



Republic v County Executive Member Finance and Economic Planning, County Government of Bungoma & another; Ahmed (Exparte Applicant) (Miscellaneous Application E002 of 2024) [2024] KEELC 5116 (KLR) (4 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5116 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E002 OF 2024
EC CHERONO, J
JULY 4, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY EXECUTIVE MEMBER FINANCE AND ECONOMIC
PLANNING, COUNTY GOVERNMENT OF BUNGOMA 1ST RESPONDENT
THE CHIEF OFFICER FINANCE AND ECONOMIC PLANNING, COUNTY
GOVERNMENT OF BUNGOMA 2ND RESPONDENT**

AND

HUSSEIN AHMED EXPARTE APPLICANT

RULING

1. By a Notice of Motion dated 21st February 2024, the Ex-parte Applicant seeks the following orders;
 - a. This Honourable Court be pleased to issue Judicial Review Orders of Mandamus directed to the County Government of Bungoma through the Respondents herein to satisfy the Decree in Bungoma Chief Magistrate’s Court ELC Case NO. 22 of 2019 together with costs and interests accruing therefrom.
 - b. Costs of this application be
2. The application is premised on six grounds shown on the face of the application as follows;
 - i. To date, there remains unsatisfied decree in Bungoma Chief Magistrate’s Court ELC Case NO. 22 of 2019 in favour of the Ex-parte applicant against the County Government of Bungoma



- ii. Several demands made to the County Government of Bungoma to satisfy the decree has borne no fruit as the demands have not attracted any action towards the satisfaction of the decree.
 - iii. The refusal by the County Government of Bungoma to satisfy the decree is not only illegal but unlawful too and is calculated to defeat justice and make it wishful for the Ex-parte applicant to realize fruits of its judgment.
 - iv. Since there is no stay of execution, appeal and or review application pending seeking to assail the judgment and decree thereof and since the County Government of Bungoma has refused, failed and or neglected to settle the decree, the instant application becomes necessary.
 - v. It is in the interest of justice and fidelity to the rule of law that the orders sought be granted.
 - vi. No prejudice whatsoever will be occasioned to the Respondents herein if the orders sought in the instant application are granted but disallowing the same will gravely prejudice the Ex-parte applicant as he will be forced to baby sit the decree obtained in Bungoma Chief Magistrate's Court Environment and Land Case NO. 22 of 2019 which will remain unsatisfied and the Applicant will be denied the fruits of its judgment.
3. The application is supported by the affidavit of the Ex-parte applicant sworn on even date where he deposed as follows;
1. That I know for a fact that on the 6th March 20219, I impleaded the County Government of Bungoma for the reliefs set out in the plaint in Bungoma Chief Magistrate's Court Environment and Land Case NO. 22 of 2019(see annexure HA-1 copies of the pleadings)
 2. That I further know for a fact that thereafter, the County Government of Bungoma was served with Summons together with the plaint wherein the entered appearance, filed defence and defended the suit to its logical conclusion. (see annexure HA-2 copy of the Memorandum of appearance and defence).
 3. That I further know for a fact that as a consequence of hearing both parties, the suit in 2 above was adjudged in my favour and I obtained a decree. (see annexure HA-3 copy of the Decree).
 4. That I further know for a fact that thereafter, I obtained certificate of order against Government and I served it on the Respondent herein. (see annexure HA-4 copy of the certificate of order against Government).
 5. That I further know for a fact that thereafter, I have through several letters addressed to the Respondents herein prompted them to settle the decree but they have refused and or neglected to do so (see annexure HA-5 copy of the letter dated 21st March 2022 together with the served decree and certificate of order against Government.)
 6. That I further know for a fact that on 4th April, 2022 the County Government of Bungoma through the County Attorney wrote to my advocate requesting for his bank details and IFMIS number to make the payments and despite being given the details they wanted, they have to date not satisfied the decree. (see annexure HA-6(a) & (b) copy of the letter dated 4th April 2022 and response thereto dated 25th April 2022).
 7. That to date, the decree remains unsatisfied this, to my prejudice despite several demands and thus the instant application is necessary as there is no other remedy available in law to compel the payment of the decretal sum in Bungoma Chief Magistrate's Court Environment and Land Case NO.22 of 2019 by the Respondent save for Judicial Review order of Mandamus.



8. That I know for a fact that I have obtained leave to file the instant Motion pursuant to the orders issued on 21st February 2024. (see annexure HA-7 copy of the order granting leave to file substantive Motion).
9. That I thus depose to this in support of the correctness of the facts as set out in the statutory statement of facts and in support of the application for judicial Review orders of mandamus.

Legal analysis and decision.

4. I have considered the Ex-parte applicant's pleadings as well as the principles set out by the Court of Appeal on the nature of the remedy of mandamus in its decision in Republic v Kenya National Examination Council ex-parte Githenji & 9 Others, (1997) KLR, where the Court held thus;

"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."

5. At paragraph 90 headed 'the mandate 'it is stated;

"The order must command no more than the party against whom the application is made 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 has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....."

6. The issues therefore that require to be determined are firstly, whether the Respondents are under a public duty and obligation to satisfy the orders issued in favour of the ex-parte Applicant, and if the answer is in the affirmative, whether the ex-parte applicant is entitled to the relief sought.

7. Section 21 of the *Government Proceedings Act* which is the applicable law 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 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.”

8. 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 the body.
9. As to whether the Respondents herein are 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 not in dispute that in the present application, Judgment was entered in favour of the ex-parte applicant against the Respondents in Bungoma Chief Magistrate’s Court ELC Case NO. 22 of 2019 together with costs and interest accruing therefrom. The ex-parte applicant in this respect annexed copies of the certificates of Order in his favour against Bungoma County Government for the decretal sum of Kshs.485,000/ being special damages plus interest, Kshs. 500,000/ being punitive damages and costs taxed at Kshs.184,715. The ex-parte applicant also annexed copies of demand letters showing that the Respondents even acknowledged receipt and requested to be given the ex-parte applicant’s bank details and IFMIS number to make the payments which have not been heeded to by the Respondents.
10. It is my view that the Respondents have refused and have no plans to pay the decreed amount. In the premises, I find that the ex-parte applicant’s Notice of Motion dated 21st February 2024 is merited and the same is allowed to the extent of the following consequential orders;
 1. An order of Mandamus be and is hereby issued to compel the Respondents to pay the ex-parte Applicant the decretal sum of Kshs. 485,000/being special damages plus interests, Kshs. 500,000/ being punitive damages plus interests and Kshs. 184,715 being taxed costs totalling Kshs. 1,169,715/= awarded in favour of the ex-parte Applicant in Bungoma Chief Magistrate’s court case NO. 22 of 2019.
 2. In addition, the Respondents shall pay the ex-parte Applicant thrown away costs of the Notice of Motion dated 21st February 2024 at Kshs. 30,000/=
11. It is so ordered

READ, DATED AND SIGNED AT BUNGOMA THIS 4TH DAY OF JULY, 2024



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HON. E.C CHERONO

ELC JUDGE

