *Shah v Attorney General (No. 3) [1970] E.A. 543*; *Ben Njoroge Mithamo & Another v The Hon. Solicitor General & The Hon. Attorney General [2014] KEHC*; & *Republic v Town Clerk of Webuye County Council & Another [2014] KEHC 7207 (KLR)*



## Respondents' Submissions

11. The Respondents submitted that they have not refused to perform their duty and have initiated the payment process and the money is expected to be paid within the 2025-2026 financial year.
12. They argued that the delay is neither wilful nor in bad faith but is a direct consequence of the government's financial current financial crisis which is well documented and in public domain.
13. The Respondents posited that granting mandamus in these circumstances could open the floodgates to similar claims thereby undermining the government's ability to manage limited resources for the greater public good.
14. The Respondents therefore prayed for indulgence as they expediate the settlement of the decree in its entirety. In support of their submissions, the respondents relied on the cases of Republic v County Government of Siaya & 2 others; Olute (Exparte Applicant) [2024] KEELRC 1868 (KLR); Wachira Nderitu, Ngugi & Co. Advocates v Town Clerk, City Council of Nairobi [2013] KEHC 76 (KLR).

## Analysis & Determination

15. The only issue that arises for determination is whether the ex parte Applicant is entitled to the reliefs sought.
16. The Court of Appeal in Republic vs Kenya National Examinations Council ex parte Gathenji and 9 Others, [1997] eKLR on the nature of the remedy of mandamus held as follows:

“The next issue we must deal with is this: What is the scope and efficacy of an order of mandamus? Once again, we turn to Halsbury's Law Of England, 4<sup>th</sup> Edition Volume 1 at page 111 from Paragraph 89. That learned treatise says: -

“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.”

At paragraph 90 headed “the mandate” it is stated:

“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. The requirements for an order of mandamus to issue were explained by Mativo J. in *Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] KEHC 9433 (KLR) as follows:

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. vs. Canada (Attorney General)*, [23] and, was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*. [24] The eight factors that must be present for the writ to issue are:-

- (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.”

18. Section 21 of the *Government Proceedings Act* in this regard provides as follows as regards the requirements to be met in the enforcement of orders as against Government organs 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.

- (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.”

19. Execution proceedings against a government or public authority under the *Government Proceedings Act* can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body. An order of mandamus is normally issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed
20. This was also the holding in *Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012)* where Githua J. held 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.”

21. In the instant case, it is clear that the sum claimed by the ex parte Applicant has not been disputed by the Respondents. The Respondents do not also deny having been duly served with the decree, the certificate of costs, the certificate of order against the Government and the demand notices by the ex parte Applicant. They aver that they have commenced the process of settling the decretal amount but they failed to annex or produce documentary evidence to substantiate such assertions.
22. The lower court judgment was delivered in 2022 and to date the Respondents have neither paid the decretal sum nor provided any evidence of meaningful steps taken towards its payment. Their explanation, attributing the delay to the Government’s financial constraints, does not absolve them of the legal duty to satisfy the judgment in a timely manner and in the absence of proof of action, such delay is unreasonable and inexcusable.
23. The Respondents have thus failed to perform their statutory and judicial obligations. In the circumstances, it is just and necessary to issue the mandamus order sought.
24. In the upshot, I find the ex parte plea for payment of the said amount merited and I hereby issue;
  - a. An order of mandamus to compel the Respondents to pay the ex parte Applicant the sum of Ksh. 6,682,518.69 together with the interest thereon at court rates from the 25<sup>th</sup> August,2022 until payment in full, being the outstanding balance of decretal sum.
  - b. Costs and interest of Ksh.381,376.96 awarded to the ex parte Applicant in Meru-CMCC No.55 of 2019.
  - c. Costs of this application.
25. Orders Accordingly.

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

**H. M. NYAGA**

**JUDGE**

