



**Republic v County Government of Nairobi & another; Achuti & another  
 (Ex parte) (Judicial Review Miscellaneous Application 219 of 2024)  
 [2025] KEHC 9324 (KLR) (Judicial Review) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9324 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 JUDICIAL REVIEW  
 JUDICIAL REVIEW MISCELLANEOUS APPLICATION 219 OF 2024**

**RE ABURILI, J  
 JUNE 30, 2025**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS  
 OF MANDAMUS UNDER ORDER 53 OF THE CIVIL PROCEDURE RULES AND  
 SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 OF LAWS OF KENYA**

**AND**

**IN THE MATTER OF: SECTION 21 OF THE GOVERNMENT  
 PROCEEDINGS ACT, CAP 40 LAWS OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE &  
 ECONOMIC PLANNING ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**FRIDAH ACHUTI & JOSEPH ONYONO CHOGO ..... EX PARTE**

**JUDGMENT**

**Introduction**

1. This judgment is in respect of an application for judicial review Orders Of Mandamus dated 2<sup>nd</sup> October, 2024 seeking to compel the Respondents to satisfy a judgment and decree issued in Nairobi CM CC No. E086 of 2022 amounting to Kshs 5,043,300.00 plus costs of Kshs 308,182.50



and interest, wherein the ex parte applicants were the plaintiffs/ decree holders against the County Government of Nairobi, Mama Lucy Kibaki Hospital and 2 others. The applicants also pray for costs of the application herein.

2. The application was filed pursuant to leave granted on 1<sup>st</sup> October, 2024 by Justice Jairus Ngaah. The application is premised on the provisions of Order 53 of the Civil Procedure Rules, Sections 8 and 9 of the Law Reform Act Cap 26 Laws of Kenya and supported by the Applicants' joint statutory statement and verifying affidavit sworn on 27<sup>th</sup> September, 2024, annexing judgment in the aforesaid suit, decree, certificate of order against the Government and demand for settlement of the said certificate of order against the government.
3. From the statutory statement and grounds in support as verified by an affidavit, sworn jointly by both applicants, the Applicants aver that she obtained judgment against the County Government of Nairobi who own Mama Lucy Kibaki Hospital. That they were awarded general damages for medical negligence which led to the demise of their unborn child and the 1<sup>st</sup> applicant suffering excruciating pain and anguish during the said period leading to her losing consciousness. That the Medical practitioners and Dentists Board found the Hospital negligent and send the parties for mediation for compensation but the defendants/ respondents reneged hence the suit and judgment rendered, giving rise to these proceedings.
4. According to the applicants, they have complied with all the conditions under the Government Proceedings Act and that they have no other remedy to fall back to save for mandamus. That they obtained and served upon the respondents the judgment, decree, certificate of order against the Government and the demand for settlement but that the Respondents have failed and/or refused to pay the decretal sum.
5. The Respondents were served with the application but they only filed Notice of appointment of advocates through their counsel Ms Leah Kemunto Nyamora, office of the County Attorney, with no opposition to the application.
6. They assert that the 2<sup>nd</sup> respondent is under statutory duty as the head of the County Treasury, to settle decree.

#### Issues for Determination

1. Whether the Applicant has satisfied the legal requirements for the issuance of an order of mandamus.
2. Whether the Respondents are under a legal obligation to settle the decree under the Government Proceedings Act.
7. Section 25 of the Government Proceedings Act provides:
  25. Exclusion of proceedings in rem against the Government
    - (1) Nothing in this Act shall authorise proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of any Government ship or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on any such ship, aircraft, cargo or other property.
    - (2) Where proceedings in rem have been instituted in the High Court or in a subordinate court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Government to set aside the proceedings, that the proceedings were



so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Government, order that the proceedings shall be treated as if they were in personam duly instituted against the Government in accordance with the provisions of this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

- (3) Any order made in accordance with the provisions of subsection (2) may be upon such terms, if any, as the court thinks just; and, where the court makes any such order, it may make such consequential orders as it thinks expedient.

8. The above section bars any execution against the government by way of attachment and sale of government property and this is the position under Order 29 of the *Civil Procedure Rules*. That being the case, the decree holder can only revert to section 21 of the *Government Proceedings Act* which provides:

21. Satisfaction of orders against the Government

- (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.
9. In *Republic v Attorney General & Another ex parte James Alfred Koroso* [2013] eKLR, the High Court held that the issuance of a certificate of order against the Government under Section 21 of the Act is not an idle formality; it imposes a statutory duty upon the accounting officer to pay. Mandamus lies to enforce this duty.
10. In the instant case, the Applicants have demonstrated that they have obtained a lawful decree against the Government; applied for and obtained a certificate of order against the Government; served the Respondent with the said certificate dated 25<sup>th</sup> April, 2024 as well as decree dated 22<sup>nd</sup> November, 2023 and judgment of the lower court rendered on 2<sup>nd</sup> November, 2023 and that they have issued formal demands for payment, which are dated 3<sup>rd</sup> May 2024, 27<sup>th</sup> August, 2024.
11. The Respondents have not disputed the existence of the decree or the Applicant's compliance with statutory procedure. No justification, legal or otherwise, has been provided for the failure to pay.
12. This Court finds that the Respondents are under a public and statutory duty to settle the decree, and have abdicated this responsibility, since 2023.
13. In light of the foregoing, the judicial review application for mandamus dated 2<sup>nd</sup> October, 2024 succeeds. The court hereby issues the following orders:
- a. An Order of Mandamus is hereby issued, directed at the County Executive Committee Member of Finance and Economic Planning together with his Chief Officer, Finance compelling the said CECM to pay the Applicants the sum of KSh 5,043,300 being the decretal amount in Milimani CMCC E086 of 2022, together with costs of Kshs 308,182.50 and accrued interest until payment in full.
  - b. Decree to issue for mandamus.
  - c. The Applicants shall have the costs of this application assessed at kshs 50,000 to be included in the decree for mandamus.

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

**R.E ABURILI**

**JUDGE**

