



**Republic v Garissa County Government & 2 others; Gamadid Trading Company Limited (Exparte Applicant) (Judicial Review E008 of 2024) [2025] KEHC 5487 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5487 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW E008 OF 2024  
JN ONYIEGO, J  
APRIL 30, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**GARISSA COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF FINANCE**

**GARISSA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER IN CHARGE OF FINANCE GARISSA**

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

**AND**

**GAMADID TRADING COMPANY LIMITED ..... EXPARTE APPLICANT**

**RULING**

1. By a plaint dated 28.10.2016, the plaintiff/applicant moved this court seeking for orders as follows:
  - i. The sum of Kes. 20, 804,580.
  - ii. Interest on the said sum at commercial rates prevailing from time to time from 17.12.2012 until payment in full.
  - iii. Costs and interests thereon.
  - iv. Damages for lost income from 17.12.2012 till 17.12.2016.
  - v. Any other remedy that this Honourable Court may deem fit to grant.
2. The plaintiff/applicant’s claim was that on 21.12.2017, it entered into a written agreement with the County Government of Garissa, then known as Municipal Council of Garissa for the management



of Garissa Open Market for a period of 5 years. The material terms of the said agreement were that the plaintiff/applicant would collect rent from the tenants of the market and remit Kes. 85,000/- monthly to the 1<sup>st</sup> respondent and maintain and improve the amenities of the market. On its part, the 1<sup>st</sup> respondent was to allow the plaintiff to remunerate itself with such collections over and above the amounts payable to it and the costs of the maintenance and repairs of the market. That due to the plaintiff's diligence, and competent performance, the 1<sup>st</sup> respondent resolved to renew the plaintiff's contract for a further term of 5 years.

3. That during the subsistence of the contract, the same was frustrated due to political and legal interferences leading to the parties entering into an agreement for the surrender of the market to the 1<sup>st</sup> respondent. As a result of the foregoing, the due payments and arrears accumulated over the period remained unsettled hence the filing of the suit herein.
4. Generally, the suit was defended as the defendants/respondents denied the contents of the plaint by urging that the county was not indebted to the plaintiff/applicant or to any person in any way.
5. During the subsistence of the suit, counsel for the defendants/respondents on 12.02.2018 informed the court that the parties had started negotiations with a view to settling the matter amicably. Additionally, the court was informed that an amount of Kes. 5,000,000/- had already been paid to the plaintiff/applicant.
6. On 18.06.2018, the plaintiff/applicant confirmed receiving an amount of Kes. 7.7 million as part payment of the amount owed.
7. On 19.11.2018, the court was informed that the plaintiff had already been paid an amount of Kes. 12,000,000/- as part payment of the amount owed.
8. On 13.11.2019, counsel for the defendants/respondents urged court for time to complete negotiations and further stated that so far an amount of Kes. 15,000,000/- had been paid to the plaintiff/applicant. The plaintiff meanwhile decried the fact that the negotiations and part payments were taking long noting the time when the suit was filed in court.
9. On 04.08.2020, parties entered a consent as follows:
  - “By consent of the plaintiff and the defendant;
    - i. Judgment be and is hereby entered for the plaintiff against the 1<sup>st</sup> defendant for Kes. 36, 798,200(Thirty-Six Million, Seven Hundred and Ninety-Eight Thousand and Tow Hundred only) all inclusive.
    - ii. That the said money will be paid by the 1<sup>st</sup> defendant by installments based on availability of money.
    - iii. That each party to bear their own costs.”
10. Having failed to honour the extracted decree, the ex parte applicant instituted the instant judicial review proceedings by way of a Notice of Motion dated 08.01.2025 seeking judicial review orders of mandamus compelling the respondents to implement the judgment awarded in Garissa High Court Civil Case No. 3 of 2016, Gamadid Trading Company Limited v Garissa County Government & 3 Others by payment of Kes. 36,798,200 plus cost being the decretal amount awarded and indicated in the certificate of order against the government dated 06.08.2024.
11. The application is founded on the grounds set out in the statutory statement of facts by his advocates dated 10.12.2024 and the affidavit verifying the facts sworn by the director of the ex-parte applicant. In



a nutshell, the applicant's case is that it sued Garissa County Government in Garissa High Court Civil Case No. 3 of 2016, Gamadid Trading Company Limited v Garissa County Government & 3 Others wherein the parties adopted a consent as a decree of the court on 04.08.2020. That the respondents have despite having participated in the proceedings in the lower court, having knowledge of the court award, having been served with the decree and all other requisite documents, refused to make good the ex-parte applicant's claim by implementing the judgment.

