



REPUBLIC OF KENYA



**Republic v Executive Committee Member of Finance County Government
of Kirinyaga & another; Kibuchi (Exparte Applicant) (Judicial Review
2 of 2019) [2023] KEHC 20519 (KLR) (20 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
JUDICIAL REVIEW 2 OF 2019
RM MWONGO, J
JULY 20, 2023**

BETWEEN

THE REPUBLIC OF KENYA APPLICANT

AND

**THE EXECUTIVE COMMITTEE MEMBER OF FINANCE COUNTY
GOVERNMENT OF KIRINYAGA 1ST RESPONDENT**

**THE COUNTY SECRETARY KIRINYAGA COUNTY GOVERNMENT 2ND
RESPONDENT**

AND

JOSPHAT GATHEE KIBUCHI EXPARTE APPLICANT

JUDGMENT

1. The *ex parte* Applicant filed this application dated August 14, 2019 seeking an order that this Honourable court be pleased to issue a writ of *mandamus* to compel the Respondents to pay the Applicant the sum of Kshs 4,511,283/= plus interest of 14% per annum with effect from May 28, 2014 until payment in full. According to the Applicant, that sum, was ordered by a court decree in Embu High Court in Civil case No 184 of 2009 Josphat Gathee Kibuchi v The County Government of Kirinyaga, on October 9, 2012 of.
2. The applicant also seeks that costs of these proceedings be borne by the Respondents.
3. The application is premised on the grounds that:
 - a. The exparte Applicant was the Plaintiff in Embu High court Civil Case No 184 of 2009 Josphat Gathee Kibuchi v The County Council of Kirinyaga who were later substituted by the Kirinyaga County Government.



- b. That vide a Consent Judgment dated 9.10.2012, it was decreed that, the Defendant do pay to the Plaintiff/Applicant Kshs 7,000,000/= out of which the Defendant paid Kshs 3,200,000/= leaving a balance of Kshs 3,800,000/= and which sum continued to accrue interest at court rates and the same had accrued to Kshs 4,511,283/= as at 12.2.2014.
 - c. That vide a court order dated 28.5.2014, the County Government of Kirinyaga agreed by consent to liquidate the decretal sum of Kshs 4,511,283/= in monthly instalments of Kshs 800,000/= with effect from 18.8.2014 and on every 18th day of each succeeding month until payment in full and in default execution to issue immediately.
 - d. That on 15.9.2014, the Defendant/Respondent paid Kshs 800,000/= leaving a balance of Kshs 3,711,283/= but has since failed, refused or neglected to make any further payments and the said sum has continued to accrue interests and the total indebtedness stands at Kshs 5,140,150 as at 19.2.2018 when a warrant of arrest was issued against the 2nd Respondent but later vacated.
4. The *ex parte* applicant confirmed his claim through a 13 paragraphs verifying affidavit dated April 24, 2019.
 5. The Respondents filed a lengthy Replying Affidavit dated October 6, 2020. Amongst its main averments are the following:
 - i. That the Consent Judgement dated October 9, 2012 and Consent Order dated May 25, 2014 in Civil Case No184 of 2009: Joseph Gatheo Kibuchi v the County Council of Kirinyaga, which the *ex parte* Applicant is seeking to enforce were both entered against the defunct Kirinyaga County Council.
 - ii. That the *ex parte* Applicant herein filed an Application dated October 16, 2015 seeking to substitute the Kirinyaga County Council with the County Government of Kirinyaga in Civil Case No 184 of 2009: Joseph Gatheo Kibuchi v the County Council of Kirinyaga. The Court allowed the Application on November 9, 2016. The County Government of Kirinyaga was therefore brought in the said matter only for purposes of execution of the consent judgment and the consent order of the Court.
 - iii. That the liabilities arising from the Consent Judgement and Order of the High Court at Embu were solely liabilities of the Defunct Kirinyaga County Council.
 - iv. That the *Transition to Devolved Government Act* No 1 of 2012 established the Transition Authority whose mandate pursuant to Section 7 (2) (c) was to prepare and validate an inventory of all the existing assets and liabilities
 - v. That the residual functions of the Transition Authority were taken over by the Intergovernmental Relations Technical Committee, which had been established under Section 11 of the *Intergovernmental Relations Act*. The Intergovernmental Relations Technical Committee was therefore supposed to finalize the process of auditing, verification and developing criteria for the transfer of liabilities of the defunct local authorities.
 - vi. That although there have been coordinated efforts to finalize the process of auditing, verification of liabilities of the Defunct Local authorities and preparation of the register of liabilities of the defunct local authorities so as to enable seamless transfer of the said liabilities to the County Governments, to date, there is nothing to show that the Intergovernmental Relations Technical Committee has completed the said process.



