



**Republic v The National Land Commission; M’noti (Exparte Applicant) (Judicial Review Application E007 of 2024) [2024] KEELC 6355 (KLR) (25 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6355 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
JUDICIAL REVIEW APPLICATION E007 OF 2024  
CK NZILI, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE NATIONAL LAND COMMISSION ..... RESPONDENT**

**AND**

**DAVID MURIUNGI M’INOTI ..... EXPARTE APPLICANT**

**JUDGMENT**

1. The exparte applicant by a notice of motion dated 27.6.2024 seeks an order of mandamus compelling the respondent to honor a decree and certificate of an order issued in Meru Chief Magistrates Court ELC No. E026 of 2022 for Kshs.356,500/= dated 6.3.2024 and April 2024, respectively. The application is supported by a statutory statement of facts and a verifying affidavit dated 18.6.2024.
2. The application was served upon the respondent on 4.7.2024. a hearing notice was also served dated 24.7.2024 and a return of service sworn on 26.7.2024 was filed by Paul Irungu Mwangi, a process server of this court. The respondent did not oppose the application or attend the hearing date despite service with a hearing notice.
3. At the hearing of the notice of motion, the applicant relied on written submissions dated 28.7.2024. It was submitted that once the decree and a certificate of the order were served upon the respondent, who failed to honor them, the only option left to the applicant was to seek to enforce settlement by invoking the jurisdiction of this court for an order of mandamus. Reliance was placed on *Republic v County Government of Nairobi & others Exparte Kingpost Ltd* [2021] eKLR.
4. Mandamus is a form of a command compelling the performance of a public duty which is imposed on a person or body of persons by a statute and where there has been a failure to perform that duty to



the detriment of a party who has a legal right to expect the duty to be performed. See *Republic v Kenya National Examination Council exparte Gathenji Njoroge & others* [1997] eKLR.

5. In *Republic v. National Land Commission exparte Sceneries Ltd* (2022) eKLR, the applicant had argued that the respondent through its accounting officer, within the meaning of section 21 of the *Government Proceedings Act* and Section 20 (4) of the *National Land Commission Act*, was mandated and had a duty to pay all claims against the government as ordered by the court.
6. The scope and efficacy of an order of mandamus was determined in the *Commission on Administrative Justice v Vision 2030 Delivery Board & others* (2019) eKLR, where the court cited *Republic v KNEC exparte Gathenji (supra)*, that its purpose is to remedy the defects of justice and is issued for the ends of justice to be achieved, where there is a specific legal right even, if there is an alternative remedy yet the mode of redress is not convenient, beneficial and effectual.
7. Before an order of mandamus is issued, there must be proof of compliance with Section 21 of the *Government Proceedings Act*. See *Republic v PS Office of the President exparte Nassir Mwandime* [2014] eKLR. In the motion before the court, there is evidence that a decree and a certificate of order were duly served upon the respondent. The same has not been appealed against or set aside. Both gave a specific right to the applicant and a corresponding duty upon the respondent through its accounting officer to pay the decretal sum as specified in the certificate of order. See also *First Star Agencies Ltd & another v National Lands Commission* [2024] KECA 439 (KLR) 12.4.2024 (Judgment).
8. The respondent has not given to this court any justification why the certificate of order or decree has not been satisfied. Accordingly, I find there is merit in the notice of motion before the court. An order of mandamus shall therefore issue compelling the secretary National Land Commission to pay the applicant an amount of Kshs.442,060/= as per the decree and Kshs.82,000/= as per the certificate of order, making a total of Kshs.524,060/= plus interest at 14% per annum from 16.3.2022 till payment. Cost to the applicant.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2024**

In presence of:-

C.A Kananu

Ringera for the exparte applicant

**HON. C K NZILI**

**JUDGE**

