



Republic v Cabinet Secretary, Ministry Of Information, Communication and Technology & another; Ondiek (Exparte) (Judicial Review Application E009 of 2023) [2023] KEHC 17578 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E009 OF 2023**

**RE ABURILI, J
MAY 18, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATION AND TECHNOLOGY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

MAURICE OCHIENG ONDIEK EXPARTE

RULING

1. The Exparte Applicant herein is Maurice Ochieng Ondiek. He seeks, by his application dated January 26, 2022 leave of this court to apply for Judicial Review Order of *Mandamus* to compel the 1st Respondent Cabinet Secretary, Ministry of ICT to satisfy judgment and decree and certificate of order against the Government entered in Nyando CMCC No 334 of 2013 all totalling to Kshs 140,850 and costs of Kshs 97,720 plus interest at 14% p.a from date of Judgment in full.
2. He also prays for costs of the application. He has set out grounds upon which the application is grounded and the history of the matter as supported by the affidavit sworn by himself on January 26, 2022.
3. He deposes in support that he was involved in a Road Traffic accident on May 13, 2012 involving Motor Vehicle Registration No GKA 742G seconded to the Ministry of ICT upon which he filed suit vide Nyando PMCC No 335 of 2013 for general damages for the injuries that he sustained.



4. That the 2nd Respondent, Attorney General entered an appearance and defended the suit against the 1st Respondent and on February 2, 2018, Judgment was entered for the Exparte Applicant in the sum of Kshs 120,000 as general damages, Kshs 6,500 special damages, costs and interest on full liability.
5. That a certificate of order for costs against the Government dated December 17, 2018 was issued and served on February 13, 2019 upon the Attorney General.
6. That since then, a decree has not been settled and no stay or appeal is pending and that despite several demands made as per the annexed correspondence, no settlement of decree is forthcoming.
7. The Exparte Applicant has annexed copies of judgment, decree, certificate of order for costs against the Government, notice of intention to sue the Attorney General, Memorandum of Appearance, Defence filed, affidavit of service of order and statement of facts.
8. The 2nd Respondent through litigation counsel Ms Manyanne Omondi submitted that they had filed grounds of opposition which regrettably, are not on record.
9. The application was argued orally. The Exparte Applicant's counsel reiterated the grounds and supporting affidavit.
10. In response, the litigation counsel submitted that the application is an afterthought as judgment was rendered in 2018 and that the claim for mandamus is statute barred as it is filed six (6) months after the judgment. She urged the court to dismiss the application.
11. I have considered the application dated January 26, 2022 but filed in court on February 27, 2023. The issue is whether the orders sought are available to the Exparte Applicant. I will commence with the opposition to the application on account that it is statute barred pursuant to Section 9(3) of the [Law Reform Act](#) and that it is an afterthought.
12. Section 9(3) of the [Law Reform Act](#) Cap 26 Laws of Kenya provides that:

“In the case of an application for an order of *certiorari* to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six (6) months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law, and where that judgment, decree, order, conviction or other proceedings is subject to appeal and a time is limited by law for the bringing of the appeal, the court or Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
13. From the above cited provision of the law, it is clear that the limitation period referred to is in respect of *certiorari* and not *mandamus* and prohibition as contained in Part VI of the [Law Reform Act](#).
14. Accordingly, the objection raised by the Respondent is devoid of any substance and is hereby overruled and dismissed.
15. On to the merits of the application for leave to apply for Judicial Review orders of *Mandamus*, I have perused the application for leave to apply for Judicial Review orders of *Mandamus* and compel settlement of the decree in Nyando SPMCC No 335 of 2013, the Judgment, decree and certificate of order of costs against the Government and the evidence of service of the said documents upon the Attorney General on February 13, 2019. There is no denial that the judgment and decree in issue has not been settled and neither is it appealed against or even stayed or set aside.



16. There is evidence of demand for settlement from 2019 to date but no response has been forthcoming from the Respondent.
17. Mandamus is the only legal avenue for compelling settlement of decrees against the Government and if that does not issue, the judgment and decree rendered in favour of the Exparte Applicant shall be a mere paper judgment and the Exparte Applicant shall be rendered a pious explorer in the judicial process.
18. Section 21(4) of the *Government Proceedings Act* prohibits execution against the Government and therefore the only avenue available is *vide* mandamus which order can only issue with leave obtained from court to apply for performance of a public duty to remedy the defects of justice for the ends of justice to be done, where there is such failure to perform a public duty and in this case, to satisfy decree issued by the court in favour of the Exparte Applicant.
19. As there is no other alternative remedy for the Exparte Applicant to realise the fruits of her lawfully obtained judgment, I am satisfied that the Exparte Applicant deserves leave of this court to apply for mandamus, as the decree issued is still valid.
20. I allow the application dated February 22, 2022 and filed in court on February 27, 2023.
21. I grant leave to the Exparte Applicant herein to apply for Judicial Review orders of mandamus against the 1st Respondent to compel settlement of judgment, decree and certificate of order for costs against the Government in Nyando SPMCC No 334 of 2013.
22. The substantive Notice of Motion to be filed and served in a separate file within the next twenty-one (21) days of the date hereof.
23. Costs of this application shall be in the main Motion once filed.
24. Ruling to be typed and order extracted forthwith.
25. This file is closed.
26. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 18TH DAY OF MAY, 2023

R. E. ABURILI

JUDGE