- vii. That unless and until the process of audit, verification and preparation of the register of liabilities of the defunct local authorities finalized by the Intergovernmental Relations Technical Committee and a mechanism is provided for the transfer of the said liabilities, the County Government lacks the legal basis to commence settlement of the debts and liabilities of the Defunct Municipal Council of Kirinyaga.
 - viii. That in fact the County- Government would be willing to settle the decretal sum provided it receives communication and/or directions from the Intergovernmental Technical Committee or the National Treasury as to the manner of settlement of such liabilities but to date there is no such directions and/or instructions.
 - ix. That in the unlikely event that the decretal sum was partly paid by the previous regime before the process of transfer of liabilities of the Defunct Kirinyaga County Council was finalized then the said payments were unlawfully and or illegally made and this Honourable County should not sanction further illegality.
 - x. That the County Government of Kirinyaga is committed to honour its entire obligation under the law provided due process arising out of the provisions of the Constitution, Transition to Devolved Government Act, Intergovernmental Relations Act and the Government Proceedings Act are fully adhered to.
 - xi. That Section 21 of the Government Proceedings Act mandatorily requires the Applicant to obtain a Certificate of Order against the Government containing particulars of the decree/ order against the Government and serve the same on the County Government.
 - xii. That the *ex parte* Applicant has failed, ignored and/or neglected to obtain and serve the Certificate of Order against the Government that would enable the County Government settle the decretal sum. The County Government is enjoined by the Government Proceedings Act to only settle an amount specified and certified in the Certificate of Order against the Government.
 - xiii. That the the instant Application is incompetent and improperly before this Honourable Court as it was filed outside the 21 days ordered by the Court and without leave for extension of time.
6. In response, the exparte applicant filed a Supplementary Affidavit dated October 19, 2020 with the following major averments:
- 1. That the Respondents cannot deny any liabilities in these proceedings because they took over the Embu High court Civil Case No 184 of 2009 from its predecessor and were duly substituted in accordance with the Law and hence such liabilities became the liabilities of the Respondent and not its predecessors.
 - 2. That the Respondent paid the 1st instalment of Kshs 800,000/= on 15.9.2014 but but failed to honour the consent order citing financial problems and the issue herein is distinguishable from issues sought to be addressed through the Transitional Authority and such verification processes as alleged by the Respondents since this is a court process in which the Respondents actively participated thereon and hence was not subject to the procedures of verifications by the Transition Authority or Intergovernmental Relations Technical Committee.
 - 3. That the averments as to conclusion of processes by the Respondents is an administrative process which has nothing to do with payment of decretal sum herein since the Decree is valid



and in any event, the Respondents could not have possibly paid the 1st instalments of Kshs 800,000/= unless they were duly satisfied of their liability.

7. In 2021, the applicant filed a Further Supplementary Affidavit dated April 13, 2021 with the following major averments:
 - i. That the Respondent herein were duly substituted in place of the defunct Kirinyaga County Council its predecessor and they took over the proceedings in Embu High Court Civil Case No 184 of 2009 even to the point of entering Consent on how to clear the decretal sums herein and even made part payments as alluded to in my supplementary affidavit dated October 19, 2020 and filed in court on October 23, 2020.
 - ii. That the Judgment delivered in Embu High court Civil Case No 184 of 2009 was a Judgment by Consent of the parties whereby it was decreed that, the Respondent shall pay me Kshs 7,000,000/= but since the Respondent had already paid Kshs 700,000/= at the time Judgment was entered, the balance of Kshs 6,300,000/= is clearly captured as the due balance by then and which sum the Respondent has subsequently been making partial payments leaving a balance of Kshs 4,511,283/= as at February 12, 2014 and the same continues to attract interest at court rates and by 10.2.2018, the balance due and owing stood at Kshs 5,140,150/=.
 - iii. That from the decree that emanated from the Consent Judgment of the parties herein, there was no award of costs of the suit and hence the Honourable court could not have issued an order for costs against the Respondent BUT only issued a Certificate of Order against the Government and which copy is hereby duly attached.
 - iv. That I have demonstrated sufficiently that, the Respondent have no reasonable cause to evade paying me my fruits of Judgment as granted Embu High court which to date, they have unlawfully withheld.
8. The application was canvassed by written submissions and the parties submitted as follows.

