



**Republic v Permanent Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operatives; Mahia (Exparte Applicant) (Application E181 of 2023) [2025] KEHC 3933 (KLR) (Judicial Review) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3933 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION E181 OF 2023  
JM CHIGITI, J  
MARCH 28, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**PERMANENT SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK,  
FISHERIES AND CO-OPERATIVES ..... RESPONDENT**

**AND**

**MARTIN CHEGE MAHIA ..... EXPARTE APPLICANT**

**JUDGMENT**

1. The application before this Court is the Notice of Motion 15<sup>th</sup> November, 2023. The application is brought Under Order 53. Rule 3 of the Civil Procedure Rules. It seeks the following orders:
  1. That an order of Mandamus now be issued and the same be directed to the Principal Secretary Ministry of Agriculture, Livestock, Fisheries and Co-Operatives.
  2. That the said Principal Secretary shall comply by paying to the Applicant within Seven (5) days the sum of Kshs.888,820 / = being the Decretal sum, plus interest in the Small Claims Court Case Number E918 of 2021, Milimani Nairobi all-inclusive together with interest thereon at the rate of 12% per annum from 27<sup>th</sup> October, 2022 until payment in full as per Certificate of Order against the Attorney General dated 28<sup>th</sup> October, 2022. That in the event that the tender has been awarded by the respondent, any further action(s) shall be declared null and void until further orders of the honourable court.



3. That the Principal Secretary Ministry of Agriculture, Livestock, Fisheries and Co-Operatives shall in addition to paying to the Applicant further interest on the said sum of Kshs.888,820 / = at the rate of 12% p.a from 29<sup>th</sup> October, 2022 until payment in full.
  4. That in default, Notice to Show Cause do issue against the Principal Secretary Ministry of Agriculture, Livestock, Fisheries and Co-Operatives or him to show cause why he should not be cited for contempt of court.
  5. That costs of this application be provided for.
2. The application is supported by a statutory statement dated 30<sup>th</sup> October, 2023 and a Verifying Affidavit by Teresia Muthua sworn on even date.
  3. It is the Applicant's case that On or about the 13th June, 2021, the Applicant had lawfully parked his Motor vehicle KBT 416D off the tarmac Road along Northern By-pass in the County of Nairobi when the Respondent's driver Eric Kinoti drove the motor vehicle registration number GKB-142W belonging to the Respondent that the said motor vehicle veered off the Road and hit the Applicant's motor vehicle exclusively damaging it on both the front and rear parts.
  4. A case was instituted in the Claim in Milimani Small Claims Court Case No.E918 of 2021 wherein Judgment was delivered on 22nd April, 2022 in favour of the Applicant for Kshs.471,718/= together with costs and interest.
  5. A Certificate of Order was issued against the Government and the same was served on the Ministry of Agriculture, Livestock, Fisheries and Co-Operatives.
  6. It is contended that despite numerous demands to both the office of the Attorney General and the Ministry of Agriculture, Livestock, Fisheries and Co-Operatives, the Respondent has failed, refused and/ or neglected to settle the decretal amount and costs.
  7. The Applicant argues that Permanent Secretary Ministry of Agriculture, Livestock, Fisheries and Co-Operatives has acted and is continuing to act in excess of his power in refusing to carry out his public duty and to make the said payment to the Applicant.
  8. The Applicant canvassed their application by written submissions dated 11<sup>th</sup> December, 2023.
  9. It is submitted that the Permanent Secretary Ministry of Agriculture, Livestock, Fisheries and Co Operatives is in violation of Article 73(1)(a) of *the Constitution*.
  10. Reliance is placed in Keroche Breweries Ltd & 6 Others Vs Attorney General & 10 Others (2016) where the court held:
 

“Under Article 73(1) (a) of *the Constitution* it is provided that authority assigned to a state officer is a public trust to be exercised in a manner that is consistent with the purposes and objects of *the Constitution*, demonstrates respect for people, brings honour to the Nation and dignity to the office, promotes public confidence in the integrity of the office and vests in the state officer the responsibility to serve the people, rather than the power to rule them”
  11. It is further submitted that this court must protect the rights of the people and more so those who have obtained Judgements against the Government.



12. Reliance is placed in *Nancy Makokha Baraza Vs Judicial Service Commission & 9 Others* (2012) EKLRR where the court expressed itself inter alia as follows; -

“The new Constitution gives the court wide and unrestricted power which are inclusive rather than exclusive and therefore allows the court to make appropriate orders and grant remedies as the situation demands and as the need arises.”

