



Republic v Chief Officer Finance County Government of Samburu & another; Mucheru (Subject) (Environment and Land Judicial Review Case E001 of 2022) [2022] KEELC 15351 (KLR) (15 December 2022) (Judgment)

Neutral citation: [2022] KEELC 15351 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2022
YM ANGIMA, J
DECEMBER 15, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF
SAMBURU 1ST RESPONDENT**

COUNTY GOVERNMENT OF SAMBURU 2ND RESPONDENT

AND

MARGARET WAMBUI MUCHERU SUBJECT

JUDGMENT

A. The Applicant's Application

1. Pursuant to leave granted on February 7, 2022 the ex parte applicant (the applicant) filed a notice of motion dated April 26, 2022 under sections 8 & 9 of the *Law Reform Act* (Cap 26), order 53 rules 3 & 4 of the *Civil Procedure Rules, 2010* and all enabling provisions of the law seeking the following orders:

- “(a) That an order of *mandamus* do issue directed to the respondents herein, by themselves and or their agents to settle the decree issued by the court in Nyahururu CM ELC No 311 of 2018 (formerly Nyahururu ELC No 19 of 2017 formerly Nakuru HCCC No 57 of 2016 by paying to the subject/applicant the sum of Kshs 8,241,156/= with costs and interest all in the sum of Kshs 15,203,020/= from the date of filing the suit (*sic*) the payment be made forthwith.



(b) That the costs of the application for leave and this motion be awarded to the subject – applicant.”

2. The application was based upon the grounds set out in the body of the motion and the contents of the verifying affidavit sworn by the applicant on April 26, 2022. The statutory statement was, however, not annexed to the application and neither was the order granting leave to file the instant application. The applicant stated that she was the decree holder in Nyahururu CM ELC No311 of 2018 in which judgment was entered against the 2nd respondent in the sum of Kshs 8,241,156/= together with costs of the suit and interest. It was contended that interest on the decretal amount since the date of judgment until the date of filing the instant application was Kshs 6,622,276/= whereas costs had been assessed at Kshs 339,588/=. The total decretal amount was stated to be Kshs 15,203,020.00.
3. It was the applicant’s contention that despite demand and service of a certificate of order against the government being served, the respondents had failed or neglected to settle the decretal amount hence the application for judicial review. It was further contended that the instant application was the only legally available mode of enforcing payment of the decretal amount.

B. The Respondents’ response

4. The material on record shows that despite the respondents being accorded two chances to file a response to the application none was filed. The record further shows that the respondents were granted an opportunity to file written submissions on points of law to the application for judicial review. By the time of preparation of the judgment, however, they had not filed any submissions. The only submissions on record are those of the applicant.

C. The issue for Determination

5. The court has considered the notice of motion dated April 26, 2022, the material on record and the applicant’s submissions. The court is of the opinion that the main question for determination is whether or not the applicant has made out a case for the grant of the judicial review order sought.

D. Analysis and Determination

6. It is evident from the material on record that the factual foundation of the applicant’s application was not disputed by the respondents. The legal foundation of the application was also not contested by the respondents. There is no indication on record that there is any pending appeal against the decree passed by the trial court on May 26, 2016. The respondent’s various efforts to seek the setting aside of the ex parte judgment were apparently unsuccessful. As matters stand now, the judgment of the trial court in Nyahururu CM ELC No 311 of 2018 is still in force.
7. The applicant submitted that in the circumstances, it is entitled to an order of mandamus to compel the respondents to settle the decretal amount. It was further submitted that since execution proceedings against the county government are barred under section 21 of the *Government Proceedings Act*, (Cap 40) then the only available avenue for enforcement of the decree is through judicial review proceedings since the respondents have a legal duty under section 21(3) of the said *Act* to settle the decretal amount. The applicant cited the cases of *Republic v Kenya National Examinations Council Ex parte Gathenji & others* [1997] eKLR, *Republic v Commissioner of Lands & another ex parte Kitbinji Murugu M’agere*, Nairobi High Court Misc Application No 395 of 2012, *Republic v Permanent secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza* [2012] eKLR, Nakuru HCC JR No 24 of 2017 *Republic v The Hon Attorney General Ex parte James Macharia*



Mwangi and High Court Judicial Review Misc Application No 44 of 2012 Republic v The Attorney General & another ex parte James Alfred Koroso.

8. The court is satisfied on the basis of the material on record and the applicable law that the applicant has no other viable or effective means of securing payment of the decretal amount. In the case of Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Engunza (supra) an order of mandamus was issued to compel the respondent to pay the applicant the decretal amount. Similarly, in the case of Republic v Attorney General & Another ex parte James Alfred Koroso (supra) the High Court granted an order of mandamus to compel the respondent to settle the decretal amount.
9. In the latter case, Odunga J (as he then was) held as follows:

“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 judgment due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and public officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit.”

E. Conclusion and Disposal Order

10. The upshot of the foregoing is that the court is satisfied that the applicant has made out a case for the grant of the judicial review order sought. Accordingly, the court makes the following orders for disposal of the notice of motion dated April 26, 2022.
 - (a) That an order of mandamus be and is hereby issued directed to the respondents to pay the ex parte applicant the decretal amount passed in Nyahururu CM ELC No 311 of 2018 (formerly Nyahururu ELC No 19 of 2017, formerly Nakuru HCCC No 57 of 2016) in the sum of Kshs 8,241,156/= together with costs and interest thereon in the total sum of Kshs 15,203,020/=.
 - (b) That the applicant is hereby awarded costs of the application for judicial review.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYAHURURU THIS 15TH DAY OF DECEMBER, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Wangari for the *ex parte* Applicant

Mr. Mwangi for the 1st and 2nd Respondents



C/A - Carol

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Y. M. ANGIMA

JUDGE

