



**Republic v County Secretary County Government of Meru & 5 others; Kaburu
t/a Mwirigi Kaburu & Co Advocates (Exparte Applicant) (Judicial Review
E009 of 2024) [2024] KEELC 13219 (KLR) (13 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13219 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW E009 OF 2024

CK NZILI, J

NOVEMBER 13, 2024

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF SECTIONS 8 & 9 OF THE
LAW REFORM ACT CAP 26 LAWS OF KENYA**

AND

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES 2010

AND

IN THE MATTER OF THE FAIR AND ADMINISTRATIVE ACTION ACT 2015

AND

**IN THE MATTER OF THE JUDGMENT AND ORDER ISSUED
IN MERU MISC H.C CIVL APPLICATION NO. E054 OF 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF
MERU 1ST RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE ECONOMIC
PLANNING AND ICT 2ND RESPONDENT**

**THE CHIEF OFFICER, FINANCE AND ECONOMIC PLANNING COUNTY
GOVERNMENT OF MERU 3RD RESPONDENT**



COUNTY EXECUTIVE COMMITTEE MEMBER, LEGAL AFFAIRS, PUBLIC SERVICE MANAGEMENT AND ADMINISTRATION 4TH RESPONDENT

THE CHIEF OFFICER PUBLIC SERVICE ADMINISTRATION AND LEGAL AFFAIRS COUNTY GOVERNMENT OF MERU 5TH RESPONDENT

COUNTY GOVERNMENT OF MERU 6TH RESPONDENT

AND

**JOSEPH MWIRIGI KABURU T/A MWIRIGI KABURU & CO
ADVOCATES EXPARTE APPLICANT**

JUDGMENT

1. What is before the court is a notice of motion dated 19.8.2024. The exparte applicant asks the court to issue an order of mandamus compelling the respondents to implement the judgment award by paying the taxed costs of Ksh.82,176,731/=.
2. The grounds are set out in the statutory statement of facts and the affidavit verifying the facts, all dated 15.8.2024. The exparte applicant avers that he sued the 6th respondent in Meru Misc Application No. E054 of 2023, to which a judgment was entered for Kshs.82,176.731/= as per a certificate of order against it dated 11.7.2024. It is averred that the 6th respondent is a creature of Article 176 of *the Constitution* and that the 6th respondent participated in the proceedings. In contrast, the 1st – 5th respondents are the officers in charge of the implementation of policies and regulations in their respective capacities as established under Sections 44 and 45 of the *County Governments Act*. Despite service with all the documentaries, it is averred that the respondents have refused to make good the claim, yet they have a legal duty to comply with the judgment.
3. The exparte applicant avers that the respondents have abdicated their constitutional and statutory duties; hence, they should be compelled to do so through an order of this court. The exparte applicant terms the continued delay in the implementation of the certificate of order as unjust, unfair, an abuse of the due process of the law, violative of his legitimate expectation and against the interest of justice.
4. Despite service of the notice of motion as per an affidavit of service sworn on 27.8.2024, the respondents did not oppose the notice of motion or file any written submissions as directed by the court on 9.10.2024.
5. The exparte applicant relied on written submissions dated 26.9.2024. It is submitted that following the grant of leave dated 19.8.2024, the notice of motion was filed within 21 days on 21.8.2024.
6. The exparte applicant submits that a judgment was delivered on 26.6.2024, a certificate of costs was extracted and served upon the 6th respondent, all of which have not been set aside or reviewed by any court and as such, the respondents are required to settle the same.
7. The exparte applicant submits that under Section 44 of the County Government Act, the 1st respondent is the secretary to the executive committee, who is answerable for the operations of the county executive, as the head of the county public service. Further, it is submitted that the 3rd and 5th respondents, as the accounting officers in charge of the treasury department under Section 103 of the Public Finance and Management Act, are the ones responsible for making payments.



8. Reliance was placed on Republic vs County Secretary Nairobi City County and others exparte Kocego & Co Advocates exparte (2020) eKLR, Republic vs County Secretary County Government of Kisumu & others, exparte Otieno Ragot and Co. Advocates (2022) KEHC 13392 (K.L.R.) (29th September 2022) (Judgment).
9. Again, the exparte applicant submits that under Order 29 Rule 2 (2) (b), of the Civil Procedure Rules, the execution of a decree against the 6th respondent is exempted in the usual manner without recourse to Sections 21 of the [Government Proceedings Act](#).
10. In this instance, the exparte applicant submits that he has complied with the law, since the certificate of order was served upon the respondents on 16.7.2024 and a formal demand dated 15.7.2024, was equally served, giving the respondents 21 days to pay, but no payment was ever made.
11. Similarly, the exparte applicant submits that there is no requirement in law against a judgment creditor to first negotiate with the judgment debtor on payment; otherwise, once a decree is passed, the judgment debtor has a legal obligation and duty to pay the same, in default of which execution ought to issue. Reliance was placed on Republic vs County Secretary Migori County Government and another; exparte Linet Magambo (2020) eKLR.
12. Further, the exparte applicant submits that following the service of the respondents with the above documents, the 6th respondent was under a statutory knowledge and duty to honor the decree, which unfortunately, the 2nd – 5th respondents have ignored, leaving him with no option but to commence these proceedings.
13. Order 29 Rule 2 (c) of the Civil Procedure Rules, as read together with Sections 21 (1) – (4) of the [Government Proceedings Act](#), relates to the execution of decrees against the government.
14. The philosophy and the rationale barring execution against the government was stated in Kisya Investment Ltd vs. Attorney General & another (2005) eKLR, that satisfaction of decree or judgment is deemed to be an expenditure by parliament and must, therefore, be justified in law and provided for in the government expenditure under Section 32 of the [Government Proceedings Act](#) and that no ministry or department has any ready fund at all times to satisfy such decree or judgment and that while the existence of the claim may be known to the ministries they have to notify the Ministry of Finance and treasury of the same so that payment is arranged for or provisions made in the government expenditure. Further, the court said that once a judgment is obtained against the government, it would require some reasonable time to have it forwarded to the Ministry of Finance, treasury, controller, and auditor general for scrutiny and approvals to be paid from the consolidated fund, the departments not to have ready funds to settle such decrees or payments and considering the nature of the government structure, procedures, read, tape and a large number of claims, this could take long and to allow attachment of its assets would ground state operations to a halt or paralyze its operation in offering constitutional and statutory duties, leading to chaos, anarchy and breakdown of the rule of law.
15. In [Five-Star Agencies Ltd & another vs National Land Commission & others \(civil appeal E290 & 328 of 2023\)](#) (consolidated) (2024) KECA 439 (K.L.R.) (12th April 2024) (Judgment), the court observed that the only remedy available in the execution of a decree against the government is to institute judicial review proceedings and seek an order of mandamus to compel the government to settle the decree in question as held in Republic vs Attorney General & another exparte James Alfred Koroso (2013) eKLR, Republic vs A.G. & another exparte Stephen Wanyee Roki (2016) eKLR, Republic vs County Secretary Nairobi exparte Wachira Nderitu Ngugi & Co. Advocates (2014) eKLR.



