



**Republic v County Executive Committee Member, Finance and Economic Affairs,  
Nairobi City County & 2 others; Tom Ojienda & Associates (Exparte) (Judicial Review  
E116 of 2024) [2025] KEHC 4306 (KLR) (Judicial Review) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4306 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW E116 OF 2024  
RE ABURILI, J  
MARCH 26, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE AND ECONOMIC  
AFFAIRS, NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY, NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**OFFICER IN CHARGE OF FINANCE, NAIROBI CITY**

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

**AND**

**PROF TOM OJIENDA & ASSOCIATES ..... EXPARTE**

**JUDGMENT**

**The Application**

1. The ex parte Applicant herein is the firm of Prof Tom Ojienda & Associates, Advocates (herein referred to as “the Applicant”), and it claims that it rendered legal services to the County Government of Nairobi in Constitutional Petition No. 223 of 2011-Hon Gideon Mbuvi Sonko v Attorney General & City County of Nairobi in which the applicant provided legal representation to the City County Government of Nairobi.
2. The Applicant thereupon filed its Bill of Costs for taxation, which Bill was taxed and certificate of taxation issued dated 26<sup>th</sup> February, 2021. The Applicant then applied and got judgment entered on



the certificate of taxation and decree was issued 29<sup>th</sup> November, 2021 in its favour as taxed in the sum of Kshs 17,777,672.70 which has now attracted interest of 7,923,484.37. The applicant contends that the County Government of Nairobi has refused, failed and/or neglected to satisfy the decretal sum now standing at Kshs 24,701,157 inclusive of interest at 14% per annum from 26<sup>th</sup> February, 2021 to 3<sup>rd</sup> May, 2023, as per the certificate of order against the Government dated 3<sup>rd</sup> May, 2024 annexed.

3. In the application dated 19<sup>th</sup> September, 2024 filed pursuant to leave granted on 16<sup>th</sup> September 2024, the applicant seeks judicial review orders of mandamus to issue, compelling the respondents to settle the decree for on costs which they served upon the respondents together with the certificate of order against the government.
4. The application is supported by the grounds, an affidavit sworn by Prof Tom Ojienda, SC and annexing all the documentation including the Ruling on Taxation, certificate of taxation and demands for settlement.
5. The application was opposed by the respondents who filed a replying affidavit sworn by Asha Abdi, the Chief Officer, Finance, the City County of Nairobi on 13<sup>th</sup> November, 2024 deposing how the application does not state how the City County has refused to settle decree hence the application is defective, incompetent and an abuse of the Court process.
6. That the applicant only served the Certificate of Order Against the Government towards the end of the financial year on 23<sup>rd</sup> May, 2024, when there were no funds for payment as the County had already utilized the allocated funds for legal fees for the financial year.
7. It was deposed that the Nairobi City County can only utilize funds allocated by the County Assembly for the purpose; that the applicant had not satisfied the provisions of section 21 of the Government Proceedings Act and that the respondents are not individually liable for settling decree in an order against the Government.
8. It was deposed that the County utilizes public funds in accordance with the Public Finance Management Act, 2012 among other legislation and follows the budgeting process under section 125 of the said Act while the County CECM for Finance ensures public participation in the budget process. Further, that payment of monies involves several stakeholders.
9. That is the court allows the application then the Court Officials who are the respondents herein should not be held liable for orders against the Government.
10. In the brief oral submissions, the parties' counsel reiterated the depositions with the respondents' counsel submitting that although there is no denial that the decree is owed, but that the money has to be budgeted for in the financial year 2024/2025 and that they sought time to factor the decree in the budget so that it is paid. That the County had not refused to settle decree but had submitted it to CEC Finance to include it in the coming budget.
11. The applicant's counsel submitted that there was no evidence of any effort to pay and that budget process is not an excuse for non-payment, relying on Republic versus Principal Secretary Ministry OF Defence exparte George Kariuki Waithaka [2019]e KLR.
12. I have considered the Applicant's and Respondents' pleadings and depositions submissions. I am guided by the Court of Appeal's decision on the nature of the remedy of mandamus in Republic vs Kenya National Examinations Council ex parte Gathenji and Others, (1997) e KLR as follows:

“ The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior



tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

13. The issues for determination are, whether the Respondents are under a public duty and obligation to satisfy the decree and certificate of order against the Government issued in favour of the Applicant, and if so, whether the Applicant is entitled to the reliefs sought.
14. On the first issue, it is now settled that for a court to grant an order of mandamus, the Respondent must have a duty by law which they have refused to fulfill. The case of Republic vs Kenya National Examinations Council *ex parte* Gathenji and Others, (*supra*) explains the nature of the remedy of mandamus.
15. In *Soloh Worldwide Inter-enterprises vs County Secretary Nairobi County and Another* [2016] eKLR, it was held that the person who had the overall financial obligation for the purpose of the affairs of the county government must be the county executive in charge of finance and unless he shows otherwise, he is the one under the obligation to pay funds in the capacity as the accounting officer. Further, that jurisprudence on the subject of the order of mandamus demands that where there is a breach of public duty or power, the Court must compel the public authority to perform the duty imposed by statute.
16. It is not news that the law bars execution against the Government and therefore the applicant has no other alternative effective remedy but judicial review. This is what courts have held in the cases of *Republic vs Attorney General & Another Ex parte James Alfred Koroso* (2013) eKLR, *Republic vs County Secretary, Nairobi City County & Another Ex parte Wachira Nderitu Ngugi & Co Advocate* (2016) eKLR, and *Republic vs County Chief Officer, Finance & Economic Planning, Nairobi City County Ex parte Stanley Muturi* (2017) eKLR.
17. The Respondents, relying on section 21(4) of the *Government Proceedings Act*, and the *Public Finance Management Act*, deposed that they are not personally liable to settle the decree and that they have not disregarded the orders of the Court and have every intention of complying with the same, but should be given more time to do so, noting that the budget for the financial year had been exhausted.
18. The applicable law on execution proceedings against the National and County Governments is section 21 of the *Government Proceedings Act*, which provides as follows:
  - “(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.”

19. Nairobi City County is one of the Counties established by Article 6 of the *Constitution* and the First Schedule to the *Constitution*, and is constitutionally recognized as a distinct government level of government by the said Article.

20. As to whether the Respondents herein are under a duty to pay the subject decretal sums, an order of mandamus is normally issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed. Execution proceedings against a government or public authority under the *Government Proceedings Act* can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body. This was the holding in *Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security (2012)* where Githua J. held 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.”

21. Section 44 of the County Government Act in this respect establishes the office of the County Secretary who is secretary to the County Executive Committee, and is answerable for the operations of the County Executive, and whose functions include being head of the county public service. Section 103 of the [Public Finance Management Act](#) No 18 of 2012 also establishes the County Treasury comprising of the County Executive member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under section 103(3) of the Act, the County Executive Committee Member for Finance is the head of Treasury, and is thus the responsible for finance matters in the County.
22. It is the duty and responsibility of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as accounting officers to set in motion the process of settling decrees of the court. They cannot claim to be helpless. They must demonstrate the efforts made in raising the funds for settlement of court decrees so that the decree holders are not left carrying bare pieces of paper.
23. This Court therefore finds that arising from these provisions, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are jointly responsible for the satisfaction of Court orders and decrees on payment of money owed by the Nairobi City County by virtue of their roles and functions. In addition, the decretal sum due from the City County of Nairobi, who was the instructing client of the applicant has not been disputed, and the Applicant in this respect annexed copies of the judgments and decrees awarded in the various cases that are the subject of this application. The Applicant also annexed copies of the Certificates of Costs issued in its favour, after taxation of its Bill of Costs in the matter where it represented the City County Government of Nairobi. There is no appeal challenging the costs as assessed. There is also evidence that not only were the respondents aware of the decree for costs, but that the applicant served the said decree and certificate of order against the government upon the respondents in compliance with section 21 of the [Government proceedings Act](#), contrary to the depositions by the respondent’s Chief Officer, Finance, on 23<sup>rd</sup> May, 2023 as admitted by the said Chief Officer in her affidavit.
24. It is now almost two years since service of the said statutory documents were served upon the respondents demanding for settlement of decree. It cannot be true that the application herein is an abuse of court process or is incompetent. I find the opposition misplaced.



