



**Twilight Investments Limited v Machakos Investment Promotion Board & 2 others (Environment and Land Judicial Review Case E005 of 2023) [2025] KEELC 782 (KLR) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 782 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2023  
AY KOROSS, J  
FEBRUARY 25, 2025**

**BETWEEN**

**TWILIGHT INVESTMENTS LIMITED ..... APPLICANT**

**AND**

**MACHAKOS INVESTMENT PROMOTION BOARD ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER, FINANCE/COUNTY TREASURER MACHAKOS COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**MACHAKOS COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Pursuant to the leave of this court granted on 15/11/2023, the applicant moved this court by way of a notice of motion dated 6/10/2023 expressed to have been moved under Order 53 Rule 3 (1) of the Civil Procedure Rules in which it sought the following judicial review orders and other orders: -
  - a. An order of mandamus directed to the county secretary, 1<sup>st</sup> respondent, 2<sup>nd</sup> respondent, county executive county (CEC) member of finance/county treasurer-Machakos County and 3<sup>rd</sup> respondent for them to comply and pay the applicant within 21 days the sum ksh. 1,815,000/- together with interest at 12% per annum from 30/08/2018 to 28/02/2019 in the sum of kshs. 181,500/- together with interest at 6% per annum on kshs. 1,996,500/- from 24/01/2019 to 31/05/2023 in the sum of kshs. 519,000/- until payment in full and costs of ksh.230,755 until payment in full being the decretal sum as ordered by the court in Machakos CMCC no.547 of 2018 between the applicant and 3<sup>rd</sup> respondent and another and in default, notice to show cause do issue against the county secretary, 2<sup>nd</sup> respondent, county executive county (CEC) member of finance, Machakos county, county treasurer and 3<sup>rd</sup> respondent’s accounting officer in the department concerned why they should not be cited for contempt.



- b. Costs of the motion be provided for.
2. The motion was supported by the grounds on the face of the motion, the verifying affidavit of the applicant's director Manoj K. Shah sworn on 6/10/2023, a statutory statement and several annexures.
  3. A summary of the contents of these documents which were in support of the reliefs sought was that the applicant was the proprietor of land parcel no. L.R. no 337/631 Athi River (suit property) and that sometime in 2014, it leased it out to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
  4. Nevertheless, they defaulted in paying the rental sums forcing the applicant to file a suit before the lower court to wit Machakos CMCC no.547 of 2018 which was between the applicant and 2<sup>nd</sup> and 3<sup>rd</sup> respondents. (lower court suit).
  5. Upon hearing the lower court suit, the learned trial magistrate in a judgment rendered on 24/01/2019, awarded the applicant damages of kshs. 1,815,000/- being rent arrears from April 2018 to January 2019.
  6. These sums were to be met by the 1<sup>st</sup> and 3<sup>rd</sup> respondents jointly and severally. Additionally, the applicant was granted the costs of the lower court suit.
  7. Subsequently, a decree dated 11/04/2019 was issued and amended on 25/09/2019. Moreover, a certificate of costs and a certificate of order for costs against the government were issued on 2/06/2023.
  8. That the 3<sup>rd</sup> respondent is privy to these chain of events and as of 31/05/2019, the applicant's advocates demanded settlement of sums due. However, it was ignored.
  9. That upon the receipt of the certificate of order on 12/06/2023, it forwarded the judgment, decrees and certificate of costs to the 3<sup>rd</sup> respondent.
  10. In this communication of 12/06/2023, the applicant demanded the 3<sup>rd</sup> respondent to settle the sums due within 21 days from the date of the letter as envisioned by Section 21 of the [Government Proceedings Act](#).
  11. The applicant stated the applicant was unresponsive, particularly to the letter dated 12/06/2023 and that the sums became due and payable over 4 years yet the 1<sup>st</sup> and 3<sup>rd</sup> respondents had not preferred an appeal against the lower court suit.
  12. It was contended in line with Section 26 of the [Civil Procedure Act](#), the 2<sup>nd</sup> respondent as the accounting officer of the 1<sup>st</sup> and 3<sup>rd</sup> respondents was mandated to settle the decretal amount with interest which is deemed payable from the date of judgment.
  13. It was averred the 1<sup>st</sup> and 3<sup>rd</sup> respondents had been reluctant to settle the amounts due thus necessitating the filing of the instant motion in the manner it had because being government bodies, execution against the 1<sup>st</sup> and 3<sup>rd</sup> respondents could not be executed in the usual manner.
  14. Despite service, the respondents did not file any documents in opposition to the motion, and as it stands, the motion is unopposed.
  15. When the motion came up for hearing on 23/1/2025, Mr. Githinji, counsel for the applicant urged this court to grant the orders sought in the motion.
  16. Having considered the motion, grounds, affidavit, statement and annexures, the single issue for determination is whether the relief of mandamus is merited.