16. The scope and the efficacy of an order for mandamus was discussed in Kenya National Examinations Council vs Republic Exparte Geoffrey Gathenji Njoroge & others (1997) eKLR. The court cited with approval Halsbury's Vo. 1 pp 111 Laws of England that it is an order directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified, which appertains to his or her or their office and is in the nature of public duty, so as to remedy the defects of justice and shall definitely issue, so that the end of justice may be done, in all cases, where there is a specific legal right and no specific legal remedy for enforcing that right and may issue where there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.
17. An order of mandamus, therefore, will issue to compel the performance of a public duty, that is imposed on a person or body of persons by a statute, 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 that duty to be performed.
18. In this application, the exparte applicant has demonstrated that his right to a legal remedy was confirmed by a judgment in his favor, followed by a certificate of order, which was duly served upon the respondents together with a formal demand letter under Section 21 of the [Government Proceedings Act](#).
19. The respondents have defaulted in compliance with the certificate of order that has not been appealed against, set aside, or reviewed by a court of competent jurisdiction. The court, under its mandate pursuant to Sections 13(7) (b) & 19 (1) of the Environment and Land and Court Act, the [Judicature Act](#), and the [Law Reform Act](#), is asked to establish if the procedure of execution with respect to the issuance of a certificate of costs and order against, the 6th respondent has been complied with. The respondents have not denied receipt of the certificate of order and a formal demand letter served on them on 16.7.2024.
20. There is no evidence that the tax masters' ruling has been appealed against, set aside, or reviewed. The respondents have not opposed the notice of motion on account of inadequate notice, inability to pay or meet its statutory obligations, or the failure by the judgment creditor to explore other alternative means to enforce the decree.
21. In Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012) eKLR, the court held that a decree against the government 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, under Section 21 (4) of the [Government Proceedings Act](#).
22. This court is therefore satisfied that the conditions precedents set out under Section 21 (1) and (2) of the [Government Proceedings Act](#), were obtained by the exparte applicant, followed by the expiry of the 21 days named in the notice served upon the 1st & 6th respondents. Once served with the certificate of order and a demand letter, under Section 21 (3) of the [Government Proceedings Act](#), a statutory duty is imposed on the 2nd respondent to pay the sums specified in the said order to the person entitled to, together with any interest lawfully accruing.
23. The provisions do not condition the payment to budgetary allocation and or require the county assembly approval of the 6th respondent's expenditure. In Permanent Secretary Office of the President & another; exparte Nassir Mwandishi (2014) eKLR, the court said that once Section 21 of the [Government Proceedings Act](#) is complied with and a demand for payment made, a cause of action accrues, what follows is an application for an order of mandamus against the government.
24. The 2nd & 3rd respondents, under Section 103 of the Public Finance and Management Act 2012, are the responsible officers on the financial matters of the 6th respondents and, by extension, a satisfaction of



court orders and decrees on payment of money owed by the County Government of Meru, by virtue of its roles and functions.

25. The mandate of this court to ensure a decree holder's right to enjoy the fruits of his judgment must not be thwarted. The court has a constitutional obligation under Articles 10, 48 & 159 (2) (a) & (b) of *the Constitution* to do justice to the parties and to do so without delay. See Republic vs A.G. & another; exparte Stephen Wanyee Roki (supra), Republic vs Town Clerk of Webuye County Council and another HCCC 488 of (2006), Republic vs Principal Secretary Ministry of Defence; Exparte George Kariuki Waithaka (2019) eKLR and Republic vs Kenya Wildlife Services & others; exparte Muhia Judicial Review Application E003 of 2024 (2024) KEHC 8086 (K.L.R.) (4th July 2024) Ruling.
26. The upshot is, I compel by order of mandamus the 2nd – 4th respondents to pay Kshs.82,176,731/= as judgment captured in the certificate of order against the 6th respondent dated 11.7.2024, within 30 days from the date hereof together with interest at 14% with effect from 26.6.2024 until payment in full. Costs of the application to the exparte applicant. It is so ordered.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13TH NOVEMBER, 2024

In presence of

C.A Kananu

Mwirigi for the applicant

HON. C K NZILI

JUDGE

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