



**Republic v Chief Officer in Charge of Finance County Government of Kericho & 2 others;
Omari Kefa p/a E.M Orina Advocates (Exparte Applicant) (Environment and Land Case Judicial
Review Application E004 of 2024) [2025] KEELC 3799 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3799 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E004 OF 2024**

LA OMOLLO, J

MAY 12, 2025

**IN THE MATTER OF AN APPLICATION ON
JUDICIAL REVIEW FOR ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF THE BILL OF RIGHTS CHAPTER
4 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF THE CIVIL PROCEDURE ACT AND RULES

AND

IN THE MATTER OF THE LAW REFORM ACT CAP 26 SECTIONS 8 AND 9

AND

THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF RULING IN THE KERICHO ENVIRONMENT AND
LAND COURT MISCELLANEOUS APPLICATION NO. E004 OF 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF OFFICER IN CHARGE OF FINANCE COUNTY GOVERNMENT OF
KERICHO 1ST RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF KERICHO 2ND
RESPONDENT**



COUNTY GOVERNMENT OF KERICHO 3RD RESPONDENT

AND

OMARI KEFA P/A E.M ORINA ADVOCATES EXPARTE APPLICANT

JUDGMENT

Introduction.

1. Pursuant to the leave of Court granted on 29th July, 2024, the Ex parte Applicant filed the Notice of Motion application dated 31st July, 2024.
2. The said application is expressed to be brought under Order 53 Rule 3(1) of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act.
3. The application seeks the following orders;
 - a. That this Honourable Court be pleased to issue an order of mandamus compelling the Respondent (sic) to pay the costs and interests as awarded by the Court as per the Certificate of Costs dated 7th May, 2024 and Certificate of Order of costs against the government dated 24th May, 2024 in Kericho Environment and Land Court Miscellaneous Application No. E004 of 2024, Omari Kefa P/A E.M. Orina Advocates vs the County Government of Kericho.
 - b. That the Respondents be compelled to comply by satisfying the Certificate of Costs on the amount cited hereinabove within (14) days from the date of service of the order.
 - c. That in default of (2) above, notice to Show Cause do issue against the persons occupying the offices of Respondents for them to show cause why they should not be cited for contempt of Court and Committal to Civil jail.
 - d. That the costs of the application be provided for.
4. The application is based on the grounds on its face and the affidavit of one Omari Kefa sworn on 24th July, 2024.

Factual Background.

5. The Ex parte Applicant filed the Chamber Summons application dated 24th July, 2024 seeking leave to commence judicial review proceedings. The said application was allowed on 29th July, 2024 and the Ex parte Applicant directed to file the substantive motion within thirty days.
6. Pursuant to the said leave, the Ex parte Applicant filed the Notice of Motion application dated 31st July, 2024. The application was mentioned for directions on 18th September, 2024 when the Ex parte Applicant was directed to serve the application upon the Respondents.
7. The exparte Applicant filed two affidavits of service sworn by one Benard Obiero. The affidavit of service sworn on 9th August, 2024 is with respect to the substantive motion while the affidavit of service sworn on 9th October, 2024 is with respect to service of the hearing notice for 16th October, 2024.

In the affidavit of service sworn on 9th August, 2024, Benard Obiero deposes that on 7th August, 2024, he served the Respondents with among other documents, the Notice of Motion application dated 31st July, 2024.



He deposes that he served the said documents upon one Lenny Kipyegon, the acting County Secretary who accepted service but declined to sign his copies of the documents.

In the affidavit of service sworn on 9th October, 2024, Benard Obiero deposes that on 9th October, 2024 he served the Respondents with a hearing notice dated 20th September, 2024.

He served the hearing notice upon the County Attorney one Mr Gedion Mutai who accepted service and wrote on the face of his copy "Received 9th October, 2024"

8. The application came up for hearing on 16th October, 2024 and the Court was satisfied with the said service and it gave directions that the application be heard by way of written submissions.
9. On 19th November, 2024 it was mentioned to confirm filing of submissions and then reserved for judgement.

The Ex Parte Applicant's Contention.

