



**Republic v Chief Secretary, Tharaka Nithi County & 2 others; Mugwetwa  
(Ex parte Applicant) (Environment and Land Judicial Review Miscellaneous  
Application E001 of 2025) [2025] KEELC 5594 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5594 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E001 OF 2025**

**BM EBOSO, J**

**JULY 24, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHIEF SECRETARY, THARAKA NITHI COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER OF FINANCE/COUNTY TREASURER, THARAKA NITHI  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY GOVERNMENT OF THARAKA NITHI ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**MUTEGI MUGWETWA ..... EX PARTE APPLICANT**

**JUDGMENT**

**Background**

1. On 4/2/2020, this court (PM Njoroge J) rendered a Judgment in Chuka ELC Constitutional Petition No 1 of 2019 in which it awarded Mutegi Mugwetwa (the exparte applicant), among other reliefs, a sum of Kshs. 4,000,000 against the following: (i) The Chief Officer for Lands, Physical Planning, Housing, Urban Development, Environment and Natural Resources in the County Government of Tharaka Nithi; (ii) The Governor, County Government of Tharaka Nithi; and (iii) The County Government of Tharaka Nithi. In addition, the court awarded the exparte applicant costs of the petition. Subsequent to that, the taxing officer of this court taxed the exparte applicant's costs at Kshs. 2,073,125. It does emerge from the pleadings filed in this suit that as at January 2025, both the decree of the court and the certificate of costs had not been settled by the judgment debtors.



2. Consequently, the *ex parte* applicant sought and obtained leave from this court, authorising him to apply for an order of mandamus compelling the respondents to satisfy the award. The *ex parte* applicant subsequently brought a substantive notice of motion dated 5/2/2025 seeking the following judicial review orders:
  - (a) That an order of Mandamus be and is hereby issued to compel the Respondents to pay the *Ex parte* Applicant the sum of Kshs.4,000,000/= and Kshs. 2,073,125/ totaling to Kshs. 6,073,125/= in satisfaction of the decree and certificate of costs payable to the *Ex parte* Applicant in Chuka ELC Petition No.01 of 2019.
  - (b) That in default of Prayer 1 above, notice to show cause be issued against the Chief Officer, Finance and Economic Planning and the County Secretary and head of public service Tharaka Nithi County, to show cause why they should not be cited for contempt of court.
  - (c) That the costs of this application be provided.
3. The above motion is the subject of this Judgment. The motion was vehemently opposed by the respondents. The key issue that falls for determination in the Judgment is whether the motion satisfies the mandatory requirements for grant of an order of mandamus compelling an accounting officer of a County Government to settle a court award. Before I analyse and dispose the issue, I will outline the parties' respective cases.

#### **Ex parte Applicant's Case**

4. The application was premised on the grounds outlined in the motion; in the supporting affidavit; and in the statutory statement. It was canvassed through written submissions dated 10/4/2025, filed by M/s Murimi Murango & Associates Advocates. The case of the *ex parte* applicant is that this court (P M Njoroge J) delivered a Judgment in Chuka ELC Constitutional Petition No. 1 of 2019 on 4/2/2020. The court decreed the respondents to pay him the sum of Kshs. 4,000,000 and costs which were subsequently assessed at Kshs. 2,073,125/=. The *ex parte* applicant further contends that he has had several formal meetings with the respondents' Advocates pursuing settlement of the award of Kshs. 6,073,125/= but the respondents have failed to settle the award.
5. The *ex parte* applicant contends that the respondents have yet to settle the award despite him having served them with the requisite documents. He urges this court to compel the respondents to pay him the sum of Kshs. 6,073,125/=.

#### **Respondents' Case**

6. The respondents opposed the application through a replying affidavit dated 4/4/2025, sworn by Mwendani Franklin and written submissions dated 4/4/2025, filed by the County Attorney. The case of the respondents is that the orders of mandamus do not lie in the present circumstances because the applicant has failed to demonstrate compliance with Section 21 of the *Government Proceedings Act* (Cap 40) Laws of Kenya (hereinafter referred to as "the Act"). The respondents contend that the applicant has not exhibited a duly extracted and served certificate of order against the County Government or proof of service upon the accounting officer of the County Government of Tharaka Nithi. They argue that it is trite law that issuance of a certificate of order against the Government is a mandatory prerequisite for orders of mandamus to be issued.
7. The respondents state that under Order 29 Rule 2(2) (b) of the Civil Procedure Rules and Section 21(4) of the *Government Proceedings Act*, no execution or attachment shall be issued against Government officers in their official capacity in enforcing payment of Government debts. They further



argue that the principle that Government officers cannot be personally held liable for public debts has been upheld in multiple cases. They cite the pronouncements in *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* (2012) eKLR, *Kenya Bus Services Ltd & Another v Minister for Transport & 2 Others* (2012) eKLR and *Council of Governors & 47 Others v Attorney General & 3 Others*(2020)eKLR.

