



REPUBLIC OF KENYA



**Multiline Services Limited v Nairobi City County Government (Judicial Review Application E042 of 2025) [2025] KEHC 9325 (KLR) (Judicial Review) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9325 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E042 OF 2025  
RE ABURILI, J  
JUNE 30, 2025**

**BETWEEN**

**MULTILINE SERVICES LIMITED ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... RESPONDENT**

**JUDGMENT**

1. Before this Court for determination is a Notice of Motion dated 12th February 2025 and filed on 18th March 2025, brought pursuant to leave granted by this Court 28<sup>th</sup> January 2025 and the time for filing of the substantive motion enlarged vide ruling rendered on 12<sup>th</sup> March, 2025. The application is brought under the provisions of Sections 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules.
2. The ex parte applicant Multiline Services Limited seeks an order of mandamus to compel the respondent to settle the balance of a decree issued pursuant to a judgment delivered on 1st July 2019, which, in Milimani CMC Commercial Case No. 6004 of 2016 though partially satisfied, remains outstanding as confirmed in the Certificate of Order Against the Government dated 30th October 2024.
3. The factual background is not in dispute. Judgment was entered in favour of the applicant on 1st July 2019 in Milimani CMC Commercial Case No. 6004 of 2016. The decretal sum as per the certificate of order against the government issue don 30<sup>th</sup> October, 2024 is Kshs 3,724,058 inclusive of costs and interest. The decree was thereafter partially satisfied, leaving an outstanding balance, which remains due and owing to date.



4. The applicant has since complied with all the legal requirements necessary for the issuance of a writ of mandamus, including obtaining a certificate of order against the Government and serving the same upon the respondent.
5. Upon service, the respondent issued cheques, one of which was subsequently dishonoured. From the record, the respondent has, over the years, made verbal assurances and pleaded for more time to settle the balance of the decree, but no tangible steps have been taken to satisfy the outstanding amount. The decree has now been pending for close to six years.
6. It is notable that the respondent has not filed any substantive opposition to the application. The only response on record is a general statement that the respondent requires three more months to settle the amount and that it prefers to pay in the next financial year, which is a few days from today, but no formal commitment or timeline for actual settlement has been provided. There is also no evidence that budgetary allocations have been made or requested for that purpose.
7. The application for mandamus was argued orally on 27<sup>th</sup> May 2025 reiterating the grounds on the face of the application and the statutory statement and verifying affidavit accompanying the application for leave to apply and the supporting affidavit sworn by Samson Masaba Munikah advocate 12<sup>th</sup> February, 2025.
8. The respondent's counsel submitted that the claim was not denied and that they would settle in the new financial year.

#### **Determination**

9. The law governing the grant of the order of mandamus is well settled. In *Republic v Attorney General & Another Ex parte James Alfred Koroso* [2013] eKLR, the Court that where a judgment has been obtained against the Government, and the Government fails to pay the decretal sum, an aggrieved party is entitled to seek an order of mandamus to compel the accounting officer to pay. The government cannot evade its legal obligations under the guise of internal financial constraints.
10. The Court in the above case further stated as follows on the remedy of mandamus:
  12. Having said that, I now move to the substantive issues. It is the respondents' public duty to satisfy the applicant's decree and failure to do so attracts the court's discretion to issue an order of mandamus commanding them to do so. In *Republic v Kenya National Examinations Council ex parte Gathengi & 8 Others* Civil Appeal No 234 of 1996. The Court of Appeal cited, with approval, *Halsbury's Law of England*, 4th Edn. Vol. 7 p. 111 para 89 thus:
 

“The order of mandamus is of 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.”
  14. As submitted by the applicant, section 21(4) of the Government Proceedings Act prohibits execution against the Government thus leaving the applicant no other appropriate remedy



except mandamus. That was the position in the English case of *R (Regina) v Dudsheath, ex parte, Meredith* [1950] 2 ALL ER 741, at 743, Lord Goddard C. J. said -

“It is important to remember that “mandamus” is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it. This is one of the reasons, no doubt, why, where there is a visitor of a corporate body, the court will not interfere in a matter within the province of the visitor, and especially this is so in matters relating to educational bodies such as colleges.”

See also *Republic v Town Clerk, Kisumu Municipality, Ex Parte East African Engineering Consultants* [2007] 2 EA 441.

....

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 baby sitting 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.”

11. Similarly, in *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza* [2012] eKLR, the Court stated:

“An order of mandamus is a command issued by the High Court to compel the performance of a public duty which is imposed by statute, where the person or body has failed to perform that duty. Once a judgment is entered against the Government and a certificate of order is issued, the obligation to pay becomes a statutory duty.”

12. In the instant case, the applicant has satisfied all conditions precedent to the grant of the order:
- a. A valid decree has been obtained.
  - b. Certificate of Order against the Government was issued on 30th October 2024.
  - c. The certificate was served upon the respondents.
  - d. The respondent acknowledges the debt and even attempted (albeit unsuccessfully) to make some payment via cheque.



13. The respondent's requests for more time, unsupported by evidence of budgetary provision, cannot serve as a valid defence or bar to the enforcement of a lawful court decree. Continued non-compliance undermines the authority of the courts and offends the right to access to justice under Article 48 of the Constitution.
14. In the circumstances, and having considered all relevant material and submissions, the Court is satisfied that the applicant has met the threshold for the issuance of the order of mandamus.
15. Accordingly, I hereby allow the application by the exparte applicant and grant the following orders:
  - a. An order of mandamus is hereby issued compelling the Respondent, to pay to the applicant the outstanding decretal sum of Kshs 3,724,058 as per the judgment delivered on 1st July 2019 and the Certificate of Order against the Government dated 30th October 2024.
  - b. In default of compliance, the applicant shall be at liberty to move the Court for consequential enforcement orders against the accounting officer(s) of the respondent.
  - c. The applicant is awarded costs of this application assessed at Kshs 50,000 to be included in the mandamus decree to issue.
16. It is so ordered.

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

**R.E. ABURILI**

**JUDGE**

