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ACCOUNTING OFFICERS UNDER INCREASED LEGAL SCRUTINY: COURTS REAFFIRM CONSTITUTIONAL, STATUTORY AND FIDUCIARY DUTY TO SATISFY JUDGMENTS, DECREES AND GOVERNMENT LIABILITIES

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EXECUTIVE SUMMARY

A growing body of recent jurisprudence is reshaping the legal, governance and public finance landscape surrounding the settlement of judgments, decrees, arbitral awards and other lawful liabilities owed by Government institutions in Kenya. Courts are increasingly emphasizing that Government immunity from ordinary modes of execution does not amount to immunity from payment and that Accounting Officers bear a direct statutory, constitutional and fiduciary obligation to ensure that lawful obligations are satisfied within a reasonable time.

While historically the debate focused on the procedural mechanisms available to successful litigants seeking payment from Government entities, courts are now adopting a broader constitutional approach that links judgment debt management to access to justice, stewardship of public resources, accountability, good governance and the rule of law.

This emerging jurisprudence reflects a growing judicial expectation that public institutions should proactively manage legal liabilities, budget for foreseeable obligations and avoid exposing taxpayers to unnecessary financial losses through delayed settlement of lawful claims.

For Principal Secretaries, County Secretaries, Chief Officers, Accounting Officers, Chief Executive Officers of State Corporations, Boards and other public sector decision-makers, the implications are significant. Failure to effectively manage judgment debts may expose institutions to escalating interest liabilities, adverse audit findings, parliamentary scrutiny, judicial intervention, governance concerns and potential personal accountability for avoidable losses to the public purse.

The message is clear: public institutions can no longer treat judgment debts as a purely administrative or post-litigation issue. They are

increasingly being treated as a constitutional governance, public finance and risk management concern.

WHY THIS DEVELOPMENT MATTERS

Across the public sector, unsatisfied judgments and decrees continue to represent one of the most significant sources of financial leakage and fiscal risk. In many cases, liabilities that could have been settled promptly have remained unpaid for years, resulting in substantial accumulation of interest, legal costs and enforcement expenses.

The consequences extend far beyond the interests of individual litigants. Every additional shilling paid in interest arising from avoidable delays represents public resources that could otherwise have been deployed towards infrastructure, healthcare, education, security and other public priorities.

Courts are increasingly recognizing that where Government institutions fail to satisfy lawful obligations, the ultimate burden falls upon taxpayers. Delayed settlement therefore raises broader questions regarding financial stewardship, institutional accountability and prudent management of public resources.

Accordingly, debt management is increasingly being viewed not merely as a legal issue but as a governance, risk management and fiscal sustainability concern.

THE LEGAL FRAMEWORK GOVERNING PAYMENT OF GOVERNMENT LIABILITIES

The obligation to satisfy lawful Government liabilities is grounded in both constitutional and statutory principles.

Articles 10, 48, 73, 201, 226 and 232 of the Constitution require public officers to uphold the rule of law, facilitate access to justice, exercise leadership with integrity and accountability, and ensure prudent and responsible use of public resources.

The statutory foundation is found principally in Section 21 of the Government Proceedings Act. Section 21(3) expressly provides that where a Certificate of Order Against the Government has been issued and served, the Accounting Officer of the relevant Government department shall pay the amount certified together with any lawfully accruing interest.

The provision is couched in mandatory terms and imposes a positive duty upon the Accounting Officer. It does not confer discretion as to whether payment should be made.

This statutory obligation is reinforced by the Public Finance Management Act, 2012, which requires Accounting Officers to ensure effective, efficient, economical and transparent management of public resources and to safeguard public funds from avoidable loss.

COURTS REJECT ADMINISTRATIVE AND BUDGETARY EXCUSES FOR NON-PAYMENT

Kenyan courts have consistently rejected attempts by public institutions to justify non-payment on the basis of administrative processes, internal approvals, budgetary limitations or bureaucratic delays.

In ***Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza [2012] eKLR***, the High Court held that once a Certificate of Order Against the Government has been issued and served, the Accounting Officer assumes a statutory duty to satisfy the decree.

The Court expressly held that payment is not conditional upon future budgetary allocations or parliamentary approval. Government immunity from execution affects only the mode of enforcement and does not extinguish the underlying obligation to pay.

Similarly, in ***Republic v Attorney General & Another ex parte James Alfred Koroso [2013] eKLR***, the Court emphasized that successful litigants must be allowed to enjoy the fruits of judgments lawfully obtained against Government entities and that public officers should not create administrative barriers that frustrate enforcement of lawful court decrees.

More recently, in ***Republic v Attorney General & 3 Others; Law Society of Kenya & 2 Others (Ex Parte) [2023] KEHC 19025 (KLR)***, the High Court reaffirmed that Accounting Officers remain under a statutory obligation to satisfy certified Government liabilities and that mandamus remains available to compel performance of that duty where necessary.

The consistent message from the courts is that Government immunity from attachment and normal modes of execution cannot be transformed into immunity from payment.

