



Republic v Governor, Nyamira County & 3 others; Aboki (Ex parte) (Environment and Land Judicial Review Case E001 of 2024) [2025] KEELC 6128 (KLR) (23 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6128 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2024
DO OHUNGO, J
SEPTEMBER 23, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE GOVERNOR, NYAMIRA COUNTY 1ST RESPONDENT

COUNTY GOVERNMENT OF NYAMIRA 2ND RESPONDENT

THE COUNTY SECRETARY NYAMIRA COUNTY 3RD RESPONDENT

**THE COUNTY CHIEF OFFICER FINANCE & ECONOMIC PLANNING,
NYAMIRA COUNTY 4TH RESPONDENT**

AND

ENOCK OGECHI ABOKI EX PARTE

JUDGMENT

1. By Notice of Motion dated 16th February 2024, the Ex Parte Applicant seeks the following orders:

1. The Application be heard on priority basis.
2. The Honourable Court be pleased to grant an order/writ of Judicial Review in the nature of Mandamus to issue against the 1st, 3rd and 4th Respondents herein compelling the same to satisfy and or settle the Decree of this Court made on 5th June 2023 in favour of the Ex-parte Applicant (sic) vide Nyamira E.L.C CASE NO. 58 of 2021 currently standing in the sum of Shs.12,547,277/= (inclusive of interest in the sum of Shs.144,392 from 18/1/2024 to the date of filing of this Application) (sic) and which continues to attract interest and or accrue interest.
3. That this Honourable Court be pleased to set a time line and/or duration within which the Respondents do pay and/or settle the sum of Shs.12,547,277/=.



4. That costs of this application be borne by the Respondents jointly and/or severally.
 5. That this Honourable Court do make such other or further orders as the court may deem fit and expedient.
2. The application is based on the annexed statement of facts and a verifying affidavit sworn by the Ex Parte Applicant. Additionally, the following are some of the grounds listed on the face of the application:
1. That leave to institute this application was issued on 19/12/2023.
 2. That Certificate of Order against the Government (county Government of Nyamira) in the sum of shs.11,393,943/= was served upon the said Government on 18/1/2024.
 3. That the Certificate of Order for costs against the Government (County Government of Nyamira) in the sum of Shs.1,008,638/= was served upon the said Government on 18/1/2024.
 4. That the Ex-Parte Applicant is the Judgment Creditor in the Decree issued in Nyamira E.L.C Case No.58 of 2021.
 8. That the Decree is dated 5/6/2023 and Certificate of Costs in the sum of Shs.932,485/= was taxed on 24/7/2023 and issued on 28/7/2023.
 10. That the decretal amount of shs.6,353,500/= together with cost and interest both from date of filing of suit has remained unpaid to date.
 11. That the amount of the debt now stands at Shs.12,547,277/= inclusive of interest at the filing of this application and still continues to attract interest.
 12. That the 1st, 3rd and 4th Respondents are the officers mandated and/or authorized to execute and implement the policies of the 2nd Respondent.
 13. That the 1st, 3rd and 4th Respondents are obliged to pay up the debt.
 14. That the Respondents have failed or neglected to pay the debt and they offend Article 47(2) of the constitution 2010 and other relevant laws.
3. In the verifying affidavit, the Ex Parte Applicant reiterated that judgment was delivered in his favour on 5th June 2023 and against the 2nd Respondent for KShs 6,353,500 together with costs and interest. That costs were taxed on 24th July 2023 at KShs 932,485 and that as of the date of affidavit, the outstanding amount stood at Shs.12,547,277.
4. On 4th March 2025, in the presence of counsels for both parties, directions and timelines for filing of a response to the Notice of Motion were given. The Respondent did not file any response. Instead, when the application came up for inter parte hearing on 13th May 2025, counsel for the Respondents sought time to file written submissions.
5. Subsequently, parties filed and exchanged written submissions. The Ex Parte Applicant filed submissions dated 25th March 2025. He argued that as of 13th May 2025, the amount due from the Respondents was KShs 14,426,250 comprised of the principal sum of KShs 6,353,500, taxed costs of KShs 932,485 and KShs 7,140,265 being interest. He further contended that the Respondents had not filed any response to the application and that consequently, the application is unopposed. He urged the Court to grant an order of mandamus to compel the Respondents to pay the sum of KShs 14,426,250 failing which they be committed to civil jail.



6. The Respondents filed submissions dated 13th May 2025. Curiously, they argued that they should be given an opportunity to file their response in pursuit of the right to be heard. They relied on the case of *Andrew Nthiwa Mutuku v Court of Appeal & 3 others* [2021] eKLR and concluded their submissions as follows:

In those premise (sic), Your Lordship, we urge this Court to the Respondents leave to file and serve their Response in the interest of justice, and the Application dated 9th June, 2023 without merit and dismiss the appeal in its entirety with costs to the Appellant.