10. The affidavit in support of the application is sworn by one Omari Kefa; the Ex parte Applicant.
11. He contends that the 3rd Respondent retained the services of their firm, E. M Orina Advocates, to represent it in Kericho Environment and Land Court Case No. 25 of 2017.
12. He also contends that they represented the 3rd Respondent in the said proceedings wherein the suit against it was withdrawn. He adds that the 3rd Respondent refused to pay for the legal services rendered.
13. He further contends that this necessitated the filing of his Advocates-Client bill of costs in Kericho ELC Misc. Application No. E004 of 2024 and adds that the bill of costs was taxed and the Court issued a Certificate of Costs dated 7th May, 2024 for Kshs. 1,553,612/=.
14. It is his contention that a Certificate of order for costs against the Government was also issued and adds that it is dated 24th May, 2024.
15. It is also his contention that the Respondents have refused to pay the said costs and that the said failure to pay infringes on his rights and unless the orders sought are granted, he will continue to suffer loss and damage.
16. It is further his contention that he is aware that no attachment in execution of a decree can issue against the government and/or a government institution.
17. He contends that after the Court delivered its ruling, he reached out to the Respondents to have the Certificate of Costs satisfied but they became evasive and non-compliant.
18. He also contends that he has been deprived of his right of equal treatment and protection of the law contrary to the provisions of Article 27 of *the Constitution* of Kenya which right the government and in particular the Respondents are joined to uphold, enforce and protect.
19. He further contends that he prays that the Court grants the orders sought so as to vindicate the rule of law and have his rights respected by all and sundry.
20. It is his contention that the Respondents herein will not suffer any prejudice if the orders sought are granted.
21. He ends his deposition by stating that the Respondents acts of continual refusal to satisfy the Certificate of Costs is in violation of his legitimate expectation which requires predictability and



certainty in government dealings with the public. He adds that the protection of legitimate expectation is at the root of the constitutional principle of the rule of law which the Court is enjoined to uphold and protect.

Issues for Determination.

22. The Ex parte Applicant filed his submissions on 14th November, 2024 while the Respondents did not file any submissions.
23. The Ex parte Applicant reiterates that he rendered legal services to the 3rd Respondent in Kericho ELC Case No. 25 of 2017. He adds that the 3rd Respondent did not pay for the said legal services.
24. The Ex parte Applicant also reiterates that he filed Kericho ELC Misc. Application No. E004 of 2024 where his advocates- client bill of costs was taxed and a Certificate of Costs issued.
25. The Ex parte Applicant further reiterates that he was issued with a Certificate of Order against the government dated 24th May, 2024 for Kshs. 1,553,612/=.
26. The Ex parte Applicant relies on Section 21 (1), (3) and (4) of the *Government Proceedings Act*, the judicial decisions of Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR and submits that the failure to satisfy a decree amounts to a failure to perform a statutory obligation which warrants the grant of an order of mandamus.
27. The Ex parte Applicant relies on the judicial decisions of Kenya National Examinations Council Ex parte Gathenji & others Civil Appeal No. 266 of 1996, Republic v Attorney General & another Ex parte James Alfred Koroso [2013] eKLR and urges the Court to compel the Respondents to compensate him for the services rendered.

Analysis and Determination.

28. I have considered the Ex parte Applicant's application and submissions. My view is that the only issue that arises for determination is whether the Ex Parte Applicant's application dated 31st July, 2024 has merit.
29. It is the Ex parte Applicant's contention that he represented the 3rd Respondent in Kericho ELC Case No. 25 of 2017 which matter was subsequently withdrawn.
30. It is also the Ex parte Applicant's contention that the 3rd Respondent refused to pay for the legal services rendered which caused him to file Kericho ELC Misc Application No. E004 of 2024. He states that his Advocate Client bill of costs was taxed at Kshs. 1, 553,612/= and a Certificate of Costs issued.
31. It is further the Ex parte Applicant's contention that he was also issued with a Certificate of Order for Costs dated 24th May, 2024 against the government.
32. The Ex parte Applicant contends that the Respondents have refused to pay the said costs and he therefore prays that the Court issues an order of mandamus to compel them to pay.
33. In the judicial decision of Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR the Court held as follows;

“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.” At paragraph 90 headed “the mandate” it is stated:

“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.”

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 by a statute and where that 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.” (Emphasis mine)

34. In the judicial decision of *Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another* [2018] eKLR the Court set out the following requirements that must be met before the Court issues an order of mandamus;

“29. Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. vs. Canada* (Attorney General), and, was also discussed in *Dragan vs. Canada* (Minister of Citizenship and Immigration). The eight factors that must be present for the writ to issue are:-

- (i) There must be a public legal duty to act;
- (ii) The duty must be owed to the Applicants;
- (iii) There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand, unless there was outright refusal; and
 - iii. An express refusal, or an implied refusal through unreasonable delay;
- (iv) No other adequate remedy is available to the Applicants;
- (v) The Order sought must be of some practical value or effect;



- (vi) There is no equitable bar to the relief sought;
- (vii) On a balance of convenience, mandamus should lie.” (Emphasis mine)

35. Section 21 of the [Government Proceedings Act](#) 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 person 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.”

