



Liechi v County Government of Homabay & another (Judicial Review Application E003 of 2023) [2025] KEELC 3232 (KLR) (7 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3232 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
JUDICIAL REVIEW APPLICATION E003 OF 2023
FO NYAGAKA, J
APRIL 7, 2025
IN THE MATTER OF AN APPLICATION FOR
LEAVE TO APPLY FOR AN ORDER OF MANDAMUS
AND
IN THE MATTER OF SECTION 21(5) OF THE GOVERNMENT PROCEEDINGS ACT
AND
IN THE MATTER OF ORDER 29 RULE 3 OF THE CIVIL PROCEDURE RULES
AND
IN THE MATTER OF ORDER 53 RULE 1(2) OF THE CIVIL PROCEDURE RULES
AND
IN THE MATTER OF EXECUTION OF A DECREE AGAINST THE GOVERNMENT
BETWEEN
DR OKELLO JOHN ROBERT LIECHI APPLICANT
AND
THE COUNTY GOVERNMENT OF HOMABAY 1ST RESPONDENT
THE CHIEF FINANCE OFFICER COUNTY GOVERNMENT OF
HOMABAY 2ND RESPONDENT

JUDGMENT

1. This is a Judicial Review Application brought under the provisions of Order 53 Rule 1(2) of the Civil Procedure Rules. The application is dated 9th October, 2023 seeking the following orders:



1. The honorable Court be pleased to grant Leave to the Applicant to apply for an order of Mandamus directed at the Chief Finance Officer of the County Government of Homabay Compelling him/her to pay the decretal amount arising in Homabay Chief Magistrate's Court Land Case No. 18 of 2018 amounting to Kshs. 3,377,900/= together with interest thereon @ 12 p.a from the 15th day of July, 2021 until the date of payment in full as more particularly set out hereinbelow:

Amount awarded.....Kshs. 3,377,900

Interest thereon @ 12% p.a from

15.7.2021 to 15.9.2021.....Kshs. 878,254

Kshs. 4,256,154

2. The costs of the application be awarded to the Ex Parte applicant.
2. The application was supported by the grounds set out and the affidavit of Okello John Robert Liech sworn on 18th August, 2023. He stated that his advocates filed a claim against the 1st Respondent for payment of damages on 19th February, 2014 at the ELC at Kisii before being transferred for hearing and determination at the Chief's Magistrate's Court at Homabay. That the matter was heard and determined and judgment duly entered in his favour against the 1st Respondent on 15th July, 2021. He stated that the Respondent's appealed against the said judgment and the high court upheld the trial court's decision save for mesne profits and costs of the suit. He added that on 4th August, 2023 a certificate of order of judgment and costs against the County government was issued and served upon the Respondents on the same date. He stated that the judgment still stood with no order of stay of execution and thus execution should be allowed to proceed for the Respondents to satisfy the decree.

Response

3. The Respondents did not file any response to the application.

Submissions

4. Counsel for the Applicant filed his submissions dated 28th November, 2024 where he relied on Section 21(1) of the Government proceedings Act that laid down the procedure for execution against the government. He also cited the case of Permanent Secretary Office of the President, Ministry of Internal Security & Another Ex parte Nassir Mwandishi [2014] eKLR and Republic v Kenya National Examinations Council ex parte Gathenji & Others [1997] eKLR. It was his submission that the Applicant has demonstrated that he has a judgment and a decree against the Respondents which it failed to satisfy despite service. He submits that it would only be fair that the Respondents be compelled to perform its duty and pay the applicant.
5. Counsel for the Respondents on the other hand filed his submissions dated 1st October, 2024 where he identified two issues for determination. The first issue was whether the 1st and 2nd Respondents should be granted the stay of proceedings. He relied on Order 42 Rule 6(2) of the Civil Procedure Rules and the case in G.N. Muema P/A (SIC) MT View Maternity & Nursing Home v Miriam Malam Bishar & Another. He further relies on the case of Butt Rent Restriction Tribunal and submits that the Respondents are deserving of the stay of execution orders. He argues that the Respondents had fulfilled and were willing to abide by any directions that the court issues.
6. He submits that the memorandum of appeal dated 2nd February, 2023 raised grave issues regarding the application of Article 6(2) and stated that the judgment by the superior court was illegal and not



grounded in law. He further submits that the present suit regards the same subject matter as in Appeal no E046 of 2023 as both suits emanated from the same judgment being Homabay ELC Appeal No. 45 of 2021. It was his submission that allowing both cases to proceed would create a potential inconsistent ruling. He relied on the case of *Kenafric Matched Limited V Match Masters Limited & Another*. He goes on to submit that it would be prejudicial to the Respondents should the orders not be granted since the moment execution commences, there is no going back. He cites the case in *Nduhiu Gitahi & Another V Hannah Wambui Warugongo* [1988] 2 KAR.