7. The position taken by the Respondents is baffling since nobody stopped them from filing a response. Their counsel never sought any additional time for that purpose. Further, what is before this Court for determination is neither an application dated 9th June 2023 nor an appeal.
8. I have carefully considered the application, the pleadings, affidavits, and submissions. The only issue that arises for determination is whether the reliefs sought should issue.
9. The Ex Parte Applicant is seeking an order of mandamus. The guiding principles in such an application were restated by the Court of Appeal in *Buffet Park Ltd v Republic & 2 others* [2019] eKLR as follows:

... the principles that guide the High Court in the exercise of judicial review Jurisdiction are as were aptly restated by this Court in *Kingdom Kenya 01 Limited versus the District Land Registrar, Narok & Fifteen (15) others* [2018] eKLR as follows:-

“Judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. See the *Commissioner of Lands –versus Hotel Kunste* [1997] eKLR. The purpose of JR is to ensure that the individual is given fair treatment by the Authority to which he has been subjected. JR as a remedy is available, in appropriate cases, even where there are alternative legal or equitable remedies. See *David Mugo t/a Manyatta Auctioneers –versus Republic – Civil Appeal No. 265 of 1997 (UR)*. JR being a discretionary remedy, it demands that whoever seeks to avail itself/himself/herself of this remedy has to act with candour or virtue and temperance. See *Zakayo Michubu Kibwange –versus Lydia Kagina Japheth and 2 others* [2014] eKLR. JR as a remedy may also be invoked where the issues in controversy as between the parties are contested. See *Zakayo Michubu Kibwange case (Supra)*. The remedy of judicial review is only available where an issue of a public law nature is involved. Further, that a person seeking mandamus must show that he has a legal right to the performance of a legal duty by a party against whom the mandamus order is sought or alternatively, that he has a substantially personal interest and that the duty must not be permissive but imperative and must be of a public nature rather than of a private nature. See *Prabhulal Gulabuland Shah –versus Attorney General & Erastus Gathoni Mlano, Civil Appeal No. 24 of (1985) (UR)*. Following the promulgation of the Kenya Constitution, 2010, judicial review is available as a relief to a claim of violation of the rights and fundamental freedoms guaranteed in *the Constitution* of Kenya 2010. See *Child Welfare Society of Kenya –versus- Republic and 2 others, Exparte Child in Family Forces Kenya* [2017] eKLR.”

10. The scope and efficacy of an order of mandamus were discussed by the Court of Appeal in *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR as follows:

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. ...

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.

11. The Respondents have not filed any affidavit to contest the Ex Parte Applicant's assertions. Ex Parte Applicant has annexed a copy of a decree issued on 13th July 2023 in Nyamira ELCC No. 58 of 2021 pursuant to judgment delivered in the said case on 5th June 2021. In the decree, judgment was entered for the Ex Parte Applicant herein against the 2nd Respondent herein for KShs 6,353,500 plus "costs of the suit together with interests on both at court rates with effect from the date of filing this suit to payment in full."
12. Further, the Ex Parte Applicant has annexed a copy of a Certificate of Costs issued on 28th July 2023 stating that Party and Party Bill of Costs dated 6th July 2023 was taxed on 24th July 2023 in the sum of KShs 932,485. Additionally, the Ex Parte Applicant annexed copies of order against government in respect of the principal sum and interest thereon and in respect of taxed costs and interest thereon. Both were issued by the Deputy Registrar of this Court on 18th January 2024.
13. The Respondents have neither disputed the existence of the decree nor the Ex Parte Applicant's contention that they are yet to settle the sums awarded. Settlement of a decree issued by a court of law is both a legal and a public duty. In the case of the decree in Nyamira ELCC No. 58 of 2021, that obligation falls squarely on the Respondents.
14. In view of the foregoing, the Ex Parte Applicant has made a case for the granting of an order of mandamus. Since the aspect of interest due requires some calculation and verification, I will limit myself to the wording of the decree and the certificate of costs. Interest due will have to be calculated and certified by the Deputy Registrar of the Court.
15. I therefore make the following orders:
 - a. A Judicial Review order of mandamus is hereby issued against the 1st, 3rd and 4th Respondents herein compelling them to satisfy and or settle the decree issued on 13th July 2023 in Nyamira ELCC No. 58 of 2021 requiring payment to the Ex Parte Applicant of KShs 6,353,500 (Kenya Shillings Six Million Three Hundred Fifty Three Thousand Five Hundred) together with interest at court rates with effect from the date of filing the said suit until payment in full.
 - b. A Judicial Review order of mandamus is hereby issued against the 1st, 3rd and 4th Respondents herein compelling them to satisfy and or settle the certificate of costs issued on 28th July 2023 in Nyamira ELCC No. 58 of 2021 requiring payment to the Ex Parte Applicant of KShs 932,485 (Kenya Shillings Six Nine Hundred Thirty Two Thousand Four Hundred Eighty Five). The costs shall be paid with interest at court rates until payment in full, as specified in the decree.
 - c. The exact interest due on the sums stated in the decree and the certificate of costs to be calculated and certified by the Deputy Registrar of this Court. The calculation and certification to be undertaken in Nyamira ELCC No. 58 of 2021.



- d. The Ex Parte Applicant shall have costs of these judicial review proceedings. The said costs to be borne by the Respondents jointly and severally.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 23RD DAY OF SEPTEMBER 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No appearance by the Ex Parte Applicant

Ms Moeche for the Respondents

Court Assistant: B Kerubo

