



**Republic v County Secretary, Government of Nairobi County & 5 others; Faram East Africa Limited (Ex parte Applicant) (Judicial Review Application E132 of 2024) [2025] KEHC 11890 (KLR) (Judicial Review) (8 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11890 (KLR)

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

**JUDICIAL REVIEW APPLICATION E132 OF 2024**

**RE ABURILI, J**

**AUGUST 8, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

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

**CHIEF OFFICER FINANCE, GOVERNMENT OF NAIROBI  
COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE GOVERNOR, GOVERNMENT OF NAIROBI COUNTY .... 4<sup>TH</sup>  
RESPONDENT**

**GOVERNMENT OF NAIROBI CITY COUNTY ..... 5<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER, DEPARTMENT OF HEALTH AND EMERGENCY  
SERVICES ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**FARAM EAST AFRICA LIMITED ..... EX PARTE APPLICANT**

**JUDGMENT**

1. The Applicant is Faram East Africa Limited. By way of a Notice of Motion dated 11<sup>th</sup> July 2024, filed pursuant to leave granted on 10th July 2024, the ex parte applicant seeks an order of mandamus to



compel the Respondents to satisfy a decree and judgment obtained in Milimani CMCC 2026 of 2018 Faram East Africa Limited v Nairobi City County Government, where the Applicant was awarded Kshs 7,055,119.00 together with costs Kshs.283,433.48 and interest at the rate of 12% per annum from 5/12/2014 until payment in full.

2. The Notice of Motion is brought under Section 8 and 9 of the Law Reform Act, Order 53 Rules 1(1),3(1) and 4(1) of the Civil Procedure Rules 2010 and section 1A,1B and 3A of the Civil Procedure Act. It is supported by a statutory statement and a verifying affidavit sworn on 11<sup>th</sup> June, 2024 by Erastus Momanyi Moruri to which the Applicant has annexed:
  - a. Ruling in Milimani CMCC 2026 of 2018.
  - b. Certified copy of the decree and certificate of costs issued on 19<sup>th</sup> January 2022.
  - c. A valid certificate of order against the Government issued on 25<sup>th</sup> January 2024, and
  - d. Evidence of service and demands for settlement of the decree in the form of a letter dated 30<sup>th</sup> January 2024.
3. The Respondents in response to the Notice of Motion filed a Preliminary Objection dated 7<sup>th</sup> August 2024 and a Replying Affidavit sworn on 20<sup>th</sup> August 2024. The Preliminary Objection was dismissed by the court in its ruling of 20<sup>th</sup> May 2025 for lack of merit.
4. The Respondents in the Preliminary objection had argued that the judicial review application had been filed outside the mandatory statutory period of six (6) months and thus offended section 9(2) of the Law Reform Act. Further, that although the time limited for filing applications under the Civil Procedure Rules can be extended, that procedure is not available for the extension of time limited by statute and as such, that the court lacked jurisdiction to entertain such an application.
5. This Court dismissed the preliminary objection and held that the Law reform Act which provides the basis for judicial review, including, mandamus, generally, did not prescribe a specific time limit for mandamus applications to enforce decrees. It also observed that the Limitation of Actions Act, specifically under section 4(4) prescribes those actions on judgments, including those seeking mandamus, are subject to a twelve-year limitation period.
6. The same grounds raised in the preliminary objection is what is reiterated in the Respondents' replying affidavit. In the affidavit, the deponent who introduces himself as the Acting County Solicitor of the 5<sup>th</sup> Respondent avers that the judicial review application is filed outside the mandatory statutory period of six(6) months and thus offends section 9(2) of the Law Reform Act.
7. The application was canvassed orally on 10<sup>th</sup> June 2025. The Applicant's counsel reiterated the prayers sought and the facts giving rise to the claim while the Respondents' counsel Ms. Kiunga submitted that there had been inordinate delay on the part of the Applicant in bringing the application which was prejudicial to the Respondents.