Applicant's submissions

9. As to whether liabilities and debts attributed to the defunct Kirinyaga County Council automatically became the debts and liabilities of County Government of Kirinyaga, the applicant argued in the positive. He argued that "transition period" under the [Transition to Devolved Government Act, 2012](#) is defined under Section 2 (1) as: the period between commencement of this Act and three years after the first elections under the [Constitution](#). The date of commencement for the [Transition to Devolved Government Act](#) was on 9th March, 2012. as such Phase One lapsed on the 4th of March 2013 and Phase Two on the 9th of March 2016. Section 3 and 7 of the [Transition to Devolved Government Act, 2012](#) buttresses that position.
10. Further that there is no doubt that the Kirinyaga County Government is the successor of the defunct Kirinyaga County Council and hence lies within the interpretation above. Additionally, in the proceedings before Embu High Court Civil Suit No184 of 2009 parties recorded a Consent Order that was later adopted as an Order of the Court on 6.6.2014, annexed. The Respondent proceeded to execute the Order and on 15.9.2014 the Respondent paid the 1st instalment of Kshs800, 000/-.
11. By dint of the payment of the 1st instalment during phase Two of the [Transition to Devolved Government Act, 2012](#), it follows that such sum of Kshs 800,000 there could be no doubt that such debts and liabilities had been audited, verified and approved as a debt payable. The same instalment was paid by the Kirinyaga County Government and therefore the respondent cannot claim that such process of finalizing the auditing and verification is yet to be completed.



12. The applicant relied on the cases of *Gateway Insurance Company Limited v Jimmy Kiamba, Treasurer Nairobi County Government & 2 others* [2015] eKLR and *Republic v Town Clerk Of Webuye County Council & another* [2014] eKLR.
13. In addition, in the case of *J.A.S. Kumenda & Another v Clerk Municipal Council of Kisii & 6 others* [2013] eKLR Okongo, J held

“To hold as argued by the respondents herein that such legal proceedings should remain suspended until such a time that the said body is set up would result in an absurd and a manifestly unjust situation for the hundreds of litigants who have pending suits against the defunct local authorities. Such holding would also put courts in very awkward position as they would not know what to do with matters involving the defunct local authorities which are pending rulings and judgments before them. In conclusion it is my finding that this application is sustainable and until the body referred to in section 59 of *Urban Areas and Cities Act* is set up or established, it shall be sustained against Kisii County Government which will also be bound by any orders that may be issued herein in place of 1st and 2nd respondents in the application.”
14. On whether the doctrine of estoppel applies against the Respondent, the applicant noted that the Respondent took part in the proceedings of this case and entered into a consent that was later adopted as an order of this Court and further paid the 1st instalment. Accordingly, the Respondent is estopped from denying any debts payable. On this they rely on the case of *Nairobi County Government v Kenya Power and Lighting Company Limited* [2018] eKLR at paragraphs 21-32.
15. Finally, on compliance with Section 21 of the *Government Proceedings Act*, the applicant argued that the Consent Order dated 6.6.2014 at paragraph 3 is explicit that in default of a single instalment, execution could issue immediately. That the applicant had gone further and obtained a Certificate of Order and served the same upon the Respondent. That with the strength of the said certificate of Order the Honourable Court proceeded to issue an Order for leave to institute the Judicial Review proceedings herein.

Respondents’ Submissions

16. On whether this Court should grant the order of *mandamus* being sought by the Applicant, the respondent submitted that it was not in dispute that the Consent Judgement and Order of the High Court at Embu was entered against the defunct Kirinyaga County Council. Consequently, the liabilities arising from the said consent judgment were solely liabilities of the Defunct Kirinyaga County Council.
17. However, they argued that the debts and liabilities attributed to the defunct Kirinyaga County Council did not automatically become the debts and liabilities of the County Government of Kirinyaga. This is because there exists a clear legal framework and processes in dealing with the such liabilities pursuant to Section 7 (2) (e) of the *Transition to Devolved Government Act* No 1 of 2012, whereby the defunct Transition Authority was to prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities.
18. In addition, pursuant to Section 7 (2) (h) of the Act of the *Transition to Devolved Government Act* No1 of 2012 the defunct Transition Authority was to develop criteria upon which to determine the transfer of functions and shared assets, Liabilities and staff from the National to County Government including the criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities.



