



Chumo v County Government of Nairobi & another (Environment and Land Judicial Review Case E011 of 2024) [2025] KEELC 3105 (KLR) (26 March 2025) (Judgment)

Neutral citation: [2025] KEELC 3105 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E011 OF 2024**

TW MURIGI, J

MARCH 26, 2025

**IN THE MATTER OF AN APPLICATION TO APPLY FOR
ORDERS OF JUDICIAL REVIEW (ORDER OF MANDAMUS)**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

**SECTION 8 & 9 OF THE LAW REFORM ACT, CAP 26 LAWS OF
KENYA**

AND

THE CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA

AND

**IN THE MATTER OF ENVIRONMENT AND LAND COURT
ELC SUIT NO. 547 OF 2013**

**IRENE JOYCE CHUMO –VS- COUNTY GOVERNMENT OF
NAIROBI AND EPCO BUILDERS LIMITED**

**IN THE MATTER OF THE DECISION AND/OR JUDGEMENT IN
ENVIRONMENT AND LAND COURT**

ELC SUIT NO. 547 OF 2013

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT

BETWEEN

IRENE JOYCE CHUMO EXPARTE



AND

COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE 2ND RESPONDENT

JUDGMENT

1. Before me for determination is the Notice of Motion dated 22nd July 2024 in which the Applicant seeks the following orders:-
 - a. That the Honourable court be pleased to issue an order of Mandamus against the Respondents compelling them to forthwith pay to the Ex parte Applicant Irene Joyce Chumo the decretal sum of Kshs 1,883,000/= interest thereon and costs awarded at Kshs 253,386.65/= as per the decree and Certificate of Taxation issued by this court in ELC Suit No. 547 of 2013.
 - b. That the costs of the application be borne by the Respondent.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Irene Joyce Chumo sworn on even date

The Exparte Applicant's Case

3. The Applicant averred that she instituted ELC No. 547 of 2013 against the Respondents claiming for compensation for loss of rental revenue amongst other orders.
4. That by a judgment delivered on 21st January 2021, the 1st Respondent was ordered to compensate the Plaintiff in the sum of Kshs 1,883,000/= for the unlawful demolition of the detached servant quarter on the suit property together with costs and interest thereon.
5. She further averred that the costs of the suit were taxed in the sum of Kshs 253,386/=. That subsequently, a decree and Certificate of Order issued by this court were served upon the Respondents. The Applicant contends that she will be denied the fruits of her judgment unless the court grants the orders sought herein.
6. She further contended that despite several demands, the Respondents have refused to settle the amount.
7. In conclusion, the deponent urged the court to allow the application as prayed.

Respondents Case

8. The Respondents opposed the application through a replying affidavit sworn by Boniface Waweru, the Director Civil Litigation of the 1st Respondent.
9. The deponent averred that the 2nd Respondent is willing to comply with the orders issued by this court.
10. He contended that the Applicant is aware of the elaborate budgeting procedure set out in Section 125 of the *Public Finance Management Act*. He further contended that all expenditures by the County Government are appropriated by the County Assembly every financial year and not by the Respondents.



11. He averred that the 2nd Respondent has moved a Motion to the County Assembly of Nairobi to make a provision in the supplementary budget for the year 2024/2025 to enable the County Government of Nairobi to pay the decretal sums owed.
12. He insisted that the 1st and 2nd Respondents would pay the Ex Parte Applicant the decretal sum together with costs awarded in ELC No .547 of 2013.
13. He explained that the County Government has numerous competing interests which includes provision of services to the public but has limited resources. He maintained that the immediate settlement of the order would require approval from the County Legislation which has not been given to the Respondents because funds have not been provided for in the County budget.
14. He reiterated that the Respondents are willing to expedite payment of the decretal sum and sought for the indulgence of the court and Counsel.
15. The application was canvassed by way of written submissions

The Ex Parte Applicant's Submissions

16. The Ex Parte Applicant's filed her submissions dated 3rd February 2025
On her behalf, Counsel relied on the case of *Mobile Kitale Service Station v Mobil Oil Kenya Ltd & Another* (2004) eKLR to submit that litigation must be conducted expeditiously to avert injustice caused by delay. Counsel submitted that before an order of Mandamus is issued against a government entity or officer, the Applicant must abide with the procedure set out in Section 21 of the *Government Proceedings Act*. To buttress this point, Counsel relied on the case of *Republic v County Government of Kiambu Ex Parte Laban J Macharia Muiruri* (2021) eKLR and on the case of *Republic v County Speaker Narok County Government & another Ex parte SEC & M Company Limited* (2022) eKLR
17. Counsel submitted that the Respondents do not dispute the decretal sum as they were served with copies of the judgment, decree and certificate of costs in ELC No.547 of 2013.
18. Counsel further submitted that Section 103 of the *Public Finance Management Act* establishes the County Treasury which is comprised of the County Executive Member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. That under Section 103(3) of the Act, the County Member for Finance is the head of the Treasury and is responsible for financial matters in the County. It was submitted that the Respondents are jointly responsible for the satisfaction of court orders and decrees on payment of money owed by the County Government of Nairobi.
19. Counsel submitted that despite several demands and requests to pay the decretal sum, the Respondents have refused to pay the same.
20. Counsel further submitted that the Respondents have not specified in the replying affidavit the time lines for preparing the budget estimates or when they submitted the Applicants decretal sum in their annual budget estimates. It was submitted that the Respondents have not annexed supporting documents which is a clear indication they have elected to ignore the order.
21. Concluding his submissions, Counsel urged the court to allow the application as prayed.

