



**Republic v Chief Officer Finance County Government of Mandera & 2 others; Engi – Consult Limited (Exparte Applicant) (Judicial Review E004 of 2025) [2025] KEHC 5521 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW E004 OF 2025  
JN ONYIEGO, J  
APRIL 30, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF  
MANDERA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY ATTORNEY COUNTY GOVERNMENT OF MANDERA .... 2<sup>ND</sup>  
RESPONDENT**

**CHIEF OFFICER PUBLIC WORKS COUNTY GOVERNMENT OF  
MANDERA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**ENGI – CONSULT LIMITED ..... EXPARTE APPLICANT**

**RULING**

1. Pursuant to the leave of the Court granted on 16.12.2024, the ex parte applicant moved this Court by way of Notice of Motion dated 17.02.2025 and expressed under the provisions of sections 8 and 9 of the *Law Reform Act* and Order 53 Rules 3 of the *Civil Procedure Rules, 2010*, seeking: -
  1. That an order of Mandamus be and is hereby issued compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein directing them to pay the ex parte applicant:
    - i. The sum of Kes. 162,183,655.32 being the decretal amount owed to the applicant as a result of the judgment issued on 19.05.2023 in the High court of Kenya at Garissa, Garissa High Court Civil Suit No. E001 of 2021; Engiconsult Limited vs County Government of Mandera.



- ii. Interests on the Kes. 162,183,655.32 above compounded at 12% from 14.04.2016 until payment is made in full and;
  - iii. The taxed costs of the suit in the sum of Kes. 1,745,130.64.
2. Costs of this application be provided.
2. The core background of this case that, on 02.02.2021, the applicant instituted a suit claiming Kes. 162,183,655 together with interest of 12% p.a. from April 2016 till payment in full and costs of the suit at Garissa High Court Civil Suit No. E001 of 2021 *Engiconsult Limited vs County Government of Mandera*. That on 19.04.2023, the court entered judgment for Kes. 162,183,655 together with interest and costs thereof. Despite being served with the certificate of order against government, the respondent is yet to honour the said order.
  3. Despite being served with a copy of the substantive notice of motion dated 17.02.2025, chamber summons dated 10.02.2025 and an order granting leave to the applicant to institute judicial proceedings, the respondent did not bother to enter appearance nor defend the application herein.
  4. Upon considering the application, I find that the only issue for determination is whether the ex parte applicant has established grounds for this Court to issue an order of mandamus.
  5. It is trite that an order of mandamus pursuant to order 53 of the civil procedure rules and Section 9 of the *law reform Act* can issue to compel a person or body of persons who have failed to perform a public duty to the detriment of a party who has a legal right to expect the duty to be performed. [ See *Kenya National Examinations Council vs R ex parte Geoffrey Gathenji Njoroge & 9 Others* {1997} eKLR.. Therefore, the writ of mandamus is a judicial command requiring the performance of a specified duty which has not been performed.
  6. In the case of *Republic vs Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another* [2018] eKLR, Mativo J. (as he was then), stated that mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its chief use. It is also employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way, nor to direct the retraction or reversal of action already taken in the exercise of either.
  7. The learned Judge went further to state that mandamus is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exists. The Court has to weigh one thing against another to see whether or not the remedy is the most efficacious remedy in the circumstances obtaining. The discretion of the Court being a judicial one must be exercised on the basis of evidence and sound legal principles.
  8. In the instant case, the decree arises from the decision in High Court of Kenya at Garissa, Garissa Civil Suit No. E001 of 2021; *Engiconsult Limited vs County Government of Mandera* where the ex parte applicant was awarded 162,183,655 together with interest and costs. The said judgment and decree have not been challenged at all. Thus clearly, there is a public duty on the part of the respondents to act in as much as they did not defend the suit herein and the said duty is owed to the ex parte applicant.
  9. Section 21(5) of the *Government Proceedings Act* Cap. 40 Laws of Kenya is applicable to the 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. They have a statutory duty bestowed on them by virtue of their roles and functions. In this case, there is no evidence of the decree subject of these proceedings having been satisfied and therefore, the ex-parte applicant is entitled to execute the said decree.



10. The legal position is that, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, and the same remains unsatisfied, it 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*.
11. Enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act*. Under the said provisions, the applicant is supposed to obtain a certificate of order from the court which issued the decree. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment or where the order provides for the payment of costs and the costs required to be taxed, at any time after the costs have been taxed, whichever is the later. Once this requirement has been met and or complied with and the decree is not satisfied, the decree holder can then proceed to seek orders of mandamus.
12. I have perused the application herein which is not opposed. It is clear that the applicant obtained a certificate of order against the government as the same was issued on 07.11.2024. Of importance to note is the fact that the ex parte applicant failed to annex a certificate of costs but nonetheless, attached a ruling by the Tax Master showing that the bill was taxed and the amount allowed being Kes. 1,745,130.64. In my view, there is sufficient proof of the amount taxed.
13. Having further perused the pleadings before this court, I note that several documents were annexed to the verifying affidavit sworn on 10.02.2025 by Kamunyu Kahenya. The very application and the annexures were duly served upon the respondents as witnessed in the affidavit of service sworn on 26.02.2025 by Demetra Mwihaki, a court process server. Thus, the first document annexed thereon is the plaint and supporting documents attached. The second document is a copy of bill of costs. The third document is a copy of the ruling on the bill of costs and copies of the certificate of order against the county government.
14. Accordingly, the Accounting Officer of the 1<sup>st</sup> respondent was under obligation to proceed and settle the decree in the manner envisaged by Subsection (3) of Section 21 of the *Government Proceedings Act* which states: “(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:
15. 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.
16. In view of the foregoing, and granted that what is sought to be enforced is a judgment as already entered by the court against the respondents, I find merit in the application dated 17.02.2025. The same is hereby allowed and orders granted as hereunder:
  - i. A declaration be and is hereby made that the respondents, namely, the County Government of Mandera, its County Secretary and the Chief Officer Finance, are in breach of their statutory duty as mandated under the provisions of Section 21(3) of the *Government Proceedings Act*;
  - ii. An order of mandamus be and is hereby issued compelling the 1<sup>st</sup> respondent through its Accounting Officer to pay the ex parte applicant the decretal amount of Kes. 162,183,655.32 plus interest and costs of the suit in the sum of Kes. 1,745,130.64.



iii. The costs of the application be borne by the respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF APRIL 2025**

**J. N. ONYIEGO**

**JUDGE**

