



**Republic v Clerk, Migori County Assembly & another; Mwamu t/
a Mwamu & Co Advocates (Ex parte Applicant) (Judicial Review
E028 of 2024) [2025] KEHC 11187 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11187 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW E028 OF 2024
A MABEYA, J
JULY 30, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE CLERK, MIGORI COUNTY ASSEMBLY 1ST RESPONDENT

**THE COUNTY ASSEMBLY, PUBLIC SERVICE BOARD,
MIGORI 2ND RESPONDENT**

AND

**JAMES AGGREY MWAMU T/A MWAMU & CO
ADVOCATES EX PARTE APPLICANT**

RULING

1. This ruling determines the Notice of Motion dated 19/03/2025 by the *Ex Parte* Applicant. He sought to have the respondents compelled to settle Kshs. 7,519,282.40 with interest in compliance with the judgment issued in Ksm Misc. Appln. No. 103 of 2018.
2. It was brought under the Regulations of the *Constitution of Kenya (Supervisory Jurisdiction and Protection of the Fundamental Rights and Freedoms of the Individual)* High Court practice and Procedure Rules 2006, Section 3A of the *Civil Procedure Act*, Section 134 of the *County Government Act, 2012* as read with Section 129 of the *Public Finance Management Act* and Order 53 rule 1, 2 and 3 of the *Civil Procedure Rules*.
3. The application was supported by a statement of facts dated 19/03/2024 and a verifying affidavit sworn on the same date by James Aggrey Mwamu Advocate. The main ground for the application is that judgment was entered on the 25/7/2019 and decree issued for the ex parte applicant against



the respondent in the sum of Kshs. 7,519,282.40 with interest at court rate of 14% from 4/6/2019. A Certificate of Costs was issued in favour of the ex parte applicant against the respondents on 3/10/2019 and despite service thereof, no settlement was forthcoming.

4. Despite being served, there was no response to the application. I have considered the record and submissions. In *Republic v Kenya National Examinations Council ex parte Gathenji and 9 Others*, [1997] eKLR, it was held that: -

“The next issue we must deal with is this: What is the scope and efficacy of an Order of *Mandamus*? Once again we turn to *Halsbury’s Law of England*, 4th Edition Volume 1 at page 111 from Paragraph 89. That learned treatise says:

“The order of *mandamus* is of a 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.”

At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way.”

What do these principles mean? They mean that an order of *mandamus* will 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....”

5. In *Republic v Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR, the court held: -

“*Mandamus* is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for *mandamus* is set out in *Apotex Inc. v Canada (Attorney General)*, and, was also discussed in *Dragan v Canada (Minister of Citizenship and Immigration)*. The eight factors that must be present for the writ to issue are: -

- (i) There must be a public legal duty to act;
- (ii) The duty must be owed to the Applicants;
- (iii) There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - i. A prior demand for performance;



- ii. A reasonable time to comply with the demand, unless there was outright refusal; and
- iii. An express refusal, or an implied refusal through unreasonable delay;
- iv. No other adequate remedy is available to the Applicants;
- v. The Order sought must be of some practical value or effect;
- vi. There is no equitable bar to the relief sought;
- vii. On a balance of convenience, mandamus should lie

6. In the present case, there is no dispute that judgment was entered in favour of the *ex-parte* applicant in Kisumu High Court Miscellaneous Civil Case No. 103 of 2018, a decree was issued and a Certificate of costs against government issued. Section 21 of the [Government Proceedings Act](#) provides: -

“(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.”

7. There is no reason that has been advanced as to why the decree has not been settled. I therefore allow the Motion dated 19/03/2025 as prayed with costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