19. Accordingly, the respondent submitted that the liabilities of the defunct local authorities can only be taken over by County Government when the following processes are completed: after the audit, the verification and preparation of the inventory the of liabilities of the local authorities, and a criteria or mechanism for transfer of the said liabilities is developed.
20. On this, the respondents rely on the Court of Appeal decision of *(Interim) County Secretary, County, Government of Kakamega v Republic ex parte Ali Adam & another* [2017] eKLR where it was held as follows:
- “ [The] *Intergovernmental Relations Act, 2012*, establishes the Intergovernmental Relations Technical Committee. Under section 12 (b) of the said Act, the Technical Committee took over the residual functions of the Transition Authority expiry of the term of the Authority. It is therefore this Committee that was required to finalise the audit and verification of assets and liabilities of the defunct Local Authorities. It is not clear whether that has been done... In view of the foregoing, I do not think that the trial court right in taking the that the County Government of Kakamega was duty bound to settle the decretal sum irrespective of whether the audit that was required to be undertaken by the Transition Authority had been done or not. ..Pursuant to section 15 of the Sixth Schedule to the *Constitution*, Parliament enacted an appropriate law that spelt out how assets and liabilities of defunct Local Authorities were to be dealt with and, in my view the statutory path, however long winded and convoluted it may appear, is always the safest route in reaching the desired destination. ”
21. The respondents do not dispute that Transition Authority term expired in 2016 and was dissolved before it had finalized the process of auditing and verification of the liabilities of the local authorities. however, the respondent submits that unless and until the process of audit, verification and preparation of the register of liabilities of the defunct local authorities was finalized by the Intergovernmental Relations Technical Committee and a mechanism provided for the transfer of the said liabilities, the respondents lacks the legal basis to commence settlement of the debts and liabilities of the Defunct Municipal Council of Kirinyaga.
22. The respondents further rely on the following authority: *Republic v County Secretary Murang'a County Government ex parte Stephen Thiga Thuita* [2014] eKLR, where it was held:
- ‘With the emergence of the County Governments, the assets and pre-existing liabilities of the now defunct local authorities were to be shared between those county governments and the national government. The body that was established to work, out how this distribution was to be done was the Transition Authority which is created under section 4 of the *Transition to Devolved Government Act*. Among its functions set out in section 7 of that Act, the Transition Authority is required to prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities.
23. As to compliance with section 21 of the *Government Proceedings Act*, the respondents submit that the provision was statutory and had to be complied with and proof shown of such compliance. At time of instituting this suit, the Applicant had not complied with the procedure for enforcing a decree against the Respondents as set out in Section 21 of the *Government Proceedings Act* as it had not obtained a certificate of cost and certificate of order against the Respondents. Further, the same were never served upon the Respondents as required by the Section 21 of the *Government Proceedings Act*.
24. The Applicant only obtained a Certificate of Order against the County Government on December 8, 2020, one year, after filing of this suit and after the Respondents had responded to the Application



and raised the issue that there was no Certificate of Order against the Respondents. The Certificate of Order obtained against the Respondent was a mere afterthought.

25. Further, there is no evidence on record that the said Certificate of Order against the Government has been served upon the Respondents, or that a demand was made to the respondents after such service of the Order.

Issues for Determination

1. Whether the statutory processes for transferring the liabilities from Kirinyaga County Council to the County Government of Kirinyaaga had been fulfilled
2. Whether a writ of *mandamus* to compel the Respondents herein to pay the Applicant should be issued.

Analysis and Determination

Whether the statutory processes for transferring the liabilities from Kirinyaga County Council to the County Government of Kirinyaga had been fulfilled