12. Further, that the respondents have hitherto not settled the said decretal sum hence the instant application to compel them to pay the applicant the sum of Kes. 36,798,200 plus costs of the proceedings herein as well as interest.
13. That the application herein was served upon the respondents and an affidavit of service sworn in support of the same.
14. The respondents opposed the said application via a replying affidavit sworn by Khadija Ahmed Mohamed, County Attorney of Garissa deposing that, the ex parte applicant has concealed information from this court in an attempt to mislead the court. That pursuant to the consent adopted on 04.08.2020 in Garissa High Court Civil Case No. 3 of 2016, the respondents were to pay the decretal sum of Kes. 36,798,200/-. That upon verification and audit, the respondents discovered that the ex parte applicant had been paid a sum of Kes. 34,845,932 as follows: on 22.12.2017, Reference No. FT17361K558, an amount of Kes. 4,741,379/- was paid; on 04.07.2018, Reference No. FT18185JW0YI, an amount of Kes. 711,206/- was paid; on 17.09.2018, Reference No. FT1826026YK4, an amount of Kes. 3,034,482.75/- was paid; on 05.11.2018, Reference No. FT18309DMFC0, an amount of 2,086,206.90 was paid; on 19.12.2018, Reference No. FT183536FCVX, an amount of Kes. 2,252,250/- was paid; on 08.01.2018 via Reference No. FT19008vRXL an amount of Kes. 4,741,393/-; on 25.05.2018, Reference No. FT18145JXBP2 an amount of Kes. 2,560,334.85/-; on 11.02.2019, Reference No. FT190429Y1M3 an amount of Kes. 13,125,600/-; on 21.03.2019, Reference No. FT19080VNTVN an amount of Kes. 2,628,395/-; on 24.05.2019, Reference No. FT19144SRNGG an amount of Kes. 758,620.70 was paid; on 03.12.2019, Reference No. FT19337PKS8P, an amount of Kes. 2,214, 700 was paid; on 11.03.2020, Reference No. FT2007150G2Q, an amount of Kes. 2,000,000/- was paid and on 21.02.2021, Reference No. FT21053DX91L, an amount of Kes. 3,000,000 was paid.
15. It was deposed that out of the said sum of Kes. 36,798,200/- claimed by the ex parte applicant, the respondents have paid a sum of Kes. 34,845,932/- leaving a balance of Kes. 1,952,268. That therefore, there has been no express refusal on the part of the respondents to comply with the judgment of the court. In the same breadth, it was averred that the threshold of the orders sought has not been met and therefore, the application herein ought to be dismissed with costs.
16. The director of the ex parte applicant, Mr. Aden Haji Gamadid filed a further affidavit sworn on 12.03.2025 denying any concealment of material fact or misleading the court. That to the contrary, it is the respondents who were out to misguide the court for the reason that the respondents were to pay the ex parte applicant an amount of Kes. 36,798,20/-. That there was a certificate of order against the government for the sum of Kes. 36,798,20/- which was dully served upon the respondents on 07.08.2024.
17. It was deposed that the ex parte applicant's claim against the respondents was for inter alia; the principal a sum of Kes. 44,362, 157.20/- plus interest at commercial rates prevailing from 17.12.2012 until payment in full. That as at 30.08.2017, the ex parte applicant was demanding a sum of Kes. 49,362,157.20 from the respondents.



18. It was averred that the alleged payments were made prior to the consent dated 16.07.2020 and adopted as an order of the court on 04.08.2020 thereby reducing the amount due to the ex parte applicant to Kes. 36,798,200/- as at 16.07.2020. It was stated that the consent adopted by the court factored the instalment payments that were made between 22.12.2017 and 11.03.2020 as the said instalments by and large went towards defraying the accrued interest. That the aforementioned consent has not been set aside or reviewed and therefore, still remains a valid order of the court.
19. It was averred that there is an express refusal on the part of the respondents to settle the decretal sum. That the application herein has met the requisite threshold and therefore, this court ought to allow the prayers sought.
20. The application was canvassed by way of written submissions wherein the applicant via submissions dated 03.03.2025 urged that the main issue for determination is whether the ex parte applicant has made a case for the grant of the order for mandamus. That by consent entered on 16.07.2024 between the applicant's advocates and the 1<sup>st</sup> respondent's advocates, the 1<sup>st</sup> respondent agreed to pay the applicant a sum of Kes. 36,798,200/-. The certificate of order was extracted and served upon the respondents on 07.08.2024 with a request to have the respondents pay the decretal amount within 7 days failing which the ex parte applicant would commence execution proceedings.
21. That the respondents are yet to settle the decretal sum hence the proceedings herein to compel them. It was urged that the respondent being a county government, the ordinary mode of executing decrees is not applicable to it hence the only way is by launching the proceedings herein.
22. It was contended that, the respondents are legally mandated by law to settle the decretal sum, the subject of the proceedings herein. To that end, reliance was placed on the case of Republic v Kenya National Examinations Council ex parte Gathenji & 9 Others [1997] eKLR where the court stated that an order for mandamus is to compel the performance of a public duty which is imposed on a person or body of persons by a statute...This court was thus implored to allow the prayers herein with costs against the respondents.
23. The respondents in their submissions dated 12.03.2025 urged that the issue for determination is whether the order of mandamus ought to issue. That an order of mandamus being unique requires some certain conditions to be fulfilled for it to be granted. To that end, support was drawn from the case of Republic v Principal Secretary, Ministry of Internal Security & Another ex parte Schon Noorani & Another [2018] eKLR where Mativo J. (as he was then) stated that an order of mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it's a remedy that controls procedural delays.
24. That as already deposed in the replying affidavit, it was clear that the respondents have not refused to pay the decretal sum and as a matter of fact, a substantial amount has already been paid to the ex parte applicant. It was submitted that the respondents have paid the sum claimed and they have every intention to pay the balance due. To that end, this court was urged to dismiss the application herein as the same was not deserving.
25. Having considered the application herein, the response thereof and the parties' submissions, the only issue which germinates for determination is whether in the given circumstances, an order of mandamus ought to issue.
26. It is trite that an order of mandamus is always issued so as to compel the performance of a public duty which is imposed on a person or body of persons by a statute and 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 the duty to



