



**Republic v Chief Officer Finance Kisii County Government & another; Mande (Exparte)  
(Miscellaneous Application E052 of 2023) [2023] KEHC 20774 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20774 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
MISCELLANEOUS APPLICATION E052 OF 2023  
PN GICHOHI, J  
JULY 20, 2023  
IN THE MATTER OF AN APPLICATION FOR  
JUDICIAL REVIEW IN THE NATURE OF MANDAMUS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHIEF OFFICER FINANCE KISII COUNTY GOVERNMENT ... 1<sup>ST</sup>  
RESPONDENT**

**KISII COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**PETER OGOTI MANDE ..... EXPARTE**

**RULING**

1. The background of this matter is that the applicant's motor vehicle registration number KBH 817 L was illegally impounded on December 9, 2014 by the agents, servants and /or derivatives acting under the authority of the respondents. Consequently, *ex-parte* applicant filed Kisii CMCC No 497 of 2014 being a suit for recovery of general damages and loss of income for the illegal impounding of the said vehicle.
2. The respondents entered appearance and defended suit and after hearing, the court entered judgment in favour of the *ex-parte* applicant on March 1, 2019 for Kshs 200,000/- being general damages, Kshs 40,000/=, costs and interest.
3. A certificate of costs was issued and the respondents were served with both the certificate and decree. Subsequently a certificate of order for costs against the Government was issued and served on the respondents. There was no stay of execution and the respondents did not pay.



4. The *ex-parte* applicant Peter Ogoti Mandi therefore applied to this court *vide* chamber summons (*ex-parte*) dated February 10, 2023 under order 53, order 29 of Civil Procedure Rules, section 8 and 9 of the Law Reform Act and section 21 of the Government Proceedings Act. He obtained leave on March 21, 2023 to apply for:

“An order of *mandamus* compelling the respondents to satisfy the judgment entered in favour of the *ex-parte* applicant in Kisii CMCC No 497 of 2014 certified payable together with costs as stated in the certificate of costs dated August 7, 2020 subject to application of interest at court rates with effect from May 14, 2020 until payment with respect to which a certificate was issued August 7, 2020 to pay the decretal sum of Kenya shillings two hundred and sixty four thousand two hundred and sixty six (Kshs 264, 266/=) due and owing as at May 14, 2015 and costs assessed at one hundred and sixty-nine thousand six hundred and twenty (Kshs 169,620/=) as at May 15, 2019 together with interest on the principal sum of Kshs 240,000/= at court rates being 14% per annum from December 18, 2018 until full payment.”

5. He did file the notice of motion dated March 30, 2023 seeking an order for judicial review in the nature of mandamus to compel the respondents to settle and or satisfy the decretal sum of Kshs 264,266/= as at March 1, 2023 and costs at Kshs 169,620 /= as at May 15, 2020 together with interest at 14 % being the court rate calculated from May 14, 2019 until payment in full.
6. When the respondents were served, the county attorney filed a notice of appointment dated April 3, 2023 for the respondents but did not file any response. Instead, the County Attorney opted to settle and urged that he be served with documents including the decree, KRA Pin and account number to enable the respondents pay saying that had the said documents been supplied, the *ex-parte* applicant would have been paid a long time ago. However, despite being supplied, the respondents did not make any payments and did not attend court for settlement as scheduled prompting this ruling.

### **Determination**

7. I have considered the notice of motion herein and that the application has been basically conceded in that the county attorney sought to settle but failed to do so. One of the principles of granting an order of mandamus is that the court will only issue a mandatory order if it concludes that it is the only decision lawfully open to the public body and that there is no other legal remedy that is available to remedy the infringement of a legal right.
8. Further, there should not be a dispute that the liability against the Respondents has crystalized. In this case, there is no stay of execution or appeal pending in respect of the judgment herein. In light of the foregoing, there is no other remedy available here other than payment of clear and calculable dues to the *ex-parte* applicant as shown above.
9. There is no justification as to why the respondents should not pay the *ex-parte* applicant what is due and owing to him. He should be allowed to enjoy the fruits of his judgment and without any further delay.
10. I am therefore satisfied that the *ex-parte* applicant’s notice of motion dated March 30, 2023 is merited. It is allowed in the following terms:
  1. An order of *mandamus* be and is hereby issued compelling the Chief Officer Finance and the County Government of Kisii to settle and satisfy the decretal sum of Kshs 264,266/= as at



January 3, 2023 and costs at Kshs 169,620 /= as at May 15, 2020 together with interest at 14 % per annum being the court rate from May 14, 2019 until payment in full.

2. Costs of this application and incidentals thereto, are awarded to the *ex-parte* applicant.

**DATED, DELIVERED AND SIGNED AT KISII THIS 20TH DAY OF JULY 2023.**

**PATRICIA GICHOCHI**

**JUDGE**

**In the presence of:**

**Ms Kebungo for the Ex-Parte Applicant**

**N/A for the Respondent.**

**Kevin Isindu Court Assistant**