26. It is not disputed that the *ex parte* Applicant was the Plaintiff in Embu High Court Civil Case No 184 of 2009 Josphat Gatheo Kibuchi v The County Council of Kirinyaga who were later substituted by the Kirinyaga County Government.
27. It is also not disputed that vide a Consent Judgment dated 9.10.2012, it was decreed that, the Defendant do pay to the Plaintiff/Applicant Kshs 7,000,000/= out of which the Defendant paid Kshs 3,200,000/= leaving a balance of Kshs 3,800,000/= and which sum continued to accrue interest at court rates and the same had accrued to Kshs 4,511,283/= as at 12.2.2014.
28. It is further not disputed that on 15.9.2014, the Defendant/Respondent paid Kshs 800,000/= leaving a balance of Kshs 3,711,283/= but has since failed, refused or neglected to make any further payments; that the said sum has continued to accrue interest and that the total indebtedness to the applicant now stands at Kshs 5,140,150 as at 19.2.2018 when a warrant of arrest was issued against the 2nd Respondent but later vacated.
29. The respondents in their replying affidavit assert that the Consent Judgment dated 9th October, 2012 and Consent Order dated 25th May, 2014 in Civil Case No184 of 2009: Joseph Gatheo Kibuchi v the County Council of Kirinyaga, which the *ex parte* Applicant is seeking to enforce were both entered against the defunct Kirinyaga County Council. Thus that the liabilities arising from the Consent Judgement and Order of the High Court at Embu were solely liabilities of the Defunct Kirinyaga County Council.
30. The place of the [Transition to Devolved Government Act](#) No 1 of 2012 (TDGA) is also not disputed. That Act established the Transition Authority whose mandate pursuant to Section 7 (2) (c) was to prepare and validate an inventory of all the existing assets and liabilities of defunct local councils. In this case one of the liabilities would have been that which had been declared due by the Embu High Court order in favour of the applicant.
31. It is important to note that the [TDGA](#) commenced on 9th March, 2012. The purpose of the Act according to its preamble was:

“to provide a framework for the transition to devolved government pursuant to section 15 of the Sixth Schedule to the [Constitution](#), and for connected purposes”



32. Section 7(2) of the *TDGA* provides as follows:

“7.

- (1) The Authority shall facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the *Constitution*.
- (2) Despite the generality of subsection (1), the Authority shall—
.....
 - (e) prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
.....
 - (h) pursuant to section 15 (2) (b) of the Sixth Schedule to the *Constitution*, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments, including — (i) such criteria as may be necessary to guide the transfer of functions to county governments; and (ii) the criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities;

33. In tandem with the existence of the TDGA, relations and issues between national and county governments and between county governments were provided for by the *Intergovernmental Relations Act* No 2 of 2012 (*IRA*) which commenced immediately after the first elections following the promulgation of the *Constitution* 2010. The preamble to the Act states:

“An Act of Parliament to establish a framework for consultation and co-operation between the national and county governments and amongst county governments; to establish mechanisms for the resolution of intergovernmental disputes pursuant to Articles 6 and 189 of the *Constitution*, and for connected purposes”

34. Section 12 of the *IRA* provides:

- “12. The Technical Committee shall—
- (a) be responsible for the day to day administration of the Summit and of the Council and in particular— (i) facilitate the activities of the Summit and of the Council; and (ii) implement the decisions of the Summit and of the Council;
 - (b) take over the residual functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity;



- (c) convene a meeting of the forty-seven County Secretaries within thirty days preceding every Summit meeting; and
- (d) perform any other function as may be conferred on it by the Summit, the Council, this Act or any other legislation.”

35. Clearly, it was the responsibility of the Transition Authority to determine and give guidance on, inter alia the transfer of liabilities to county governments. This is not seriously disputed and has been buttressed by the Court of Appeal in the case of *(Interim) County Secretary, County, Government of Kakamega v Republic (supra)*.

36. The Transition Authority role was to be conducted in two phases as provided under the Fourth Schedule to the Act as follows:

“ 1 Phase One 1.

During Phase One of the transition period, the Authority shall carry out the following activities—

- (a) audit assets and liabilities of the government, to establish the asset, debts and liabilities of the government;
- (b) audit assets and liabilities of local authorities, to establish the asset, debts and liabilities of each Local Authority;
- (o) provide mechanisms for the transfer of assets and liabilities which may include vetting the transfer of assets during the transitional period;
- (p) provide for a mechanism that will secure assets and liabilities held by the Local Authorities; and
- (q) any other activity that may be necessary to carry out its functions.