25. However, I note that in the judgment and decree on costs dated 29<sup>th</sup> November, 2021 and issued on 19<sup>th</sup> January 2022, Mrima J entered judgment for Kshs 17,777,672/70 with interest at court rates from the date of certificate of costs that is 26<sup>th</sup> February 2021 until settlement. Contrary to this decree, the Certificate of Order Against the Government as extracted on 3<sup>rd</sup> May, 2024 states that the interest shall be at 14% per annum from 26/02.2021 to 03/05/2024.
26. Certificate of Order Against the Government must agree with the decree issued by the Court. In this case, there is variance in terms of interest.
27. Section 26 of the *Civil Procedure Act* provides as follows on interest:
- (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
  - (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.
28. On what court rates is, Joel Ngugi J had this to say in *Jane Wanjiku Wambu v Anthony Kigamba Hato & 3 others* [2018] eKLR:
- “...First, at all times a Trial Court has wide discretion to award and fix the rate of interests provided that the discretion must be used judiciously. Given this discretion, an appellate Court is, therefore, enjoined to treat the original decision by a trial Court with utmost respect and should refrain from interference with it unless it is satisfied that the Lower Court proceeded upon some erroneous principle or was plainly and obviously wrong. See *New Tyres Enterprises Ltd v Kenya Alliance Insurance Company Ltd* [1988] KLR 380.
- ... 34. One last issue is what the appropriate interest rate should be. Counsel for the Appellant has suggested a figure of 15% as the “current commercial rates.” Counsel has not disclosed where that figure has come from. On my part, I will, again, rely on our stable jurisprudence and judicial practice to determine what the appropriate interest rate on liquidated damages is. The rate that is mostly used by the Courts absent special or exceptional circumstances which are not proved here, is to award an interest rate of 12% per annum from the date of filing suit until payment in full. See, for example, the *Orix Oil (Kenya) Limited Case* (supra) and *Autolog Kenya Limited v Navisat Telematics (Kenya) Limited* (2013) eKLR and *Permuga Auto Spares & another v Margaret Korir Tagi* [2016] eKLR.”
29. Rule 7 of the Advocates Remuneration Rules is clear that interest is chargeable at fourteen (14%) per cent per annum, from the expiration of one month from the delivery of the bill to the client. There was therefore a reference point, from when interest would be calculable. It could not accrue before one month had expired, from the time when the bill was delivered to the client.
30. In *Amondi and Co Advocates v County Government Of Kisumu* [2021] eKLR it was stated that:
- “Going further, interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served. Rule 7 of the Advocates Remuneration Rules



provides that interest is only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full....”

31. I have perused the original advocate/ client bill of costs dated 10<sup>th</sup> June, 2019. I do not find any item or demand for the 14% interest on the itemized bill of costs.
32. In *Otieno, Ragot & Company Advocates v Kenindia Assurance Co Ltd* (Civil Appeal 165 of 2019) [2023] KECA 1443 (KLR) (24 November 2023) (Judgment), the Court of Appeal was confronted with a situation where an advocate did not claim for any interest in the bill of costs served on the client. The High Court awarded the advocate interest at court rates, on the taxed costs. The advocate appealed to the Court of Appeal seeking that he be awarded interest at 14% per annum from one month after submission of the bill of costs to the client. Dismissing the appeal, the Court of Appeal stated as follows, inter alia:

“...under what conditions is an advocate permitted to recover the allowable interest of 14% p.a. under Rule 7 of the Advocates Remuneration Order? In that companion appeal whose decision this Court has issued today, the Court reached several consequential conclusions respecting the interpretation of Rules 7 and 11 of the Advocates Remuneration Order and section 51(2) of the *Advocates Act* as follows:

- a. First, that an advocate can only claim the allowable interest of 14% under Rule 7 of the Advocates Remuneration Order if the advocate included that claim in the original fee note/bill presented to the client; and/or the same was taxed and allowed by the Taxing Master;
- b. Second, that, conversely, an advocate who did not claim the interest in his Bill of Costs and who did not benefit from a favourable ruling by the Taxing Master on the issue of interest at 14% p.a. under Rule 7 of the Advocates Remuneration Order can only challenge the non-award by invoking Rule 11 of the Advocates Remuneration Order and filing a reference to the court.
- c. Third, that, consequently, an advocate cannot claim, for the first time, in his attempt to enforce the Certificate of Costs issued by the Taxing Master, the potentially allowable claim of 14% p.a. interest vide an application under section 51(2) of the *Advocates Act*. A section 51(2) motion can only enforce the Certificate of Costs as issued but cannot vary it or add a new claim to the award therein.

