



**Republic v Attorney General & another; Kasamani (Exparte)
 (Environment and Land Court Judicial Review Application E002 of 2022)
 [2022] KEELC 15049 (KLR) (22 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15049 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
 ENVIRONMENT AND LAND COURT JUDICIAL REVIEW APPLICATION E002 OF 2022
 DO OHUNGO, J
 NOVEMBER 22, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

AND

CHARLES LUTTA KASAMANI EXPARTE

JUDGMENT

1. The ex-parte applicant (the applicant) sought leave of court to apply for a judicial review order of mandamus through Chamber Summons dated 27th January 2022. Leave was granted on 27th January 2022.
2. Subsequently, the ex-parte applicant filed Notice of Motion dated 9th February 2022 seeking an order of mandamus to compel the respondents to satisfy judgment dated 26th November 2019, decree issued on 13th February 2020 and certificate of costs dated 9th October 2020, all issued in Kakamega Environment and Land Case No. 546 of 2014, Charles Lutta Kasamani vs Attorney General & National Land Commission.
3. The application is supported by an affidavit sworn by the ex-parte applicant who deposed that on 26th September 2019, he obtained a judgment in Kakamega ELC Case No. 546 of 2014 against the respondents and subsequently extracted the decree, certificate of costs and certificate of orders against the government. That no appeal is pending from the said decree which remains unsatisfied to date. The ex-parte applicant further deposed that despite service upon the respondents of the judgment, decree,



certificate of costs, certificate of order against the government and all necessary notices, the respondents have failed to acknowledge and to satisfy the decree and certificate of costs. That despite addressing the second respondent to carry out a valuation of the land compulsorily acquired, it has refused to do so and that the respondents' disobedience smacks of impunity which must be stopped by this court.

4. The respondents did not respond to the Notice of Motion.
5. The application was canvassed through written submissions. The ex-parte applicant filed submissions on 29th March 2022. The respondents did not file any submissions. In his submissions, the ex-parte applicant reiterated the contents of the Notice of Motion and the affidavit and urged the court to allow the application.
6. I have considered the application, the affidavit filed and the submissions. The sole issue for determination is whether the relief sought should be granted.
7. The circumstances under which a judicial review order of mandamus should issue were discussed in *Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR where the Court of Appeal stated:

The next issue we must deal with is this: What is the scope and efficacy of an order of mandamus? Once again we turn to Halsbury's Law of England, 4th Edition Volume 1 at page 111 from paragraph 89. That learned treatise says:-

"The order of mandamus is of a most extensive remedial nature, and is, in form, 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."

... What do these principles mean? They mean that an order of mandamus will compel 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.

8. In this case, the ex-parte applicant has moved this court to compel the satisfaction of a judgment already decreed in its favour by a competent court of law. The ex-parte applicant has demonstrated by way of evidence the existence of the judgment as well as the respondents' failure to satisfy the ensuing decree despite compliance with the provisions of Section 21 of the [Government Proceedings Act](#).
9. A reading of the judgment dated 26th September 2019 shows that it required the respondents to adequately compensate the ex-parte applicant for compulsorily acquiring his property. Subsequent thereto, a decree was issued on 13th February 2020. The ex-parte applicant's contention that the decree remains unsatisfied has not been contested by the respondents.
10. In [Republic v Attorney General & another Ex parte James Alfred Koroso](#) [2013] eKLR Odunga J (as he then was) 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. ...

11. I have perused the court file in Kakamega Environment and Land Case No. 546 of 2014 and I have ascertained that the judgment, decree, and certificate of costs referred to in the application are in the said file. In the premises, the ex Parte applicant has made a case for the grant of the order of mandamus which he seeks.
12. In the result, I make the following orders:
 - a. An order of mandamus is hereby issued compelling the respondents to satisfy judgment dated 26th November 2019, decree issued on 13th February 2020 and certificate of costs dated 9th October 2020, all issued in Kakamega Environment and Land Case No. 546 of 2014, Charles Lutta Kasamani vs Attorney General & National Land Commission.
 - b. Since there was no prayer for costs in Notice of Motion dated 9th February 2022, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF NOVEMBER 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the ex parte applicant

No appearance for the first respondent

No appearance for the second respondent

Court Assistant: E. Juma

