



**Republic v Chief Officer Finance County Government of Samburu & another;  
Mucheru (Exparte Applicant) (Environment and Land Judicial Review  
Case E001 of 2022) [2024] KEELC 4743 (KLR) (3 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4743 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2022**

**YM ANGIMA, J**

**JUNE 3, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF  
SAMBURU ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF SAMBURU ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MARGARET WAMBUI MUCHERU ..... EXPARTE APPLICANT**

**RULING**

**A. Introduction and Background**

1. The material on record shows that in 1996 the ex-parte Applicant sued the 2<sup>nd</sup> Respondent in Nakuru HCCC No. 57 of 2016 (later Nyahururu CM ELC No. 311 of 2018) and obtained judgment against it in the sum of Kshs. 8,241,156/= together with costs and interest.
2. The record further shows that when the 2<sup>nd</sup> Respondent failed to settle the decretal amount, the ex-parte Applicant (hereafter the Applicant) filed the instant application for judicial review seeking an order of mandamus to compel the Respondents to settle the decretal amount together with costs and interest which had accumulated to Kshs. 15,203,020/= by 26.04.2022.
3. By a judgment dated December 15, 2022 this court allowed the said application for judicial review and granted an order of mandamus commanding the Respondents to settle the decretal amount together with costs of the application for judicial review. It would appear that the Respondents did not comply with the said order hence the Applicant’s instant application.



## **B. The Ex-parte Applicant's Application**

4. Vide a notice of motion dated February 23, 2023 based upon Sections 3, 3A, 63(c) of the [Civil Procedure Act](#) (Cap. 21) and Order 22 rule 31 and Order 51 Rule 1 of the [Civil Procedure Rules](#) and Section 5 of the [Judicature Act](#) and all enabling provisions of the law, the Applicant sought the following orders:
  - a. Spent;
  - b. That the court be pleased to issue a notice to the 1<sup>st</sup> Respondent to show cause why he should not be committed to prison for failure to comply with the judgment of this court made on 15<sup>th</sup> December, 2022.
  - c. That this honourable court be pleased to order the arrest of the 1<sup>st</sup> Respondent and committal to civil jail for such period as the court may deem fit.
  - d. That the costs of this application be borne by the Respondents.
5. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Applicant on February 23, 2023 together with the exhibits thereto. It was contended that despite issuance and service of the order of mandamus requiring the Respondents to settle the decretal amount they had refused to comply therewith. It was further contended that the continued disobedience of the said order was undermining the dignity of the court hence the orders sought should be granted.

## **C. The Respondents' Response**

6. The Respondents did not file a replying affidavit in response to the application to dispute the factual foundation of the application. So far as the record shows there is no explanation by the Respondents as to why they have not complied with the order of mandamus.
7. The court has noted that the Respondents' advocates filed grounds of opposition dated April 13, 2023 in response to the application. The court has noted that most of the matters raised therein are factual matters which ought to have been raised in an affidavit. It is not permissible for the Respondents' advocates to introduce evidence from the bar by claiming, inter alia, that the Respondents have no funds with which to settle the decretal amount or that they have not been given adequate time to effect payment.

## **D. Issue for Determination**

8. The court has considered the Applicant's notice of motion dated 23.02.2023 as well as the material on record. The court is of the opinion that the main question for determination is whether the Applicant has made out a case for the grant of the orders sought in the application.

## **E. Analysis and Determination**

9. At the hearing hereof, the Respondents' advocate requested for time to file written submissions whereas the Applicant relied entirely upon the grounds set out in the notice of motion and the supporting affidavit. However, the Respondents' submissions were not on record by the time of preparation of the ruling. There is no contest that the Applicant has a decree against the 2<sup>nd</sup> Respondent which has not been satisfied. There is no contest that there is no pending appeal against the said decree. There is also no dispute that there is in force an order of mandamus directing the Respondents to settle the decretal amount.



10. There is no dispute that the 1<sup>st</sup> Respondent as Chief Officer – Finance is the accounting officer of the 2<sup>nd</sup> Respondent hence responsible for facilitating the payment of the decretal amount. It was contended in the grounds of opposition that the County Assembly of the 2<sup>nd</sup> Respondent had not “provided any monies” for settlement of the decretal amount. The court is not aware of any such obligation on the part of a County Assembly which is the legislative and oversight arm of a County Government. So far as the court is aware, the role of the County Assembly is limited to approval of budgets submitted by the county executive under Section 8(1)(c) of the County Governments Act, 2012. There is no evidence on record to demonstrate that the county executive budgeted for the Applicant’s claim and that the County Assembly refused to approve that budget item.
11. The court is also unable to agree with the Respondents’ claim that they were not given adequate time to settle the decretal amount. The material on record shows that the decree in favour of the Applicant was passed on May 26, 2016 which is more than 7 years ago. There is no evidence on record to demonstrate what steps, if any, the Respondents have taken towards settlement of the decretal amount. There is also no indication on record as to how much more time is required to enable the Respondents settle the decretal amount. As a result, the court finds no good reason or explanation by the Respondents on why they have not complied with the order of mandamus. The court is consequently inclined to allow the application.

#### **F. Conclusion and Disposal Order**

12. The upshot of the foregoing is that the court finds merit in the Applicant’s notice of motion dated February 23, 2023. As a result, the court makes the following orders for disposal thereof:
  - a. A Notice to Show Cause be and is hereby issued for the 1<sup>st</sup> Respondent to attend court personally and show cause why he should not be committed to prison for failure to comply with the order of mandamus made on December 15, 2022.
  - b. The matter is stood over to July 25, 2023 for Notice to Show Cause when the issue of committal shall be considered.
  - c. The Applicant is awarded costs of the application.

Orders accordingly.

**RULING DATED AND SIGNED AT NYAHURURU THIS 3RD DAY OF JULY, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

**In the presence of:**

**Ms. Wangare for the Applicant**

**N/A for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents**

**C/A - Carol**

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**Y. M. ANGIMA**

**JUDGE**