2. In the companion appeal, these consequential holdings were sufficient to render the appellant’s appeal still-born: he had not made the claim in his fee note delivered to the client; he had not included it in his Bill of Costs as filed and taxed by the Taxing Master; and he had not invoked Rule 11 to file a reference to protest the non-award of the interest under Rule 7 of the Advocates Remuneration Order. We explained the rationale for the interpretation of the relevant legal provisions thus: 30. Once the advocate includes the claim of interest, it must be litigated before the Taxing Master in the taxation proceedings. If it is awarded by the Taxing Master, it would be well and good for the advocate. However, if it is not awarded in the taxation proceedings and included in the Certificate of



Costs, the advocate must challenge the omission in a reference to the Court under Rule 11 of the Advocates Remuneration Order. It is not open to the advocate to spring the claim of interest for the first time at the enforcement proceedings under section 51 of the *Advocates Act*.<sup>31</sup> To reiterate, the policy rationale for this interpretation is that the advocate should put the client on notice about the totality of the claim he has against the client at the earliest instance. There is a policy preference against an advocate making piecemeal claims against the client. Requiring an advocate to raise the claim for interest at the earliest instance gives the client an opportunity to object to any delays by the advocate in raising the Bill of Costs. This, in turn, acts as a disincentive for advocates to needlessly delay raising a Bill of Costs with the sole objective of increasing the amounts due through the allowable interests under Rule 7 of the Advocates Remuneration Order. Conversely, it incentivizes clients to promptly pay the amounts due to the advocate as claimed in the Bill of Rights or raise an objection promptly.

6. These facts are not disputed. Indeed, at the High Court, the respondent did not oppose the application. However, the High Court entered judgment in favour of the appellant in the sum of Kshs. 216,158.03/= as prayed (and as reflected in the Certificate of Costs) but with interest at court rates from the date of delivery of the ruling (12<sup>th</sup> March, 2019), as opposed to awarding 14% interest p.a. from 15<sup>th</sup> December, 2014 when the Certificate of Costs was issued and when, the appellant argues, the interest was last calculated...”
33. From the above decision of the Court of Appeal, which was rendered quite recently, after the judgment on costs in the present case was rendered by Mrima J, it is clear that the advocate did not claim for interest under Rule 7 of the Advocates Remuneration Order and only claimed it at the time of judgment and that being the case, the court ought not to have awarded him any interest at all. However, because the respondents have not raised any issue on the award, what this court will do at this moment is to ensure that the correct interest as awarded is applied. The Court having awarded interest at court rates in the decree, it was erroneous for the Certificate of Order Against the Government to contain interest at 14% per annum.
34. In the premises, I direct that a fresh certificate of Order against the Government do re issue reflecting the decree issued by Mrima J. The interest shall be recalculated at court rates which shall be 12% per annum and not 14% per annum. This is on the authority of *Jane Wanjiku Wambu v Anthony Kigamba Hato & 3 others* (supra).
35. The Applicant to collect a fresh Certificate of Order Against the Government issued by the Deputy Registrar of the Court that taxed the Bill of costs and serve the same upon the Respondents herein for settlement as ordered herein.
36. In the end, I make the following orders:



1. Judicial Review Order of Mandamus is hereby issued against the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, compelling them to settle decree in the sum decreed at Kshs 17,777,672.70 with interest at court rates of 12% per annum from 26<sup>th</sup> February, 2021 until payment in full.
2. The 2<sup>nd</sup> respondent County Secretary, Nairobi City County is expunged from these proceedings
3. The applicant will have costs of the application for mandamus
4. Mention on 21<sup>st</sup> May 2025 for further directions.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 26<sup>TH</sup> MARCH, 2025**

**R.E. ABURILI**

**JUDGE**