The Respondents Submissions.

22. The Respondents filed their submissions dated 13th March 2025



- On their behalf, Counsel submitted that the only issue for determination is whether the application meets the legal threshold for the grant of the orders sought.
23. Counsel relied on the case of *Republic v Kenya National Examination Council ex parte Gathenji and 9 others* to submit on the conditions necessary for the grant of an order of Mandamus which he summarised as follows:-
 - i. A public officer has failed or refused to perform a clear legal duty.
 - ii. The duty is mandatory and not discretionary
 - iii. There is no other adequate remedy
 24. Counsel submitted that, the Applicant has not demonstrated that the Respondents have failed or refused to settle the decretal sum. It was submitted that the delay in making payment was occasioned by budgetary constraints arising from competing interests served by the County but has limited resources. Counsel implored the court to recognise the good faith demonstrated by the administration in its efforts to settle the decretal sum in the 2025/2026 Supplementary Budget.
 25. It was submitted that the 2nd Respondent has unequivocally undertaken to initiate the statutory processes to pay the decretal sums owed.
 26. It was argued that the Respondents are willing to offset the decree but are tied by the legal procedures under the Public Management and Asset Disposal Act and the Budgetary approvals by the County Assembly. Counsel submitted that all County expenditure must be approved by the County Assembly through appropriation law. Counsel submitted that if the Respondents settle the decretal sum without the said appropriation, it will amount to a breach of statutory duty on their part. It was further argued that an order of Mandamus should not be issued to compel a public body to act unlawfully or to bypass statutory procedures. To buttress this point Counsel relied on the case of *Board of Trustees National Social Security Fund vs Micheal Mwaloi (2015) eKLR*
 27. Counsel submitted that if an order of Mandamus is issued at this stage it will amount to directing a budgetary process which will be conflict with the doctrine of separation of powers
 28. Counsel further submitted that the Respondents have acknowledged the debt but are unable to settle the same due to various legal and procedural constraints. Counsel argued that that the Respondents have taken all the reasonable steps to ensure that there is a provision in the budget for the decretal amount. Reliance was placed in the case of *Republic v County Secretary Nairobi City County & Another (2023) KEELC 20391 (KLR)*

Analysis and Determination

29. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.
30. Section 21 of the [Government Proceedings Act](#) provides that:
 - 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 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.
31. The effect of these provisions is that whereas execution proceedings are not available against the Government, the accounting officer for the Government department concerned is nevertheless under a statutory duty to satisfy a judgement made by the Court against that department.
32. In *Republic vs. 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.”

33. The requirements for an order of mandamus were further explained by Mativo J. in *Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR as follows:

“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. vs. Canada (Attorney General)*, and, was also discussed in *Dragan vs.*



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

34. In the English case of R (Regina) vs. Dudsheath, ex parte, Meredith [1950] 2 All E.R. 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. ”

35. From the foregoing, it is clear that the Court only compels the satisfaction of a duty that has become due. The Applicant is under an obligation to prove that the sum claimed is actually due.

36. In Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security & Another ex parte Fredrick Manoah Egungza the court held that:

“The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issues against the Government is found in section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to as the Act) which provides The Respondent’s claim that the Applicant should have waited until the start of the next financial year to enforce payment of the decree issued in his favour cannot be sustained firstly because it has no legal basis and secondly because it is the responsibility of the Government to make contingency provisions for its liabilities in tort in each financial year so that successful litigants who obtain decrees against the Government are not left without remedy at any time of the year.”



37. The issue for determination is whether the Respondents are under a duty to pay the subject decretal sums
38. By a judgment delivered on 21st January 2021, the 1st Respondent was ordered to pay the Applicant a total sum of Kshs 1,883,000/= plus costs and interest for the unlawful demolition of the detached servant quarter situated in the suit property. The costs of the suit were taxed in the sum of Kshs 253,386.65/=.
39. The ex parte Applicant has demonstrated that she made demand and requests for payment which have not been heeded to by the Respondents. There is thus an implied refusal on the part of the Respondents to pay the decretal sum.
44. The upshot of the foregoing is that the application dated 22nd July 2024 is merited and the same is hereby allowed in the following terms:-
- a) An order of Mandamus be and is hereby issued to compel the Respondents to pay the Ex parte Applicant the decretal sum of Kshs 1,888,000/= together with interest and costs of Kshs. 253,386.65/=.
45. The Ex Parte Applicant is awarded costs of the application.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 26TH DAY OF MARCH, 2025.

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T. MURIGI

JUDGE

In the presence of

Chebon holding brief for Otieno for the 1st Respondent.

Hilda – Court Assistant

