



**Republic v County Government of Machakos & another; Nyamai (Exparte Applicant) (Judicial Review Application 9 of 2023) [2024] KEHC 13999 (KLR) (11 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13999 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
JUDICIAL REVIEW APPLICATION 9 OF 2023**

**FR OLEL, J**

**NOVEMBER 11, 2024**

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY  
FOR ORDER OF MANDAMUS UNDER ORDER 53 RULE 1 OF  
THE CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF SECTION 8 OF THE LAW REFORM  
ACT CHAPTER 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF EMPLOYMENT & LABOUR  
RELATION CAUSE NO 68 OF 2019 MACHAKOS DAVID  
KIOKO NYAMAI VERSUS COUNTY GOVERNMENT OF  
MACHAKOS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF MACHAKOS ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE MEMBER OF FINANCE - MACHAKOS .... 2<sup>ND</sup>  
RESPONDENT**

**AND**

**DAVID KIOKO NYAMAI ..... EXPARTE APPLICANT**



## JUDGMENT

### A. Introduction

1. The Ex-parte Applicant filed his Notice of Motion Application on 20<sup>th</sup> February 2024 under Order 53 Rule 1 of The Civil Procedure Rules 2010, Sections 1A,1B, and 3A of the Civil Procedure Act and all other enabling provisions of law seeking the following orders;
  - a. The court be pleased to issue an order of Mandamus compelling the Respondents herein to forthwith pay the decretal sum of Kshs1,666,669/= awarded in Machakos Employment and Labour relation case no. 68 of 2019 together with the sum of Kshs 149,660/= being the certified costs and interest with effect from 28<sup>th</sup> July 2022 until full payment.
  - b. That costs of the application be borne by the Respondents.
2. The Application is supported by the statutory statement of fact and verifying affidavit of David Kioko Nyamai sworn on 17<sup>th</sup> November 2023 where he contends that he was the claimant in Machakos Employment and Labour relation case no. 68 of 2019, where he had sued the 1<sup>st</sup> respondent for unfair employment termination and after the trial judgment was entered in his favour for unlawful dismissal in the sum of Kshs.1,633,989.66/= plus costs certified at Kshs.149,660/= and interest with effect from 28<sup>th</sup> July 2022 until payment in full. The 1<sup>st</sup> respondent has refused to pay the decretal sum leaving him with no alternative but to file this Application to enforce his rights.
3. After trial, he was issued with a certificate of order against the government dated 21<sup>st</sup> July 2023, for the sum of Kshs.1,666,699/= ( together with interest thereon from the 28<sup>th</sup> day of July 2022 until the date of payment and together with costs which have been taxed and certified by the registrar at Kshs.146,660/= plus interest also payable from the said 28<sup>th</sup> July 2022 until date of payment of the said decree plus costs in full. The certificate of order against the government, too was duly served upon the 1<sup>st</sup> Respondent on 1<sup>st</sup> August 2023, but no effort had been to settle the decretal sum as directed. The Ex-parte applicant thus urged this court to grant the orders sought.
4. The Application despite being served on the respondents, is not opposed and was disposed of by way of written submissions.

### B. Submissions

5. The Ex-Parte Applicant filed submissions dated 18<sup>th</sup> July 2024 wherein he reiterated the contents of the verifying affidavit and statutory declaration. While relying on the cases of Republic vs Kenya National Examinations Council Ex parte Gathenji & 8 others ,Civil Appeal no 234 of 1996, Republic vs Principal Secretary, Ministry of Internal Security & Another ex parte Schon Noorani & Another [2018] e KLR, Republic vs Town Clerk of Webuye County Council & Another HCCC 448 OF 2006 and Republic vs County Government of Kiambu Ex Parte Laban J Macharia Muiruri [2021]e Klr, the Ex Parte Applicant submitted that he had complied with provisions of section 21 of the Government Proceedings Act and urged the court to allow the application as prayed to allow him enjoy the fruits of his judgment.

### C. Determination

6. I have considered the application and the submissions on record. Despite service, the application remains unopposed.



7. The ex-parte Applicant presented as part of his pleadings, a copy of the memorandum of claim dated 14.08.2019, the judgement/decree dated 28.07.2022 awarding him a decretal sum of Kshs.1,666,669/=, a certificate of costs of Kshs.149,660/=, demand letter dated 24<sup>th</sup> November 2022 to the county secretary seeking settlement of the decretal sum and the certificate of order against the government dated 21.07.2023. The said documents sufficiently prove that indeed he has a valid claim against the 1<sup>st</sup> respondent who should expeditiously settle the same.
8. Section 21 of the *Government Proceedings Act* provides as follows as regards the requirements to be met in the enforcement of orders as against Government organs in civil proceedings:

“(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.”



9. In the case of Republic vs Principal Secretary, Ministry of Internal Security & Another ex parte Schon Noorani & Another [2018] e KLR Mativo J. espoused the principles of an order of mandamus and stated as follows;

“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), [23] and, was also discussed in Dragan vs. Canada (Minister of Citizenship and Immigration).[24] 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

10. The court of Appeal in the case of in Republic vs Kenya National Examinations Council exparte Gathenji and 9 Others, [1997] e KLR. The said Court held as follows in this regard:

“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, 4<sup>th</sup> 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....”

11. In the case of *Republic v County Government of Kiambu Ex Parte Laban J Macharia Muiruri* [2021] eKLR, the court stated as follows;

“execution proceedings against a government or public authority under the *Government Proceedings Act* can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body.

Section 103 of the *Public Finance Management Act* No 18 of 2012 in this respect also establishes the County Treasury comprising of the County Executive member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under section 103(3) of the Act, the County Executive Committee Member for Finance is the head of Treasury, and is thus responsible for finance matters in the County.”

12. Guided by the above cases, I do find that, the 2nd Respondent, is responsible for satisfying Court orders/ decrees on payment of money owed by Machakos County by dint of his role and functions as prescribed under the *Public Finance Management Act*.
13. The ex-parte applicant ought to enjoy the fruits of his judgment. See *Republic Vs Town clerk of Webuye County Council & Another HCC 448 of 2006*, where Majanja (J) stated that;

“..... a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the *constitution* particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159(2) (a)&(b) and the Applicant’s right of access to justice protected under Article 48 of the *constitution*.”

#### **D. Disposition**

14. In the end, the application succeeds and I hereby issue the following orders;
- a. An order of Mandamus is hereby issued compelling the Respondents herein to forthwith pay the decretal sum of Kshs1,666,669/= awarded in Machakos Employment and Labour relation



case no. 68 of 2019 together with the sum of Kshs.149,660/= being the certified costs and interest with effect from 28<sup>th</sup> July 2022 until payment in full.

- b. That costs of the application be borne by the Respondents and the same is assessed at Kshs.200,000/= all inclusive.

15. It is so ordered.

**JUDGMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**Delivered on the virtual platform, Teams this 11<sup>th</sup> day of November, 2024.**

In the presence of:-

Ms Wambua for Ex parte Applicant

No appearance for Respondent

Susan/Sam Court Assistant

