



**Mulwa v Waithira, County Attorney, County Government of Kiambu & 3 others (Judicial Review Application E097 of 2025) [2025] KEHC 5206 (KLR) (Judicial Review) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5206 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E097 OF 2025**

**RE ABURILI, J**

**APRIL 25, 2025**

**BETWEEN**

**AGNES MUTETHYA MULWA ..... APPLICANT**

**AND**

**IRENE WAITHIRA, THE COUNTY ATTORNEY, COUNTY GOVERNMENT OF KIAMBU ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, COUNTY GOVERNMENT OF KIAMBU ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICE FINANCE, COUNTY GOVERNMENT OF KIAMBU ..... 3<sup>RD</sup> RESPONDENT**

**DR KIMANI WAMANGI, THE GOVERNOR, COUNTY GOVERNMENT OF KIAMBU ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. I have considered the ex parte applicant's chamber summons dated 17/4/2025, the statutory statement and verifying affidavit. I have also considered the annexures thereto which are:

“Judgment in Milimani CM Commercial Court Civil case No. 416/2015, dated 4/3/2022, certificate of order against the Government dated 29/3/2023, Decree dated 4/3/2022 together with certificate of costs assessed”.

2. The applicant has also annexed copy of letter dated 30/3/2023 and received on 3/4/2023 by the County Attorney of the Respondents, demanding for settlement of the decree and certificate of order against the County Government of Kiambu dated 29/3/2023 for Kshs.3,304,261.60.



3. The ex parte applicant seeks leave of court to apply for Judicial Review orders of mandamus to compel the Respondents to settle the said decree which has been pending since 2022.
4. I am satisfied that the applicant has complied with Section 21 of the *Government Proceedings Act* regarding the procedure for execution of degree against the Government and in this case, the decree is against Kiambu County Government. The applicant has served upon the County Attorney Certificate of order against the Government and demanded for payment which has not been made.
5. The law at section 25 of the *Government Proceedings Act* does not permit execution by way of attachment and sale of Government property. The only remedy available is mandamus to compel settlement, as long as the procedure under Section 21 of the *Government Proceedings Act* is followed.
6. However, I observe that the applicant is also seeking for an order to summon the Respondents to appear to explain non payment of the decretal sum. That prayer is premature. I decline it.
7. Additionally, the applicant has enjoined the Governor of Kiambu County Government. Whereas the Governor has a say on disbursement of funds since he is the Chief Executive Officer of the County Government, Section 21 of the *Government Proceedings Act* is clear on the process to be followed in settlement of decrees and it is clear that the accounting officer of the respective County Government or Government ministry is the one responsible for settlement of decrees once they are advised by the County Attorney.
8. The County Attorney is the principal legal advisor of the County Government and therefore it follows that suits against County Governments, just as those against the National Government can be instituted in the name of the County Attorneys.
9. However, in this case, the primary party to the suit giving rise to the decree which is sought to be enforced by David Gikonyo and Kiambu County Government, not the County Attorney. As I have stated above, the County Attorney is not statutorily mandated to settle decrees but to advise the Accounting Officer and the Executive to settle decrees.
10. The Accounting Officer, under the County Governments *Public Finance Management Act* is the person designated by the County Executive Committee member for Finance and in all instances, is the Chief Officer, Finance, the equivalent of the Principal Secretary in the case of the National Government.
11. It is the duty of the Accounting Officer to ensure that all relevant approvals at the County Government level, are sought and obtained for payment to be done. That duty is a statutory duty and mandamus only issues to compel performance of a statutory duty.
12. For the above reasons, I find that the joinder of the County Attorney at this stage is not justified. Equally, the joinder of the Governor H.E. Dr. Kimani Wamatangi as well as the CEC for Finance does not add any value, legally, to these proceedings.
13. I hereby strike out of the chamber summons the County Attorney, the County Executive Committee member for Finance and the Governor of Kiambu County Government.
14. I grant leave to the ex parte applicant to apply for Judicial Review order of mandamus to compel the Chief Officer Finance and Accounting Officer of Kiambu County Government to settle decree and certificate of order against the Government dated 29/3/2023 given on 4<sup>th</sup> March 2022 for the sum of Kshs. 3,304,261.60 being decretal sum plus costs and interest in Milimani Commercial Court Civil Suit No.416/2015.



15. The substantive notice of motion to be filed and served in a separate court file within 21 days of today. Costs shall be in the main motion.
16. This file is closed. I so order.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF APRIL, 2025**

**R.E. ABURILI**

**JUDGE**