ACCESS TO JUSTICE INCLUDES ENJOYMENT OF THE FRUITS OF JUDGMENT

The courts have repeatedly emphasized that access to justice extends beyond obtaining a favorable judgment.

In, *Republic v Attorney General & Another ex parte James Alfred Koroso*, the High Court observed that access to justice cannot be said to have been achieved where a successful litigant is unable to realize the fruits of a judgment due to the actions or inaction of public officers.

This reasoning has become a central pillar of the jurisprudence on Government liability. It recognizes that judicial authority is undermined where lawful court orders remain unimplemented and that constitutional rights become illusory where successful litigants are left with unenforceable decrees.

The obligation to satisfy judgments is therefore not merely a financial obligation. It is a constitutional imperative linked to the rule of law, judicial authority and public confidence in Government institutions.

THE CONSTITUTIONALISATION OF JUDGMENT DEBT MANAGEMENT

One of the most significant developments in recent years is the gradual constitutionalisation of judgment debt management.

Courts are increasingly assessing the conduct of public institutions through broader constitutional principles of accountability, transparency, responsiveness, integrity and prudent management of public resources.

This shift transforms judgment debt management from a routine administrative function into a constitutional governance responsibility.

Accounting Officers are increasingly expected to demonstrate that they have exercised diligence and foresight in identifying, budgeting for, monitoring and settling legal liabilities. Prolonged failure to do so may attract scrutiny as a governance failure rather than merely an operational delay.

This approach aligns with global trends that recognize compliance with court orders and management of public liabilities as essential components of democratic governance and effective public administration.

JUDGMENT DEBTS AS A FISCAL SUSTAINABILITY AND GOVERNANCE RISK

From an international public finance perspective, unmanaged judgment debts represent a material fiscal risk.

Institutions such as the World Bank, the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD) and the International Organization of Supreme Audit Institutions (INTOSAI) have consistently emphasized the importance of identifying, quantifying and managing contingent liabilities as part of sound fiscal governance.

Judgment debts should therefore be incorporated into broader financial planning and risk management frameworks. Once liability has crystallized, institutions should ensure that obligations are reflected in budgets, financial statements, medium-term expenditure frameworks and enterprise risk management systems.

Failure to recognize and manage such liabilities can result in distorted financial reporting, budgetary pressures, recurring audit findings and increased fiscal exposure.

Increasingly, the effectiveness with which institutions manage legal liabilities is becoming an important indicator of governance quality, financial discipline and leadership effectiveness.

PERSONAL ACCOUNTABILITY OF ACCOUNTING OFFICERS

An important emerging issue concerns the potential personal exposure of public officers where avoidable delays result in unnecessary losses to the public purse.

Article 226(5) of the Constitution provides that a public officer who directs or approves the use of public funds contrary to law may be personally liable for resulting losses.

The principal judgment debt will usually be an institutional liability. However, where avoidable delay, poor planning or failure to act causes unnecessary interest, penalties, costs or enforcement expenses to accrue, questions may arise as to whether those additional losses resulted from failures in public finance stewardship, internal control or lawful administration.

Where institutions fail to establish adequate systems for managing judgment debts, oversight bodies may increasingly question whether the resulting interest and costs represent preventable losses attributable to failures in governance, financial planning or administrative oversight.

As accountability frameworks continue to evolve, this issue is likely to receive increasing attention from auditors, regulators, oversight institutions and the courts.

GOVERNANCE IMPLICATIONS FOR BOARDS AND SENIOR LEADERSHIP

The responsibility for effective management of judgment debts extends beyond Accounting Officers.

Boards of State Corporations, County Executive Committees, governing councils and senior leadership teams all have important oversight responsibilities regarding litigation exposure, contingent liabilities and compliance risks.

Effective governance requires institutions to maintain visibility over significant legal liabilities in the same way they monitor financial, operational and regulatory risks.

This requires institutions to establish structured reporting mechanisms on pending litigation, material judgments, accrued interest exposure and settlement strategies.

Institutions that integrate legal liabilities into enterprise risk management frameworks are generally better positioned to manage financial exposure, reduce litigation costs and avoid costly enforcement proceedings.

LOOKING AHEAD

The direction of Kenyan jurisprudence is increasingly clear. Courts are moving beyond a narrow focus on enforcement mechanisms and are placing greater emphasis on the governance, constitutional and public finance implications of delayed settlement of lawful obligations.

For Accounting Officers, Principal Secretaries, County Secretaries, Chief Officers, State Corporations and County Governments, the management of judgment debts can no longer be viewed as a purely administrative or post-litigation function. It is increasingly becoming an integral component of financial stewardship, institutional governance and risk management.

Public institutions that establish robust systems for identifying, monitoring and settling legal liabilities are likely to reduce fiscal exposure, strengthen compliance with constitutional and statutory obligations, and avoid costly enforcement proceedings, audit findings and governance concerns.

Courts have made it clear that Government immunity from execution cannot be transformed

into immunity from payment. The challenge for public institutions is therefore not whether lawful obligations should be honoured, but how effectively they are managed before they become a source of avoidable financial loss and public accountability concerns.

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