



Republic v County Government of Bungoma & 12 others; Chief Officer Ministry of Lands & Housing, Bungoma County (Interested Party) (Environment and Land Judicial Review Miscellaneous Application E001 of 2024) [2025] KEELC 1071 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1071 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E001 OF 2024**

EC CHERONO, J

MARCH 6, 2025

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF BUNGOMA RESPONDENT

AND

CHARLES BARASA WASIKE 1ST APPLICANT

CONCESITA KHAYUMBI WASIKE 2ND APPLICANT

ISAAC SIMIYU MUREFU 3RD APPLICANT

CHRISTOPHER WANYONYI 4TH APPLICANT

JACKTON SHICHENJULI MAKOKHA 5TH APPLICANT

PATRICK WESONGA MUREFU 6TH APPLICANT

CALISTUS KUNDU WESONGA 7TH APPLICANT

FLORENCE NABWOBA TENDEMWA 8TH APPLICANT

PIUS SIMIYU MULIRO 9TH APPLICANT

VINCENT WANGILA TENDEMWA 10TH APPLICANT

DOUGLAS WANGILA MUKHWANA 11TH APPLICANT

ZAINABU AKONGO OLANDO 12TH APPLICANT

AND



JUDGMENT

Background

1. The basis of these proceedings is that the ex-parte Applicants filed a Petition against the County Government of Bungoma and 7 Others in Bungoma ELC Petition case NO. 5 of 2013 and after the hearing, this court entered judgment in their favour with costs on . A copy of the impugned judgment was annexed to the affidavit in support of the application. By an ex-parte Chamber Summons application dated 6th February 2024 the ex-parte Applicants moved this honourable court for leave to apply for judicial review orders of mandamus to issue against the Chief Officer Ministry of Lands and Housing Bungoma County to direct him to satisfy the costs of Kshs.593,648.3 plus accrued interest in the former suit being ELC Petition No. 5 of 2013. They averred that on 6/7/2023, they served the interested party who is the accounting officer with the Ruling Certificate of costs but has failed and/or refused to settle the same to date. By a Ruling delivered on 31st October 2024, this court granted the Ex-parte Applicants leave to apply for judicial review proceedings of mandamus against the chief officer Ministry of Lands and Housing Bungoma County directing him to satisfy the costs of kshs. 593, 648.3 plus accrued interest issued in ELC Petition No.5 of 2013.
2. Pursuant to said the leave, the ex-parte Applicants moved this honourable court vide a substantive Notice of Motion application dated 16/2/2025 seeking an order of mandamus directed to the Respondent/judgment debtors to pay to the Ex-parte Applicants the decretal sum of Kshs.593, 648.3 in satisfaction of the judgment already decreed in their favour by a court of competent jurisdiction and in accordance with the applicable law and *the constitution*. The said application is supported by the affidavit of Charles Barasa Wasike, the 1st Ex-parte Applicant herein sworn on 16/02/2025. The grounds for the application are that the Ex-parte Applicants are the decree holders in relation to the judgment and decree issued in Bungoma ELC Petition No. 5 of 2013 and the decree and certificate of costs remain unsatisfied to date.
3. Under order 29(3) of the Civil Procedure Rules, 2010 as read with Section 21 of the *Government Proceedings Act*, the Ex-parte Applicants made an application requesting court to issue a certificate of order as against the Respondent. The decree and certificate of costs in relation to the certificate of costs were forwarded to the Respondent's offices for compliance but the same has not been satisfied

Analysis and Decision

4. I have considered the ex-parte Applicants' pleadings and submissions which despite service upon the respondent, no response was filed in opposition thereto.



5. The principles guiding the remedy of mandamus was discussed by the Court of Appeal in R-V-Kenya National Examination Council ex-parte Githinji and 9 Others, (1997) KLR, where it was held as follows;

“ 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.”

6. At paragraph 90 headed “the mandate” it is stated;

“ The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

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....”

7. In –V-Principal Secretary, Ministry of Internal Security & Another ex-parte Schon Noorani & Another (2018) eKLR, the court held;

“ Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in Apotex Inc. v Canada Attorney General), (23) and, was also discussed in Dragan v Canada (Minister of Citizenship and Immigration), (24). The eight factors that must be present for the writ to issue are;

- i. There must be a public legal duty to act;
- ii. The duty must be owed to the Applicants;
- iii. There must be a clear right to the performance of that duty, meaning that;
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been;
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand;



- iii. An express refusal, or an implied refusal through unreasonable delay;
- iv. No other adequate remedy is available to the Applicants;
- v. The order sought must be of some practical value or effect;
- vi. There is no equitable bar to the relief sought;
- vii. On a balance of convenience, mandamus should lie.

8. It is clear from the present application that judgment with costs was entered in favour of the ex-parte Applicants in Bungoma ELC Petition No. 5 of 2013. It has also transpired that the Applicants filed their bill of costs which was taxed and a certificate of costs served upon the Interested party who is the accounting officer in the Ministry of Lands and Housing in the County Government of Bungoma.
9. Despite service of the said Ruling and Certificate of costs, the Interested party has refused/declined to settle the same.
10. Section 21 of the *Government Proceedings Act*, provides as follows;

“(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.

- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney- General.
- (3) 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.



- (4) save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”
11. Bungoma County is one of the 47 Counties established under Article 6 and the first schedule to the Constitution of Kenya, 2010 and is constitutionally recognized as a distinct Government level of the County Government by the said Article. Article 6(2) of the Constitution, Government refers to Government at the National and County levels. Under the Government Proceedings Act, ‘Government’ refers to the government at the National and County levels.
 12. As to whether the Interested Party herein is under a duty to pay the subject decretal sums, an order of mandamus is normally issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed. It is trite that execution proceedings against a Government or public authority under the Government Proceedings Act can only be as against the accounting officer or chief officer of the said Government or authority, who is under a statutory duty to satisfy a judgment made by the court against that body.
 13. The decretal sum due from Bungoma County Government has in this respect not been disputed by the Respondents and the ex-parte Applicants annexed copies of the judgment and the certificate of taxation issued in their favour against Bungoma County awarded in the sum of ksh. 593,648.3
 14. This Court therefore finds that arising from these provisions, the Respondent is jointly responsible with the Chief Officer, Ministry of Lands & Housing (Interested Party) for the satisfaction of Court decrees on payment of money owed by Bungoma County Government by virtue of roles and functions.
 15. In view of the aforesaid matters, I am satisfied that the Applicants’ Notice of Motion dated 16th February 2025 is merited and I hereby grant the following consequential orders;
 - a. An order of mandamus to compel the County Government of Bungoma, and the Chief Officer, Ministry of Lands & Housing to pay to the ex-parte Applicants the sum of Kshs. 593,648.3 being the taxed costs together with interest thereon at 6% per annum from 21st February, 2023 until payment in full.
 - b. The ex-parte Applicants shall have the costs of the Notice of Motion dated 16/02/2024.
 - c. Orders accordingly.

DATED, DELIVERED AND SIGNED AT BUNGOMA THIS 06TH DAY OF MARCH, 2025.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. M/S Wanyama H/B for Bwanchiri for Applicant.
2. Respondent/Advocate-absent.
3. Bett C/A