### **Analysis and Determination**

8. I have considered the Notice of Motion as filed and argued and the fact of there being no dispute on the facts pleaded and deposed by the Applicant. The issue for determination is whether the Applicant is entitled to an order of mandamus to compel the Respondents to pay the decretal sum under Section 21 of the Government Proceedings Act.
9. Section 25 of the Government proceedings Act bars any execution against the Government property by way of attachment and sale. This provision is replicated in Order 29 of the Civil procedure Rules.



10. The rationale for barring execution against the Government was stated in *Kisya Investments Ltd v Attorney General & another* [2005] KEHC 3226 (KLR) wherein the High Court comprising Ibrahim and Visram, JJ. (as they then were) held thus:

“History and rationale of government’s immunity from execution arises from the following.... Firstly, there has been a policy in respect of Parliamentary control over revenue and this is threefold and is exercised in respect of (i) The raising of revenue (by taxation or borrowing); (ii) Its expenditure; and (iii) The audit of public accounts. The satisfaction of decree or judgments is deemed to be an expenditure by Parliament and as a result of this must be justified in law and provided for in the Government’s expenditure. It is for this reason that Section 32 of the *Government Proceedings Act* provides that any expenditure incurred by or on behalf of the Government by reason of this Act shall be defrayed out of the monies provided by Parliament. Parliamentary control over expenditure is based upon the principle that all expenditure must rest upon legislative authority and no payment out of public funds is legal unless it is authorized by statute, and any unauthorized payment may be recovered. As a result of the foregoing, which was borrowed from the Crown Proceedings Act, 1947 (Section 37) of England, this is a warning that any payment by Government must be covered by some appropriation. It is said that parliament is very jealous of its control over the expenditure and this is as it should be. No ministry or department has any ready funds at all times to satisfy decrees or judgments - while existence of claims and decrees may be known to the ministries and departments, they have to notify the Ministry of Finance and Treasury of the same so that payment is arranged for or provisions made in the government expenditure. The second situation, which arises from the above, is that once a decree or judgment is obtained against the government, it would require some reasonable time to have it forwarded to the Ministry of Finance, Treasury, Controller and Auditor General etc. for scrutiny and approvals for it to be paid from the consolidated fund. The Ministries and Departments do not have their “own” funds to settle such decrees or payments and considering the nature of the government structure, procedures, red tape and large number of claims, this could take a long time. If execution and or attachment against the government were allowed, there is no doubt that the government will not be able to pay immediately upon passing of decrees and judgments and will be inundated with executions and attachments of its assets day in day out. Its buildings will be attached and its plants and equipment will be attached, its vehicles, aircraft, ships and boats will be attached. There will be no end to the list of likely assets to be attached and auctioned by the auctioneer’s hammer.

No government can possibly survive such an onslaught. The government and therefore the state operations will ground to a halt and paralyzed and soon the government will not only be bankrupt but its constitutional and statutory duties will not be capable of performance and this will lead to chaos, anarchy and the breakdown of the Rule of Law. This is the rationale or the objective of the law that prohibits execution against and attachment of the government assets and property”

11. Equally, section 21 (4) of the *Government Proceedings Act* prohibits execution against the Government. The section provides that: -

“Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, 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.”

12. In *Republic vs. County Secretary, Nairobi City County & Another ex parte Wachira Nderitu Ngugi & Co. Advocates* [2016] eKLR, the court held thus:

“...the law as it stands presently is that no execution can be levied against the property of a Government in settlement of a decree in a civil case and hence the only recourse available to a decree holder is to apply for mandamus against the Chief Officer of the Government, and upon obtaining such orders, the decree holder will be at liberty to apply for committal of the Chief Officer if the order of mandamus is not complied with.”

13. The scope of an order of mandamus was discussed by the Court of Appeal in the case of *Kenya National Examination Council vs. Republic ex parte Geoffrey Gathenji Njoroge & 9 Others* [1997] eKLR thus:

“What is the scope and efficacy of an order of Mandamus? Once again, we turn to Halsbury’s Law of England, 4<sup>th</sup> 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.”

