



Case Number:	Judicial Review 26 of 2000
Date Delivered:	17 Mar 2022
Case Class:	Civil
Court:	High Court at Nakuru
Case Action:	Judgment
Judge:	Joel Mwaura Ngugi
Citation:	Republic v Attorney General & another Ex-Parte George Kariuki Wanjau [2022] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Judicial Review
History Magistrates:	-
County:	Nakuru
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 26 OF 2000

IN THE MATTER OF EXECUTION AS AGAINST THE GOVERNMENT

AND

IN THE MATTER OF SATISFACTION OF DECREE

AND

IN THE MATTER OF SATISFACTION OF CERTIFICATE OF COSTS

UNDER ORDER 21 RULE 9 OF THE CIVIL PROCEDURE RULES, 2010

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

AND

IN THE MATTER OF AN ORDER OF MANDAMUS

BETWEEN

REPUBLIC.....APPLICANT

-VERSUS-

HON. ATTORNEY GENERAL.....1ST RESPONDENT

PERMANENT SECRETARY, MINISTRY OF INTERIOR.....2ND RESPONDENT

GEORGE KARIUKI WANJAU.....EX-PARTE APPLICANT

JUDGMENT

1. The Applicant herein, George Kariuki Wanjau, brought Petition No. 12 of 2013 in which he sued the Honourable Attorney General on behalf of the Government for alleged illegal arrest, detention and physical torture he alleged he suffered at the hands of the Police. The Petition was heard to completion by the Honourable Justice Roselyn Lagat Korir who, on 21/02/2019, returned a verdict in favour of the Applicant. The Learned Judge awarded Kshs. 1,500,000/- in favour of the Applicant. The Learned Judge also ordered the Government to pay the costs of the Petition.

2. A decree for the damages plus costs taxed at Kshs, 260,000/- was duly extracted. It is dated 27/03/2019. Thereafter, after the Government failed to satisfy the decree, the Applicant's Counsel returned to Court and extract a Certificate of Costs Against the Government. It is dated 01/09/2020. By a letter dated 09/03/2020, the Applicant's Counsel served the Honourable Attorney General

with the Decree and Certificate of Costs Against the Government. The Applicant says that neither he nor his counsel received any response from the government.

3. The Applicant has now approached this Court as his next attempt to get the decree satisfied. Through his lawyer, he has, after duly being granted leave, filed an Application for Judicial Review for the orders that:

(1) – *Spent-*.

(2) *That this Honourable Court be pleased to issue an order of Mandamus to compel the Respondent to pay the ex-parte Applicant herein the decretal sum of Ksh 1,500,000/= and costs of the suit amounting to Kshs 260,000/= in satisfaction of the judgment of the High Court of Kenya at Nakuru Petition No. 12 of 2013.*

(3) *That the costs of the leave stage Application and Substantive Motion be provided for*

4. The Application was served on the Honourable Attorney General. In one Court session, Mr. Weche from the Office of the Attorney General appeared but only long enough to inform the Court that he was holding the brief of Mr. Ondieki, another counsel in that office, but that Mr. Ondieki had no instructions on how to defend the suit. In the end, therefore, the Application proceeded unopposed.

5. It is not in doubt that section 21(4) of the Government Proceedings Act prohibits execution against the Government. The said provision states:

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.

6. However section 21 (1) of the Act provides:

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.

7. Section 21 (3) of the said Act on the other hand provides:

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.

8. As many decisions in our jurisdiction have pointed out, the effect of these provisions is that whereas execution proceedings as are known to law 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. That Accounting Officer can be compelled by an order for mandamus to do so. This is what the Applicant seeks here. However, the Applicant has not demonstrated that he served the decree and the Certificate of Order Against the Government on the Accounting Officer concerned – in this case the Permanent Secretary in the Ministry of Interior and Coordination of National Government. Instead, the Applicant has exhibited a letter serving the Attorney General with the decree and the Certificate of Order Against the Government.

9. The Honourable Attorney General is not the Accounting Officer in the Ministry of Interior and Coordination of National Government. The Permanent Secretary is. Of course in an effectively functioning government, the documents served on the Honourable Attorney General, who serves as the Chief Government Legal Adviser, should have reached the Permanent Secretary. However, we have no such assurance. In any event, an order for mandamus is issued against a specific government official who has failed to take a particular action after he is due to do so. The Permanent Secretary in the Ministry of Interior and Coordination of National Government cannot be said to have failed to have paid the amounts demanded when the relevant documents were not served on him.

10. In the circumstances, it is without relish that I am compelled to dismiss the instant Petition as premature. Service of a demand for payment in addition to the decree and Certificate of Costs Against the Government on the Accounting Officer, the Permanent Secretary, is a condition precedent to filing an application for mandamus to compel him to make the payments. This was not done here.

11. There will be no order as to costs as the Application was undefended.

12. Orders accordingly.


DATED AND DELIVERED AT NAKURU THIS 17TH DAY OF MARCH, 2022

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.

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