



**Manyonge Wanyama & Associates LLP v Clerk, County Assembly of West Pokot & another  
(Judicial Review E003 of 2024) [2024] KEHC 15388 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15388 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
JUDICIAL REVIEW E003 OF 2024  
RPV WENDOH, J  
NOVEMBER 28, 2024**

**BETWEEN**

**MANYONGE WANYAMA & ASSOCIATES LLP ..... APPLICANT**

**AND**

**THE CLERK, COUNTY ASSEMBLY OF WEST POKOT ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY ASSEMBLY OF WEST POKOT ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The ex parte Applicant, Manyonge Wanyama and Associates, approached this court by way of Notice of Motion dated 8/3/2024 seeking an order of Judicial Review of mandamus to issue compelling the Clerk County Assembly of West Pokot to pay the applicant the sum of Kshs. Four million one hundred fifty thousand (Kshs.4,450,000/=) being payment as legal fees due tin Kapenguria SRMC E008/2022 Manyonge Wanyama Associates Versus The County Assembly of West Pokot and another, and costs of the application.
2. The Notice of motion was filed after the court granted leave to commence Judicial Review proceedings on 1/3/2024.
3. The grounds upon which the application are predicated are found in the statement of facts dated 26/2/2023 and Verifying Affidavit sworn by Peter Manyange Wanyama and partner in the exparte applicant form of Advocates.
4. It is the case of the applicant that on 30/9/2021 they executed an agreement between the applicant and the legal representative of the Respondent; that the applicant offered legal services in the matter as instructed to represent the Respondent in Kapenguria Constitutional Petition E002 of 2021 Hon. Catherine Mukenyang Versus. Hon. Evanson Lomaduny and West Pokot County Assembly; that the applicant discharged the mandate till the conclusion of the case on 15/3/2022. Upon delivery of Judgment; that the Respondent has declined to pay the legal fees; that the matter was referred to



mediation and the parties agreed on fees owed as 4,150,000/= as final settlement and the consent was adopted as an order of court on 24/10/2023 (PEXh-2 consent); that it was a term of the consent that the sum be paid by 29/12/2023 but despite follow up through letters ..... 4 the payment has not been forthcoming.

5. The failure to pay provoked this application, that the applicant is suffering loss as a result of the failure to pay.
6. The court gave directions on 25/7/2024 that the Notice of Motion be canvassed by way of submissions and on 23/09/2024 the applicants had complied with the directions but the Respondent had not. The court allowed Respondent another opportunity to file their submission by 17/10/2024. On 17/11/2024 the court was away not on other duties and the matter was put off to 14/11/2024. An affidavit of service was filed to the effect that the Respondents had been served, again on 8/11/2024. By then there was no response to the application nor was there appearance for the Respondent.
7. Under section 13 of the County Government Act, the 1<sup>st</sup> Respondents the accounting officer of the County Assembly of West Pokot.
8. Whether an order of Mandamus can issue; In the Kenya National Examination Council Vs. Republic ex parte Geoffrey Gathenji Njoroge & 9 others (1997) eKLR the court said

“The order of mandamus is of most extensive remedial nature and is in form, of 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 or redress is less convenient, beneficial and effectual. “These principles mean that an order of mandamus compels 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”.

9. Since the Respondent is a government entity, the only way of realizing the fruits of judgment is by way of seeking an order of Mandamus. The same was confirmed in Republic VS. Attorney General & Another Ex parte James Alfred Koroso (2013) eKLR where the court said “In the present case the ex parte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgment that he has been awarded is realized. Unless something is done, he will forever be left babysitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of *the Constitution* which enjoins the state to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgments have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers.....”.
10. The applicant exhibited the service agreement dated 30/9/2021. The consent order dated 24/10/2023 for payment of the outstanding fees of Kshs.4,150,000/= was filed and adopted as an order of the court dated 24/10/2023. The applicant obtained a certificate of order in terms of Order 29 Rule 3 of the Civil Procedure Rules. Since the Respondents did not file any reply nor appear, this court is satisfied that the application was proved, that the applicant is owed the said sums which should have been paid



way back on 29/12/2023. I hereby issue an order of Mandamus compelling the Respondent to pay the applicant Kshs.4,150,000/= plus costs of the application. It is so ordered.

**DELIVERED, SIGNED AND DATED AT KAPENGURIA THIS 28TH DAY OF NOVEMBER, 2024**

**R. WENDOH.**

**JUDGE**

Judgment delivered virtually in the presence of

Miss Komen holding brief for Manyonge Wanyama Advocate for applicant.

Court Assistant - Juma/Hellen