- be performed. (See Republic v Kenya National Examinations Council *ex parte* Gathenji and 9 Others, [1997] eKLR).
27. It is not in dispute that judgment was entered in favour of the applicant and a decree issued which the *ex parte* applicant claim has not been satisfied. As such, it is my view that the issue which this court ought to determine is whether the respondents are under a public duty and obligation to satisfy the said decree, and if so, whether the applicant is entitled to the reliefs sought.
  28. The 1<sup>st</sup> respondent, Garissa County Government, 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 level of government by the said Article. (See Republic v County Secretary, Nairobi City County & another *Ex Parte* Wachira Nderitu Ngugi & Co. Advocates [2016] eKLR and Josephat Gathee Kibuchi v Kirinyaga County Council [2015] eKLR). Being a government, it therefore means that it has a duty to satisfy debts owed to people and which duty is public.
  29. Section 44 of the County Government Act of 2012 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* 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 the said section, the County Executive Committee Member for Finance is the head of Treasury and is thus responsible for finance matters in the County.
  30. It is clear therefore that the respondents have a statutory and public duty to satisfy the decree issued by a competent court in favour of the *ex parte* applicant. Section 21(5) of the *Government Proceedings Act* Cap. 40 Laws of Kenya is applicable to civil proceedings commenced 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. However, in this case, they have failed to perform the said duty. 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.
  31. 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*. (See Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR).
  32. The only requirement which serves as a condition precedent to the satisfaction or enforcement of such 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.
  33. 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 require 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.
  34. I have perused the application herein which reveals that indeed the applicant obtained a certificate of orders against the government which was issued on 06.08.2024. Of importance to note is the fact that



the ex parte applicant failed to annex a certificate of costs but nonetheless, it attached a decree issued by the Deputy Registrar showing that judgment had been entered against the respondents in the sum of Kes. 36,798,200/-. That the said money was to be paid by the 1<sup>st</sup> defendant in instalments based on the availability of the money and each party was to cater for its costs.

35. As such, the applicant has complied with the procedure under Section 21 of the Government Proceedings Act. However, the respondents have, without any lawful justification and/or excuse failed to fulfill its aforesaid duty to the detriment of the applicant despite the fact that no appeal was lodged by the Government against the judgment entered in its favour. In Republic v Attorney General & another Exparte James Alfred Koroso [2013] eKLR, which decision I agree with, Odunga J when faced with a similar application held that: -

“ .....in the present case the ex-parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left babysitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution, executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit...”

36. The respondents have not denied being served. According to them, they have already paid an amount of Kes. 34,845,932/- with only a balance of Kes. 1,952,268/- remaining unpaid.
37. Having perused the file and specifically the decree, I note that indeed prior to the consent entered between the parties, the sum claimed was Kes. 44,362,157.20 and after signing the consent, the amount was reduced to 36,798,200/-. Thus confirming the ex parte applicants case that the alleged payments were made prior to the consent dated 16.07.2020 thereby reducing the amount due to the ex parte applicant to Kes. 36,798,200/-.
38. The claim by the respondents that they have since discovered through a finance audit that payment of over 34million has been made, there was no proof as to when the audit was done. Was it done before entry of the consent judgment or after? If it was before, why then enter into a consent judgment of Kes 36m plus. If payment was made before, how come the same was not raised then before signing the consent order. If there was discovery of new evidence, why didn.t they move the court for review of the judgment or setting aside the same.
39. As argued by the ex parte applicant, this is not the right forum to challenge the certificate of order as the same would be akin to challenging the judgment already entered by the court. It cannot be emphasised enough that it is important to point out that the failure by the 1<sup>st</sup> respondent to comply with the court order led to the current situation. As was held in Republic v The Attorney General & Another ex parte James Alfred Koroso [2013] eKLR access to justice cannot be said to have been ensured when



persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers.

40. In view of the foregoing, it is my view that the applicant has demonstrated that he is deserving of the relief sought in the application herein and the same is allowed as prayed.

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

**J. N. ONYIEGO**

**JUDGE**