17. However, before I proceed further, there is the preliminary issue of the relief of contempt of court that the applicant has sought at the stage where it is seeking orders of mandamus.
18. In my humble view, this relief is premature as it has to be sought after a positive outcome of this judgment and the consequential non-compliance (if any).
19. Further, in the appropriate contempt proceedings at a suitable time, the applicant will be guided by the legal framework provided for under Section 5 of the Judicature Act and Part 81 of the England and Wales Civil Procedure Rules. The relief of contempt proceedings is declined at this stage.
20. Now, back to the issue of determination, the jurisdiction of this court to deal with judicial review orders including mandamus is derived from Article 23(3)(f) of the Constitution, Section 8(1) of the Law Reform Act and Section 13(5) (b) of the Environment and Land Court Act. This Section 13 (5) 5(b) specifically states: -
  - “In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
    - (a) .....
    - (b) prerogative orders;”
21. The essence of judicial review orders of mandamus is to compel a public entity to carry out its duty and this was stated in the Supreme Court of Kenya in *National Rainbow Coalition Kenya (NARC Kenya) v Independent Electoral & Boundaries Commission; Tharaka Nithi County Assembly & 5 others (Interested Parties)* [2022] KESC 6 (KLR) thus: -
  - “An order of mandamus would compel the performance of a public duty which was imposed on a person or body of persons by a statute and where that person or body of persons had failed to perform to the detriment of a party who had a legal right to expect the duty to be performed.”
22. The circumstances under which an order of mandamus can be issued were elucidated in the persuasive decision of *Republic v Director General of East African Railways Corporation Ex-Parte George Nume Kaggwa* [1977] KEHC 8 (KLR) which held: -
  - “The purpose of mandamus is to compel the performance of a public duty or an act contrary to, or evasive of, the law; as I said above, it does not lie against a public officer as a matter of course and where one or more of the bars or limitations which I have considered above exist the Court will, usually, not exercise its discretion in favour of the applicant. These bars are: that there is an alternative specific remedy at law; that there is no possibility of effective enforcement, or performance will be impossible by reason of the circumstances, like lack of power or means to obey on the part of the respondent and that it will result in interference by the judicial department with the management of the executive arm of Government. There are other bars, which are not relevant to this case, like delay in making the application.”
23. As evidenced by the judgment, decree, certificate of order and certificate of costs, the applicant was successful in the lower court suit where it had sued the 1<sup>st</sup> and 3<sup>rd</sup> respondents which are county government entities.
24. Noteworthy, in a civil suit involving non-government entities, a successful party in whose favour a decree has been issued, can execute the judgment as soon as the decree is issued.



25. However, where the party against whom a decree is to be executed is a government body, divergence arises on the mode of execution. Guidance on this can be drawn from Section 21 of the Government Proceedings Act (GPA) particularly subsection (1) and (2) thereof which provides: -

“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.”

