



**Republic v Kenya Water & Sanitation Program Ministry of Water & Sanitation & 3 others; Olilo (Exparte) (Application E006 of 2024) [2025] KEHC 3990 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3990 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
APPLICATION E006 OF 2024  
J NGAAH, J  
MARCH 28, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYA WATER & SANITATION PROGRAM MINISTRY OF WATER & SANITATION ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF WATER & SANITATION ..... 2<sup>ND</sup> RESPONDENT**

**PRINCIPAL SECRETARY MINISTRY OF WATER & SANITATION .... 3<sup>RD</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**BARRACK APINDI OLILO ..... EXPARTE**

**JUDGMENT**

1. Before court is the motion dated 21 March 2024 expressed to be filed under Order 53 rule 3(1) of the Civil Procedure Rules. The applicant seeks the orders, thus:
  1. That the honourable court be pleased to grant an order of mandamus compelling the respondents jointly and severally to pay the applicant the decretal sum, interest and costs awarded on the 16<sup>th</sup> May 2023 in Mombasa High Court Civil Case No. 7 Of 2019, all totaling kshs.6,234,587.60 as at 16<sup>th</sup> may 2023 and which continues to attract court interest at 12% per annum.
  2. That all the consequential directions as may be deemed necessary be given.



3. That costs of this application and by extension the costs of the entire proceedings in this suit and for the grant of leave be paid by the respondents.”
2. The application is based on a statutory statement dated 20 February 2024 and an affidavit verifying the facts relied upon sworn on even date by the applicant.
3. According to these documents, on 16 May 2023, the applicant obtained a judgment for the sum of Kshs. 5,815,860/=, against the Ministry of Water and Sanitation in this Honourable Court Civil Suit No. 7 of 2019. On 31 August 2023, costs of the suit were taxed at Kshs. 418,907.60.
4. The applicant subsequently obtained a certificate of order against government for the decretal sum together with costs which he served upon the respondents. However, even after service of the certificate and demand for payment, they have ignored, neglected or refused to pay, hence this application.
5. Despite having been served with the application and the hearing notice of the hearing of the substantive motion, none of the respondents appeared at the hearing. They also did not file any response to the application.
6. There is evidence of service of the decree, the certificate of taxation and the certificate of order against government upon all the respondents, on diverse and various dates in 2023 and 2024.
7. It is not in doubt that execution or attachment of property is one of the ways through which decrees or orders are enforced. But the Government is protected from such process of execution or attachment or other similar process in enforcement of decrees or orders. This protection is encapsulated in section 21 of the [Government Proceedings Act](#), in particular, section 21(4) thereof. The entire section 21 reads as follows:

#### 21. Satisfaction of orders against the Government

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.
8. Subsection 4 is of particular relevance to this application. In the face of the protection from execution or attachment, the only available route open to the applicant is to compel the Principal Secretary in the Ministry of Water and Sanitation, in his capacity as accounting officer in the Ministry, to perform his statutory duty under section 21(3) of the Act and pay what has been decreed as due and owing to the applicant. In other words, only the order of mandamus would be the appropriate order in the circumstances.
9. According to Halsbury's Laws of England/Judicial Review (volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction paragraph 689:

“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”
10. This is reiterated in paragraph 703 which states:

“A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”
11. And with particular reference to public officers who, like in the instant case, fail to perform their public duty, paragraph 706 is clear that a mandamus order may be issued to compel them to carry out the duty. It reads as follows:

“706. Public duties by government officials.

If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA; *R v London Transport Executive, ex p GLC* [1983] QB 484, [1983] 2 All ER 262, DC.)”



12. Besides service of the certificate of order against the Government, it is not denied that the applicant has complied with the rest of the conditions prescribed in section 21 of the *Government Proceedings Act*. To be precise, there is no evidence that the applicant has defaulted in any other step prescribed under this provision of the law as to disentitle him the order of mandamus.
13. A demand for payment having been made and the respondents having failed to pay, no other evidence is required to demonstrate that the 3<sup>rd</sup> respondent has failed to perform a public duty with which he is charged under section 21(3) of the *Government Proceedings Act*. A mandamus order would properly issue in such circumstances.
14. Accordingly, I allow the applicant's application to the extent that the order of mandamus is hereby granted compelling the 3<sup>rd</sup> respondent, to pay the applicant in terms of the certificate of order against the government issued on 18 January 2024. The applicant will also have costs of the application. It is so ordered.

**SIGNED, DATED AND DELIVERED ON 28 MARCH 2025**

**NGAAH JAIRUS**

**JUDGE**

