



**Republic v County Government of Nyeri & 2 others; Manyonge Wanyama & Associates LLP (Exparte) (Environment and Land Judicial Review Case E1 of 2020) [2022] KEELC 3739 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3739 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E1 OF 2020**

**JO OLOLA, J**

**JUNE 9, 2022**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY WAY OF THE ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT CHAPTER 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF NYERI ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER FINANCE, NYERI COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY EXECUTIVE MEMBER, FINANCE, NYERI COUNTY**

**GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**MANYONGE WANYAMA & ASSOCIATES LLP ..... EXPARTE**

**RULING**

1. By the notice of motion dated June 24, 2021, Manyonge Wanyama & Associates LLP (the ex-parte applicants) pray for an order that this court be pleased to make an order of *mandamus* directed at the respondents to compel the respondents to pay them the sum of Kshs 401,450/- being payment for the



- advocate-client bill of costs as taxed on October 2, 2019 in respect of Nyeri ELC Miscellaneous Cause No 10 of 2019; *Manyonge Wanyama & Associates v The County Government of Nyeri & 2 others*.
2. The application is supported by an affidavit sworn by the ex-parte applicant's Managing Partner Peter Manyonge Wanyama and is premised upon the following grounds:
- (i) That on February 9, 2017, the respondents instructed the applicant to offer legal services in Nyeri ELC No 18 of 2017; the Registered Trustees of the Agricultural Society of Kenya v Sports Kenya & another;
  - (ii) That the applicant duly offered legal services in the matter as instructed;
  - (iii) That the applicant filed the advocate-client bill of costs on July 17, 2019 and the same was taxed at Kshs 401,450/- on October 2, 2019 after which a certificate of taxation was issued on October 22, 2019;
  - (iv) That the respondents have failed and declined to make payments in settlement of the bill of costs;
  - (v) That the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are the accounting officers of the 1<sup>st</sup> respondent and are under a public duty to ensure the 1<sup>st</sup> respondent fulfills her legal obligations. They have without justification refused to perform their duties;
  - (vi) That the respondents have a duty to pay a debt already decreed by a competent court of law which debt is now due and payable;
  - (vii) That the applicant has no other means of realizing her rightfully earned fees since execution proceedings cannot be commenced against the respondents;
  - (viii) That it is therefore in the interest of justice and fairness that the applicant is granted the orders as prayed for.
3. In response to the said motion, the respondent submitted through their learned advocate on record Mr Wahome Gikonyo that there was no evidence of their refusal to pay. It was further their case that the motion had not been accompanied by a verifying affidavit as required under order 53 of the *Civil Procedure Rules*.
4. The respondents further told the court the applicants had omitted to obtain a certificate of costs against the government and that the one filed later had not been introduced by way of a supplementary affidavit and therefore had no bearing on the motion.
5. Section 21(1) of the *Government Proceedings 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.”

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

“If the order provides for 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, a 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.”

7. As Githua J stated in Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit.

Similarly, when a judgment has been entered against the Government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree.

Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in section 21(1) and (2) of the Government Proceedings Act ... which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Honourable Attorney General. The certificate of order against the Government should be issued by the court after the expiration of 21 days after entry of judgement. Once the certificate of order against the Government is served on the Honourable Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and Parliamentary approval of Government



expenditure in the financial year subsequent to which the Government liability accrues.  
(Emphasis mine).

8. In the matter before me, it was not disputed that the ex-parte applicants' bill of costs was taxed as against the respondents on October 2, 2019 in the sum of Kshs 401,450/-. It was also not in dispute that a certificate of taxation of the costs was subsequently issued on October 22, 2019.
9. In a ruling delivered herein by the Honourable Justice Yuvinalis Angima on June 16, 2021 the ex-parte applicant was granted 45 days to file a certificate of order against the Government. While it is true that the said certificate as contended by the respondents has not been annexed in the supporting affidavit to the application before me, the respondents do not deny that the certificate was issued and served upon them.
10. And while the respondents aver that there is no evidence that they have refused to pay the costs as taxed, they did not demonstrate that they have paid and/or are willing to pay. In the present scenario, the ex-parte applicant has no other option of realizing the fruits of her judgment since she is barred from executing against the Government. Other than through an order of *mandamus* sought herein, the ex-parte applicant has no other means of ensuring that the decree is complied with.
11. In the circumstances herein I am satisfied that there is merit in the motion dated June 24, 2021. I allow the same with costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 9<sup>TH</sup> DAY OF JUNE, 2022.**

**In the presence of:**

Mr Peter Wanyama for the ex-parte applicant.

Mr Theuri holding brief for Wahome for the respondent.

Court assistant - Kendi

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**JO Olola**

**JUDGE**