26. A reading of these provisions of law depicts some preconditions that have to be fulfilled by the decree-holder towards enforcement of a decree which are the payment be anchored on a certificate of costs issued to the decree-holder and that it be served against the responsible government body.
27. Additionally, the certificate of order against the government should be obtained by the decree-holder after the expiry of 21 days after entry of the judgment.
28. In the circumstances of this case, the applicant complied with all legal prerequisites. Armed with a certificate of costs, certificate of order, and amended decree, it duly served these documents upon the 3<sup>rd</sup> respondent’s county executive county (CEC) member, finance through its advocates on 12/6/2023.
29. Nevertheless, despite service, the respondent was unresponsive. As a result, the applicant took a cue from the silence, and 4 months later which was on 15/10/2023, instituted these judicial review proceedings.
30. Apart from complying with the provisions of Section 21 (1) and (2) of the GPA and as held in a line of court decisions, the applicant had to prove to this court that the amount was due and demonstrate that the quantum is known. On this, the decision of *Jaribu Credit Traders Limited v Nairobi County Government* [2018] KEHC 8000 (KLR) had this to say: -

“The Applicant must go a step further and prove that the sum claimed is actually due. Where therefore liability is admitted or proved, the next stage is to prove the actual quantum payable and where the said sum is yet to be determined an order of mandamus cannot for forth for payment of the said sum.”

31. As shown by the decree, certificate of order and certificate of costs, the applicant has met this hurdle as the amount due from the 1<sup>st</sup> and 3<sup>rd</sup> respondents are proven and ascertainable.
32. Thus, as envisaged by Article 48 of the Constitution which guarantees every person access to justice, the applicant as a successful litigant, should be allowed to enjoy the benefits that ensued from the successful outcome of the judgment.
33. Section 21(3) of the GPA states the liable officer for purposes of settlement of decree is the accounting officer of the relevant government entity.



34. Nonetheless, Section 21(4) thereof provides, that, no officer of the government shall personally be liable for payment of money or costs ordered against the government, government entity or its officers.
35. From the motion, the applicant has sued the 1<sup>st</sup> and 3<sup>rd</sup> respondents as parties to the lower court suit and also the chief officer, finance/county treasurer of Machakos County. In other words, the 2<sup>nd</sup> respondent is the identified accounting officer of the 1<sup>st</sup> and 3<sup>rd</sup> respondents.
36. Still, by joining the 1<sup>st</sup> and 3<sup>rd</sup> respondents to these proceedings, it has given them too, a free hand to identify the responsible officers who will settle the sums due.
37. It is not disputed that by the time these proceedings were initiated, the 1<sup>st</sup> and 3<sup>rd</sup> respondents had neglected to settle the decretal amounts due despite ample notice being issued to them which compelled the applicant to move the court in the manner it has.
38. Consequently and for the reasons stated above, I find the applicant is deserving of the reliefs sought but with necessary modifications. I find the motion dated 6/10/2023 merited and allow it with costs to the applicant. Therefore, I hereby issue the following disposal orders: -
- a. An order of mandamus be and is hereby issued compelling the Machakos Investment Promotion Board and/or Chief Officer-Finance/County Treasurer, Machakos County and/or Machakos County Government to pay the applicant within 90 days hereof the sum of ksh. 1,815,000/- together with interest at 12% per annum from 30/08/2018 to 28/02/2019 in the sum of kshs. 181,500/- together with interest at 6% per annum on kshs. 1,996,500/- from 24/01/2019 to 31/05/2023 in the sum of kshs. 519,000/- until payment in full in terms of the certificate of order against government issued on 2/06/2023.
  - b. An order of Mandamus be and is hereby issued compelling the Machakos Investment Promotion Board and/or Chief Officer-Finance/County Treasurer, Machakos County and/or Machakos County Government to pay to the applicant the sum of Ksh. 230,775/- in terms of the certificate of order for costs against the government issued on 2/06/2023.
  - c. Costs of this suit are awarded to the applicant.

Orders accordingly.

**DATED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2025**

**HON A. Y. KOROSS**

**JUDGE**

25. 02.2025

Delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Kithinji for Applicant

N/A for Respondent

Ms Kanja- Court Assistant