Phase Two (s. 7(3))

- 1. During Phase Two of the transition period the Authority shall carry out the following activities —
 - (a) complete any activity that may be outstanding from Phase One;

37. The Transition Authority was not extended beyond 2017. However, according to a Gazette Notice No 858 under the Intergovernmental Relations Act published on 27th January 2017 exhibited by the respondents in the Replying Affidavit of Catherine Kinyua dated 6 October, 2020, at paragraphs 2, 3 and 4 it is provided as follows:

“2(1) All liabilities of the defunct local authorities as on the March 27, 2013, shall be verified and validated by the Intergovernmental Relations Technical Committee

3. The Intergovernmental Relations Technical Committee shall co-ordinate the process of identification, verification and validation of the assets and liabilities of the defunct local authorities as on the 27th March 2013



4. The Intergovernmental Relations Technical Committee shall –
 - (a) co-ordinate the process of the identification, verification and validation of the assets and liabilities of the defunct local authorities by providing policy and leadership direction to the County Assets and Liabilities Committees;
 - (b) submit the verified reports of the assets and liabilities of the defunct local authorities to the respective county governments and National Treasury;
 - (c) submit the verified reports of the assets and liabilities of the defunct local authorities to the Intergovernmental Budget and Economic Council and the National and County Governments Co-ordinating Summit;
 - (d) develop and implement a communications strategy for the identification, verification and validation of the assets and liabilities of the defunct local authorities, and
 - (e) develop procedures for the proper functioning of the Interagency Technical Team.

38. There is no doubt, therefore that the Intergovernmental Relations Technical Committee was the body that was statutorily obligated to finally verify and validate the liabilities of the defunct local authorities. It is therefore from that body that all liabilities payable by a county government can be established through the statutory process provided for. In the absence of such process, there would be a chaotic scene of transition as all manner of liabilities could easily have arisen or been cooked up.

39. That is why the Court of Appeal, recognising this fact and acknowledging that the process could be lengthy and arduous, stated in *(Interim) County Secretary, County, Government of Kakamega v Republic ex parte Ali Adam & another* [2017] eKLR as follows:

“...the [Intergovernmental Relations] Technical Committee took over the residual functions of the Transition Authority expiry of the term of the Authority. It is therefore this Committee that was required to finalise the audit and verification of assets and liabilities of the defunct Local Authorities. It is not clear whether that has been done... In view of the foregoing, I do not think that the trial court right in taking the that the County Government of Kakamega was duty bound to settle the decretal sum irrespective of whether the audit that was required to be undertaken by the Transition Authority had been done or not. ...Pursuant to section 15 of the Sixth Schedule to the *Constitution*, Parliament enacted an appropriate law that spelt out how assets and liabilities of defunct Local Authorities were to be dealt with and, in my view the statutory path, however long winded and convoluted it may appear, is always the safest route in reaching the desired destination.”

40. As for the instalments paid by the County Government, it can only be presumed that they were made after verification. However, in the absence of any explanatory evidence I will make no further comment thereon. Further, as already stated, under the *Intergovernmental Relations Act*, 2012 in section 12 (b) of the said Act, the Technical Committee took over the residual functions of the Transition Authority after expiry of the term of the Authority. It is therefore this Committee that was required to finalise the



audit and verification of assets and liabilities of the defunct Local Authorities. It is not clear whether that has yet to be done.

41. Consequently, the Applicants must wait for the Intergovernmental Relations Technical Committee to complete its work before they can claim the decretal sum from the County Government of Kirinyaga.
42. In *Simon Kimani Gituria & 2 others v County Government of Kiambu* [2021] eKLR a similar decision was reached where Meoli J held that:

‘...the court has been informed by the Respondent that the Applicants’ claim has been remitted to the Intergovernmental Relations Technical Committee through the Kiambu County Assets and Liability Committee established under the *Intergovernmental Relations Act* vide Gazette Notice No 2791 of 24th March, 2017. In the circumstances, the court considers the application for an order of *mandamus* to compel payment of the decretal sum by the Respondent to the Applicants to be premature. The Applicants must wait for the Intergovernmental Relations Technical Committee to complete its work.’

Whether a writ of *mandamus* to compel the Respondents herein to pay the Applicant should be issued.

43. Having noted that there was a statutory process for verification of defunct local government liabilities, and that that statutory process has not been shown to have been completed or exhausted, a writ of *mandamus* cannot issue to enforce the payment sought by the applicant.
44. All that this court can say is that there is an order by a competent court, pursuant to which there are certain moneys payable to the applicant. Such moneys must undergo the statutory verification process before payment. That is not to be deemed as a denial of the existence of the liability, but rather as a step in the enforcement of a compliance process
45. Accordingly, for the reasons given, I decline to grant the orders of *mandamus*.
46. The application therefore fails and is dismissed with costs.
47. Orders accordingly.

DATED AT KERUGOYA THIS 20TH DAY OF JULY 2023

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Nyaga - holding brief for Kahiga for the Exparte Applicant
2. No representation - for Attorney General (Barasa)
3. Court Assistant - Murage