7. Counsel for the Respondent relies on the case of *Century Oil Trading Company Ltd V Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007*. He submits that the Respondents being public bodies were subject to Article 201 of *the constitution*. He submits that in the instant case, the decision appealed from was rendered on 7th December, 2022 with the memorandum of appeal being filed on 2nd February, 2023. He relied on the case of *MRM aka RLM V SMRM (Civil Appeal 124 of 2022 [2024])* and submit that the Respondents filed the present application on time. It was further his submission that they were willing to bind themselves to any terms as the court may deem fit on matters of security.
8. On the second issue – costs, counsel relies on the case of *Karia V Keshe (Environment and Land Appeal E006 of 2023 [2024])*. He urges the court to give the Respondents the opportunity to be heard on appeal.

Analysis and determination

9. After considering the pleadings in form of the application itself and the submissions by the parties, the sole issue for determination is whether leave should be granted to the Applicant to commence judicial review proceedings by way of an order for mandamus against the Respondent. Costs will be a matter of course since Section 27 of the *Civil Procedure Act* provides that they follow the event unless the court, for reasons to be recorded, thinks otherwise. I have no such a reason in mind so far.
10. In the case *Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996*, the Court of Appeal citing with approval the *Halsbury's Law of England*, 4th Edition. Vol. 7 p. 111 para. 89 noted the circumstances under which an order of mandamus can be issued. It quoted the relevant excerpt as follows:

“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.”
11. In the instant matter, a brief background of this application is apt. it is that the Applicant on 19th February, 2014 filed a case against the Respondents whereby judgment was entered in favour of the Applicant as against the Respondents. The Respondents appealed but the trial court's judgment was upheld. The Applicant served the Respondents with the judgment, decree and the



certificate of costs but they have since failed to satisfy the said decree. The Applicant now seeks leave to file judicial review in the nature of mandamus compelling the Respondents to settle the decretal sum.

12. Of executions against national government the law is that before an order of mandamus is issued, an Applicant must abide by the procedure in Section 21 of *Government Proceedings Act*. It stipulates 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.”

13. Further, Section 21 (3) of the said Act provides that:

“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.”

14. Worth of note is that a County Government is government but at the second level. Actually, it is only a second level of government which is closer to the people hence the statute applicable – *Government Proceedings Act* – has had to be amended to speak to the realities of the new constitutional dispensation. The procedure applicable to executions against the national government also apply to County Governments. Thus, in *Gichina (Suing as the administrator of the Estate of the Late Joseph Gichina Muhoro) v County Government of West Pokot (Environment & Land Case 125 of 2016) [2024] KEELC 7104 (KLR) (24 October 2024) (Ruling)*, this Court held that,

“Under the *Government Proceedings Act* the relevant provisions in regard to execution of decrees against government is Section 21 of the Act. Further, the Section has been amended by The Government Proceedings (Amendment) Act, 2015, *Act No. 35 of 2015*, assented to on 18th December, 2015 and commenced on 7th January, 2016. The provision stipulates that: “Section 21 of the *Government Proceedings Act* is amended by inserting the following new sub-section immediately after sub-section (4)- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.”



26. It is not in doubt that Section 21 of the *Government Proceedings Act* which was amended by *Act No. 35 of 2015* is the one that provides for execution against the government. The new provision includes the execution against any county governments to be levied in the manner and way the Section provides. It thus puts such executions against county governments outside of and totally distinct from the procedure of executions of monetary and other decrees or orders of a civil nature or process as is levied against other entities or persons than government under Order 22 of the CPR. Of the executions against government and by the same token and law as against county governments, the procedure laid down by the *Government Proceedings Act* is the one Applicable.”
15. After that this Court held in the same decision as follows:
- “I find persuasion in the holding of *Jamleck Waweru Karanja v County Government of Nakuru* [2020] eKLR where her ladyship Mbaru J held that no execution against the property of the government or County Government in settlement of a civil decree may be levied, but rather that the execution ought to be by way of an application for judicial review for an order of mandamus.”
16. It is noteworthy that from the court record, the Respondents did not file any response in opposition of the application. But it is not in dispute that there is a decree and certificate of costs against the Respondents dated 13th February, 2023 and 1st August, 2023 respectively. It is also not in dispute that the said decree was served upon the Respondents and that the appeal had been heard and determined. It is my opinion that the Applicant has explained all the steps taken to pursue the claim for settlement in Homabay ELC Land Case No. 18 of 2018 with the judgment in that case having been entered in 2021.
17. In the case of *Republic v Principal Secretary, State Department, Ministry of Interior and Coordination of National Government Ex parte Applicant Geoffrey Rono* [2021] KEELRC 636 (KLR) the court granted leave to commence Judicial Review proceeding in an employment and labour relations matter for the ex-parte applicant to seek orders of mandamus to realize fruits of judgment in Nakuru ELRC No. 403 of 2014 against the government.
18. Having looked at the facts herein, it is this court’s view that the decree against the Respondents can only be implemented by an order of mandamus since it is against the county government which is government at the second level. Thus, the order of Mandamus is to be issued as prayed.
19. In conclusion, I find that the instant application is merited and is therefore allowed with costs to the Applicant.
20. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 07TH DAY OF APRIL 2025.

HON. DR. IUR F. NYAGAKA,

In the presence of,

1. G. S. Okoth Advocate for the Ex Parte Applicant
2. Odongo Advocate holding brief for Akello for the Respondent.

