



Republic v Secretary Kilifi Government & 2 others; Okunda (Exparte Applicant) (Miscellaneous Civil Application 39 of 2022) [2023] KEELC 21488 (KLR) (9 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21488 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS CIVIL APPLICATION 39 OF 2022**

EK MAKORI, J

NOVEMBER 9, 2023

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS AND IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE

RULES 2010

AND

IN THE MATTER OF: THE GOVERNMENT PROCEEDING ACT CAP 40 OF THE LAWS OF KENYA

AND

IN THE MATTER OF: THE EXECUTION OF A DECREE OF KSHS 1,450,587/-

AND

IN THE MATTER OF: ARTICLES 1(1) (2), (2(1), 10 (1) (B), 20(1), 2(1), 23(1), 27(1), 28, 73, 156 AND 165 OF THE CONSTITUTION OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

SECRETARY KILIFI GOVERNMENT 1ST RESPONDENT

CHIEF OFFICER FINANCE 2ND RESPONDENT

COUNTY GOVERNMENT OF KILIFI 3RD RESPONDENT

AND

GEORGE ENOCK OKUNDA EXPARTE APPLICANT



RULING

1. The motion dated August 26, 2022 is brought under order 53 rule 1, 2, and 3 of the Civil Procedure Rules significantly seeking leave to file for an order of mandamus directed and compelling the respondents, the Chief Finance Officer to pay the applicant the sum of Kshs 1,450,587/- being the decretal sum decreed in Malindi Chief Magistrate's Court Civil Suit No. 446 of 2010. Costs be provided.
2. The applicant contended that all measures to execute the decree have borne no fruits hence the current motion. The applicant cites the case of Republic v The Principal Secretary State Department, Ministry of Interior and Coordinate Ex parte Applicant Geoffrey Rono (JR No. E6 of 2021 where leave was sought to commence Judicial Review proceedings for an order of mandamus against the Principal Secretary in the Ministry of Interior to settle the decretal sum in Nakuru ELRC No. 403 of 2014. The application was allowed.
3. The respondent on the other hand averred that the current motion is misconceived and offends the provisions of section 21 of the Government Proceedings Act, order 29 of the Civil Procedure Rules. It is an abuse of the court process and no reasons have been advanced to warrant leave being granted.
4. The issue for determination is whether leave should be issued for the ex-parte applicant to commence proceeding for orders of mandamus
5. The applicant in this matter has explained all the steps taken to pursue the claim for settlement in Malindi CMCC No. 446 of 2010 with the judgment in that case having been entered in 2013. This is extensively covered in the statement of claim and averments contained in the verifying affidavit from paragraphs 2 to 10. At one point, I can see negotiations to settle at one point, which bore no fruits.
6. In *Republic v The Principal Secretary State Department, Ministry of Interior and Coordinate Ex parte Applicant Geoffrey Rono* (JR No. E6 of 2021 Wasilwa J. granted leave to commence Judicial Review proceeding in an employment and labour relations matter for the ex-parte applicant to seek orders of mandamus to realize fruits of judgment in Nakuru ELRC No. 403 of 2014.
7. This is also an appropriate matter to grant leave to commence proceedings for orders of mandamus for the ex-parte applicant to get the fruits of the judgment in Malindi CMCC No. 446 of 2010. The opposition by the respondents was not supported by any material facts.
8. Motion dated 20th August 2022 is hereby allowed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 9TH DAY OF NOVEMBER 2023.

E. K. MAKORI

JUDGE

In the presence of:

Ms Kenyakanga for the Applicants

Court Clerk: Happy

In the absence of:

Mr. Gakuo for the Respondent.