14. In *Republic v Attorney General & Another ex parte James Alfred Koroso* [2013] eKLR, it was held that where a judgment creditor has complied with Section 21 of the *Government Proceedings Act* and the Government fails to honour its obligation, an order of mandamus lies to compel the performance of that statutory duty.
15. The principles established in the aforementioned cases affirm that a mandamus order compels the execution of a public duty imposed by statute on an individual or entity, where such individual or entity has neglected to carry out that duty, thereby prejudicing a party with a legal entitlement to its performance.
16. Has the applicant complied with the elaborate procedure for applying for mandamus under section 21 of the *Government Proceedings Act*?
17. A court will only issue an order of mandamus if it is shown that the requirements under Section 21 of the *Government Proceedings Act* have been fulfilled. In the case of *Republic vs. Permanent Secretary*



Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandishi [2014] eKLR, Odunga, J. (as he then was), held as follows:

“...It must be remembered that an application for an order of mandamus seeking an order compelling the Government to satisfy a decree is a very elaborate procedure. Before the Court issues such an order, there must be proof that the provisions of the Government Proceedings Act have been complied [with] with respect to issuance of certificate of costs and certificate of order against the Government. After the issuance of the aforesaid documents, just like in any application for mandamus, there must be a demand for payment made by or on behalf of the decree holder to the relevant department seeking payment since in an application for an order of mandamus, the law as a general rule requires a demand by the applicant for action and refusal as a prerequisite to the granting of an order, though there are exceptions to the rule...

The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view, is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court.”

18. Similarly, in *Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security* [2012] eKLR, the Court held thus:

“Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree 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. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

19. I adopt the reasoning of the court in both *Republic vs. Permanent Secretary Office of The President Ministry of Internal Security & Another ex-parte Nassir Mwandishi* and *Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security* (supra).
20. It is only after the procedure as laid down under section 21 of the Government Proceedings Act has been complied with and a demand for payment made that a cause of action accrues for the purposes of an application for an order of mandamus against the Government.



21. In the instant case, it is undisputed that the Applicant has fully satisfied the requirements of Section 21 by securing a valid decree, obtaining a certificate of order against the Government, and duly serving it upon the Respondents.
22. The Respondents have not alleged any procedural default or legal impediment to payment. There is no evidence of any appeal, stay of execution or judicial review against the original judgment.
23. The Respondents have argued that the instant application was brought after an inordinate delay and that as such the same is prejudicial to them. The delay, if any, does not negate the Applicant's right to pursue enforcement of a valid court decree which has not been overtaken by any statutory limitation period. The ruling of 21<sup>st</sup> January 2022 gave rise to a monetary obligation which remains unsatisfied and the mere lapse of time does not extinguish or invalidate that obligation.
24. Further, the Respondents have not demonstrated any specific prejudice suffered as a result of the timing of the application. If anything, they did not have to wait for mandamus application to compel them to settle the decree, an exercise that only burdens the tax payer as delay to settle decree means that costs continue to be incurred plus the accruing interest. The principles of justice and finality require that valid court orders be honoured and the invocation of delay cannot be used as a shield to avoid compliance with a lawful decree.
25. Accordingly, I find the Notice of motion dated 11th July 2024 to be merited and is hereby allowed in the following terms:
  - a. An Order of Mandamus is hereby issued, compelling the accounting officer Nairobi County Government to pay to the Applicant the sum of Kshs 7,055,119/= together with costs of Kshs.283,433.48 and interest at the rate of 12% per annum from 5/12/2014 until payment in full in accordance with the decree and the certificate of order against the Government as decreed in Milimani CMCC 2026 of 2018 Faram East Africa Limited v Nairobi City County Government.
  - b. The Applicant shall have the costs of these proceedings assessed at Kshs 50,000.
  - c. Mention on 29<sup>th</sup> October, 2025 to confirm settlement.
  - d. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF AUGUST, 2025**

**R.E. ABURILI**  
**JUDGE**