36. In the judicial decision of Republic (sic) V Permanent Secretary, Ministry Of State For Provincial Administration And Internal Security Exparte Fredrick Manoah Egunza[2012] eKLR the Court held that execution proceedings against the government under the [Government Proceedings Act](#) can only be



commenced against the Accounting Officer of the said government as that is the officer who is under a statutory duty to satisfy a judgement made by the Court. The Court also held as follows;

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the [Government Proceedings Act](#).

The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the [Government Proceedings Act](#) (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the Court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the Court after expiration of 21 days after entry of judgment.

Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” (Emphasis mine)

37. In the judicial decision of Republic v Attorney General Ex partes Miriam Wairimu Wambugu & another [2021] eKLR the Court held as follows;

“It is not disputed in the present application that judgment was entered in favour of the ex parte Applicants in HCCC No. 661 of 2007 as against the Respondent. The ex parte Applicant in this respect annexed copies of the Certificates of Order Against the Government issued in her favour against the 1st Respondent, for the decretal sum of Kshs 40,613,835.20= inclusive of interest awarded until 16th May 2019, and costs taxed at Kshs 957,720=. The ex parte Applicants also brought evidence to show that they made demands and requests for payment which have not been heeded to by the Respondent.

13. There is thus an implied refusal on the part of the Respondent to pay the demanded sums.” (Emphasis mine)

38. The Ex parte Applicant has attached to his affidavit in support of the application a Copy of Certificate of Costs dated 7th May, 2024. It was issued in Kericho ELC Misc. Application No. E004 of 2024 Omari Kefa P/A E. M Orina Advocates LLP versus Kibet A. Cheruiyot & County Government of Kericho being sued as successor to Kipkelion Town Council. It states that costs were taxed at Kshs. 1,553,612/= on 23rd April, 2024 as against the Respondents.



39. The Ex parte Applicant has also attached a copy of a Certificate of Order for Costs against the Government issued in Kericho ELC Misc. Application No. E004 of 2024 which certifies the costs payable by the Respondents at Kshs. 1,553,612/=.
40. The Ex parte Applicant has attached a copy of a letter dated 25th June, 2024 addressed to the County Attorney, County Government of Kericho. The letter informs the County Attorney that a ruling had been delivered on 23rd April, 2024 and costs taxed at Kshs. 1,553,612/=. The letter requests for payment within seven days failure to which execution proceedings will commence.
41. The letter states that it has attachments which are copies of the Certificate of Costs and Certificate of order for costs against the government.
42. It is evident from the face of the said letter that it was signed and received on 9th July, 2024. The Ex parte Applicant has therefore demonstrated that he served the said Certificate of Costs and the Certificate of Order for Costs against the government upon the Respondents.
43. The Ex parte Applicant contends that despite service, the Respondents have failed to pay the said sum.
44. It is important to note that under prayers 2 and 3 of the Notice of Motion application dated 31st July, 2024, the Ex parte Applicant seeks that the Respondents be compelled to satisfy the Certificate of Costs within fourteen days and in default, a Notice to Show Cause be issued against the persons occupying the offices of the Respondents to show cause why they should not be cited for contempt and be committed to civil jail.
45. In the judicial decision of Republic v Attorney General Ex partes Miriam Wairimu Wambugu & another (supra) the Court held as follows;

“...However, it is notable in this respect as regards the prayer for issue of a Notice to Show Cause against the Respondent to show cause why he should not be cited for contempt of Court, the same is premature as the ex parte Applicants have not shown evidence of service and disobedience of this Court’s order, and resultant contempt of Court proceedings.”
46. In the above cited judicial decision, the Court held that the prayer for issuance of a Notice to Show Cause against the Respondent to show cause why he should not be cited for contempt of Court was premature as there was no evidence of service and disobedience of the Court order. Similarly, in the present matter, I find that the prayer for issuance of a Notice to Show cause is premature as there is no evidence of service of the court order, disobedience of the court order and contempt proceedings resulting therefrom.

Disposition.

47. Taking the foregoing into consideration, the Ex parte Applicant’s application dated 31st July, 2024 partially succeeds and I order as follows:
 - a. An order of mandamus is hereby issued compelling the Respondents to pay the Ex parte Applicant a sum of Kshs. 1,553,612/= being the certified costs awarded to the Ex parte Applicant in Kericho ELC Misc Application No. E004 of 2024 together with interest from 23rd April, 2024, being the date of taxation, until payment in full.
 - b. The Ex parte Applicant shall have costs of this application.
48. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 12TH DAY OF MAY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Okok for the Ex parte Applicant.

No appearance for the 1st Respondent.

No appearance for the 2nd Respondent.

No appearance for the 3rd Respondent.

Court Assistant; Mr. Joseph Makori.

