



Republic v Embu County Government & 2 others; Olaka (Exparte Applicant) (Judicial Review Application E004 of 2024) [2024] KEHC 15022 (KLR) (27 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15022 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
JUDICIAL REVIEW APPLICATION E004 OF 2024
LM NJUGUNA, J
NOVEMBER 27, 2024
IN THE MATTER OF AN APPLICATION BY VICTOR
ONYANGO OLAKA FOR AN ORDER OF MANDAMUS
AND
IN THE MATTER OF THE LAW REFORM ACT
AND
IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES 2010**

BETWEEN

REPUBLIC APPLICANT

AND

EMBU COUNTY GOVERNMENT 1ST RESPONDENT

**THE CHIEF OFFICER FINANCE EMBU COUNTY GOVERNMENT 2ND
RESPONDENT**

**THE COUNTY SECRETARY EMBU COUNTY GOVERNMENT 3RD
RESPONDENT**

AND

VICTOR ONYANGO OLAKA EXPARTE APPLICANT

RULING

1. Pursuant to leave granted on 14th June 2024, the applicant filed a notice of motion dated 27th June 2024 seeking the following orders:



- a. That a prerogative order of a mandamus do issue compelling the 2nd and 3rd respondents directing them to pay the exparte applicant, within 30 days of the order, the sum of Kshs.2,680,000/= being the decretal sum in respect of Embu CMCC E045 of 2021;
 - b. That in default, the 2nd and 3rd respondents be committed to civil jail at Embu GK prison for a period of not less than 3 months; and
 - c. That costs of this application be provided for.
2. In Embu CMCC E045 of 2021, the 1st respondent was ordered to pay Kshs.2,480,000/= and costs which were assessed at Kshs.200,000/=. The 1st respondent lodged an appeal which was heard and determined through Embu HCCA No. 49 of 2021 where the appeal was dismissed through a judgment delivered on 02nd June 2022. The exparte applicant deposed that the respondents have refused to pay the decretal amount, hence the present application.
 3. The application is unopposed.
 4. The court directed the parties to file written submissions and the exparte applicant complied with this direction.
 5. It was his argument that the order of the court in Embu CMCC E045 of 2021 was upheld in Embu HCCA No. 49 of 2021 which stated that the exparte applicant ought to be paid Kshs.2,680,000/=. Regardless, the 1st respondent, through the 2nd and 3rd respondents, has refused to pay the specified amount. The exparte applicant has filed the application herein to compel the 1st respondent, a public body, to settle the decretal amount since there is no stay of execution of the judgment and decree.
 6. That he cannot execute against the 1st respondent as he is barred from doing so by the Government Proceedings Act, thus the only recourse lies in judicial review. He relied on the cases of Kenya National Examination Council v. Republic, Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996 and Republic v. Attorney General & Another Exparte James Alfred Koroso (2013) eKLR.
 7. The issue for determination is whether the order sought may be granted.
 8. The circumstances under which judicial review order of mandamus are issued were discussed in the case Kenya National Examination Council v. Republic, Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996 (*supra*), where the Court of Appeal cited with approval, Halsbury's Law of England, 4th Edition. Vol. 7 p. 111 para 89 thus:

“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 of 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 the duty to the detriment of a party who has a legal right to expect the duty to be performed.”
 9. The exparte applicant was awarded Kshs.2,680,000/= including costs through Embu CMCC E045 of 2021 which decision was upheld in Embu HCCA No. 49 of 2021. He has deposed that the 1st



respondent has refused to pay the said amount thus denying him the fruits of his judgment. For the applicant to be successful in his claim herein, it is important that he complies with the provisions of Section 21 of Government Proceedings Act on issuance of the relevant notices to the County government

10. This provision opens the door for the applicant to pursue an order of mandamus otherwise he may never see the fruits of his decree. Such were the sentiments of the court in the case of Republic v The Attorney General & Another ex parte James Alfred Koroso (2013) eKLR where it held as follows;

“...in the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby-sitting 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 judgements 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.”

11. Since the exparte applicant cannot levy execution against the county government, it suffices that the orders sought herein should be granted. Moreover, the application is unopposed.

12. In the upshot, I find that the application has merit and it is hereby allowed. Prayers (1) and (2) are granted as prayed. The costs of this application are hereby awarded to the exparte applicant.

13. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF NOVEMBER, 2024.

L. NJUGUNA

JUDGE

..... for the Applicant

..... for the 1st Respondent

..... for the 2nd Respondent

..... for the 3rd Respondent

..... for the Exparte Applicant

