



**Republic v County Secretary, Kisii County Government & 2 others; Oyugi (Exparte)  
(Judicial Review 1 of 2022) [2023] KEELC 645 (KLR) (8 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 645 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
JUDICIAL REVIEW 1 OF 2022**

**M SILA, J**

**FEBRUARY 8, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, KISII COUNTY GOVERNMENT .... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER FINANCE, KISII COUNTY GOVERNMENT .... 2<sup>ND</sup>  
RESPONDENT**

**KISII COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**DAVID MORANGA OYUGI ..... EXPARTE**

**JUDGMENT**

(Ex parte applicant having sued the County Government of Kisii for compensation for land that the latter acquired; judgment entered for ex parte applicant with County Government ordered to pay money to the ex parte applicant as compensation; County Government not making good the decree; ex parte applicant now seeking order of *Mandamus* to compel payment; no response made to the suit; judgment entered for the ex parte applicant and order of *Mandamus* issued)

1. Through an application dated 18 October 2022, the ex parte applicant sought leave to file suit seeking an order of mandamus to compel the respondents to satisfy the judgment in Kisii ELC Petition No. 9 of 2016, David Moranga Oyugi vs The County Government of Kisii & 4 Others, delivered on 2 February 2022 together with costs amounting to Kshs. 5,605,885/-. Leave was granted on 25 October 2022 and the ex parte applicant directed to file the substantive motion within twenty one (21) days. The substantive motion, dated 9 November 2022, was subsequently filed on 10 November 2022.



2. The case of the ex parte applicant is that he filed the suit Kisii ELC Constitutional Petition No. 9 of 2016 against the County Government of Kisii and four other individuals, and that the suit was heard resulting in a judgment in his favour, delivered on 2 February 2022, for the sum of Kshs. 5,000,000/= . He then had his bill of costs taxed at Kshs. 605,885/- and a Certificate of Costs was issued on 14 June 2022. On 18 August 2022, a Certificate of Order to Government was issued seeking payment of the sum of Kshs. 5,605,885/= and interest at 14%, and the same was served upon the County Government of Kisii. The ex parte applicant has attached copies of the judgment, the certificate of costs, the certificate of order to Government, and an affidavit of service of the certificate of costs and order to Government. There is also a demand letter dated 23 August 2022, served upon the County Government on the same day, demanding payment of the decretal sum. The ex parte applicant avers that despite all the above, the respondents have failed to pay the said monies.
3. Nothing was filed to oppose the motion and indeed, when the matter came up for hearing on 26 January 2023, Mr. Kaburi, counsel for the respondents, stated from the bar that the application is not opposed.
4. I have gone through the application. I have seen the judgment in Kisii ELC Constitutional Petition No. 9 of 2016. The case of the petitioner in that suit was that he owned the Plot No. 51B in Keumbu market which he had developed. He complained that the County Government of Kisii had forcefully taken it over without any form of compensation. The court, in the judgment delivered on 2 February 2022, found the County Government liable to compensate the ex parte applicant the sum of Kshs. 5,000,000/= as damages. The court also awarded the ex parte applicant the costs of the suit to be shouldered by the 1<sup>st</sup> respondent. I have seen the Certificate of Costs wherein the ex parte applicant's bill was taxed at Kshs. 605,885/=. I have also seen the certificate of order against Government dated 18 August 2022. A demand notice has been issued demanding payment but none has been forthcoming.
5. Given the above, I have no reason not to allow this suit. I allow it. An order of *Mandamus* is hereby issued compelling the respondents jointly and/or severally to make good the payment of the sum of Kshs. 5,605,885/= to the ex parte applicant forthwith. The said sum to attract interest at court rates from the date hereof till settlement in full. I also award the ex parte applicant the costs of this suit the same to attract interest from the date of taxation till payment in full at court rates.
6. Judgment accordingly.

**DATED AND DELIVERED THIS 8 DAY OF FEBRUARY 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