**Respondent’s case;**

13. The Respondent opposes the Application through a Replying affidavit dated 19<sup>th</sup> February, 2024 sworn by Paul K. Ronoh who is introduced as the Principal Secretary, Ministry of Agriculture and Livestock Development.
14. It is posited that Kenya Forest Service (KFS) registered Forest Industry Investors in October 2021 in accordance with the Public Procurement and Assets Disposal Act, 2015 as well as its subsequent Public Procurement and Assets Disposal Regulations of 2020.
15. It is deponed that this suit arises from a road accident which occurred on or about the 13<sup>th</sup> day of June, 2021 along Northern By-pass, Nairobi County involving motor vehicle registration number KBT 416D and motor vehicle registration number GKB 142W.
16. The Respondent avers that that Applicant's motor vehicle registration KBT 416D sustained extensive damage on both the front and rear parts.
17. It is also averred that a suit was filed in Milimani Small Court Case No. E918 of 2021 wherein Judgment was delivered in favour of the Applicant on 22<sup>nd</sup> April, 2022 for the sum of Kshs. 471,718/= plus costs and interest and a Certificate of Order against the government was issued and served to the Ministry.
18. It is his case that the delay in settling the same has been occasioned by factors beyond his control.
19. It is contended that the State Department obtains its budgetary allocation from the National Treasury and the budgetary allocation for the FY 23/24 is already underway. The State Department has already factored the Applicant's decretal award in the next budget proposal and this information was communicated to the Applicant's legal representatives.
20. According to him the Ministry has at all times been ready and willing to comply and have the decretal sum be settled in full however the Ministry is constrained from taking further steps by virtue of lack of budgetary allocation for the same by the National Treasury.
21. Respondents filed written submissions dated 5<sup>th</sup> February, 2025.
22. It is submitted that the Respondent's actions are not tainted with illegality, irrationality nor procedural impropriety.
23. Reliance is placed in *Pastoli Vs Kabale District Local Government Canal & Others* (2008) 2ea 300 At Pages 300-304.
24. It is the Respondent's submission that Respondent has exhibited transparency and willingness to settle the amount owed to the Applicant and has promptly followed up on the release of funds by the National Treasury and they are willing to pay the same if only they can be accorded ample time by the Applicant to make further follow up on payment of the dues.



## Analysis and determination;

25. What is before this court for determination is whether or not the applicant's application has merit.
26. On 22<sup>nd</sup> April, 2022 Judgment was delivered in favour of the Applicant for Kshs.471,718/= together with costs and interest in Milimani Small Claims Court Case No. E918 of 2021.
27. A Certificate of Order was thereafter issued against the Government and the same was served on the Ministry of Agriculture, Livestock, Fisheries and Co-Operatives.
28. The Respondent does not deny that there was a judgment that was entered against it as pleaded by the applicant. However, despite numerous demands the Respondent has failed, refused and/ or neglected to settle the decretal amount and costs.
29. The respondent's only defence is that it is the State Department that obtains its budgetary allocation from the National Treasury and the budgetary allocation for the FY 23/24 is already underway.
30. In the case of Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR the court held:

“The defence of non-allocation of funds by Parliament was also raised by the Respondent in the present application in his replying affidavit. Odunga J. in his ruling of 12<sup>th</sup> February 2018 extensively dealt with the defence as follows:

As regards lack of budgetary allocation, Githua, J in Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR expressed herself 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.” [Emphasis mine].

31. It is the Respondent’s case that The State Department has already factored the Applicant’s decretal award in the next budget proposal and this information was communicated to the Applicant’s legal representatives.
32. It is further the Respondent’s case that the Ministry has at all times been ready and willing to comply and have the decretal sum be settled in full however the Ministry is constrained from taking further steps by virtue of lack of budgetary allocation for the same by the National Treasury.
33. The foregoing are entries that have no economic value to a decree holder in the face of the doctrine of legitimate expectation.

**Disposition;**

34. This court is satisfied that the applicant has made out a case for the grant of the orders sought.

Order;

1. An order of Mandamus is hereby issued compelling the Principal Secretary to pay the Applicant within Forty Five (45) days the sum of Kshs.888,820 / =being the Decretal sum, plus interest in the Small Claims Court Case Number E918 of 2021, Milimani Nairobi all-inclusive together with interest thereon at the rate of 12% per annum from 27th October, 2022 until payment in full as per Certificate of Order against the Attorney General dated 28thOctober, 2022.
2. In default, Notice to Show Cause do issue against the Principal Secretary Ministry of Agriculture, Livestock, Fisheries and Co-Operatives or him to show cause why he should not be cited for contempt of court.
3. Costs of this application in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH 2025**

.....

**J. CHIGITI (SC)**

**JUDGE**