8. They further contend that being public entities/offices, established under *the Constitution* and statutes, the respondents are bound by the protocols in the *Public Finance Management Act*, including the requirement that all expenditures must be supported by approved budgetary allocations. They add that the *Public Finance Management Act* 2012, read together with Articles 201 and 225 of *the Constitution*, prohibit public entities from expending public funds without a lawful appropriation by the County Assembly. They argue that the amount claimed was not factored in the 2024/2025 budget and as such, they are restrained by law against making any unbudgeted payments.
9. The respondents state that the court in a similar plea in *Kingdom Bank Limited v County Government of Tharaka Nithi Misc Civil Appl. No. E002 of 2023* declined to issue orders of mandamus and show cause orders for contempt, despite the County Government admitting the debt. They further state that the same principles ought to apply as the applicant's motion is misconceived, premature and unsustainable. They add that no willful disobedience of a valid court order has been demonstrated nor has any evidence been tendered showing personal culpability on the respondents' part. The respondents state that they are willing to settle the debt in a structured and fiscally responsible manner, subject to budgetary appropriation.

### **Analysis and Determination**

10. The court has considered the motion, the response to the motion, and the parties' respective submissions. The court has also considered the relevant legal frameworks and the prevailing jurisprudence on the key question in the suit. As observed in the introduction part of this Judgment, the key issue to be determined in the Judgment is whether the motion under consideration satisfies the requirement for grant of an order of mandamus compelling an accounting officer of a County Government to settle a court award.
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 (Miniser 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.

13. For clarity, Section 21 of the [Government Proceedings Act](#) provides 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.

(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.

- (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. There abounds a litany of judicial pronouncements affirming that the requirements of Section 21 of the Act must be satisfied before an order of mandamus is issued. In *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security; Ex parte Fredrick Manoah Egunza* (2012), the court 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. 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.”

15. The Court of Appeal recently affirmed the above interpretation of Section 21 of the Act in *Five Star Agencies Limited & another v National Land Commission & 2 others* (Civil Appeal E290 & 328 of 2023 (Consolidated)) [2024] KECA 439 (KLR) (12 April 2024) (Judgment) as follows:

- “95. An application that seeks to compel the Government to satisfy a decree is subject 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 vs. 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]

96. Similarly, in Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR, the Court held thus: “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.”
97. We adopt the reasoning of the court in both Republic vs. Permanent Secretary Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandishi and Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (supra). It is our view that



only after the procedure as laid down under section 21 of the Government Proceedings Act has been complied with and a demand for payment made that a cause of action accrues for the purposes of an application for an order of mandamus against the Government.

16. Has the ex parte applicant met the above threshold? In the motion under consideration, the ex parte applicant exhibited the following important documents:
  - (i) judgment (award) of the court dated 4/2/2020;
  - (ii) formal decree of the court dated 4/2/2020 and extracted on 4/3/2021;
  - (iii) certificate of costs dated 19/11/2020 and extracted on 26/12/2021; and
  - (iv) demand letters dated 5/6/2022 and 27/1/2025 addressed to the County Government of Tharaka Nithi.
17. The ex parte applicant did not, however, exhibit the certificate of order which he obtained from the Deputy Registrar of this court and served on the Accounting Officer of the County Government of Tharaka Nithi. Put differently, there is no evidence that a certificate of order was procured and served as required under Section 21 of the Act.
18. A certificate of order serves as a formal demand. It is the instrument which the accounting officer relies on when preparing budgetary estimates to be presented to the County Assembly as and when necessary. In the absence of evidence of service of a certificate of order, the plea for an order of mandamus at this point is pre-mature.
19. Consequently, the plea for an order of mandamus at this point is rejected. The ex parte applicant will be at liberty to bring a fresh motion in the event a certificate of order is procured and served and a period of 12 months lapses without the accounting officer satisfying the court award.
20. Taking into account the fact that the award giving rise to this motion was within the knowledge of the County Government of Tharaka Nithi and the said County Government was a party to the case and had a corresponding duty to extract the certificate of order but chose not to extract it and not to settle the award, there will be award of costs.
21. In the end, the notice of motion dated 5/2/2025 is struck out for having been brought prematurely. Parties shall bear their respective costs of the case.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24TH DAY OF JULY, 2025.**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:

Mr. Murimi Murango for the Applicant.

Respondents – Absent

Court Assistant – Mr. Mwangi

