



Republic v County Government of Siaya & 2 others; Olute (Exparte Applicant) (Judicial Review Application E012 of 2024) [2024] KEELRC 1868 (KLR) (18 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1868 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E012 OF 2024**

**CN BAARI, J
JULY 18, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF SIAYA 1ST RESPONDENT

CORNEL RASANGA AMOTH 2ND RESPONDENT

COUNTY CHIEF OFFICER FINANCE, SIAYA COUNTY 3RD RESPONDENT

AND

MARY APIYO OMONDI OLUTE EXPARTE APPLICANT

JUDGMENT

1. The *Ex parte* Applicant in an application dated 18th April, 2024, seeks the following orders against the 1st and 3rd Respondents:
 - i. An order of *Mandamus* compelling them to pay the decretal sum of Kshs. 4,338,062.50 together with interest at the rate of 12% per annum on the decretal sum from the date of judgment, which was delivered on 17th October, 2022 in Kisumu ELRC Cause No. E059 of 2021.
 - ii. An order of *Mandamus* compelling them to pay the taxed costs of Kshs. 690,965, which is due on account of the Ruling delivered by the Taxing Master on 4th October, 2023.
 - iii. An order of *Mandamus* pursuant to Order 7 of the *Advocates Remuneration Order* (as amended in 2014), to pay interest at the rate of 14% per annum on the taxed amount from 11th June, 2023 until payment in full.



2. The application is premised on a Judgment delivered by this Court on 17th November, 2022 in Kisumu ELRC Cause No. E059 of 2021, wherein, the court made an award in the sum of Kshs. 4,338,062 in favour of the Ex parte Applicant, together with costs of the suit. That subsequently, costs were assessed at Kshs. 690,965 in a ruling rendered by the Taxing Officer on 4th October, 2023
3. The Applicant avers that both the judgment and ruling aforesaid, were delivered in the presence of Ms. Ndeda, counsel for the Respondents, and to date, no appeal against the judgment nor a reference against the award of costs have been preferred.
4. It is the Applicant's submission that she has made several demands to the Respondents for payment to no avail. She states that from the Respondents' actions, there is an implied refusal to pay the decretal sum and the costs through unreasonable delay.
5. The Applicant further states that there is no other equitable remedy available to her in the circumstances, the Respondent being a County government. She states that the Respondents have in their replying affidavit admitted the debt.
6. The Respondents filed a replying affidavit in opposition sworn by Jack Odinga on 4th June, 2024. He deposed that the application is premature on the basis that the 1st Respondent has not refused, ignored, and/or neglected to pay the decretal sum.
7. He avers further that the *Ex-parte* Applicant has also not demonstrated that the Respondents have refused and/or are unable to settle the decretal sum and that in any event, the Respondents have indicated to the *Ex parte* Applicant their commitment to settle the decretal sum immediately after the next budgeting cycle begins, which is the cycle where the Ex-parte Applicant's money is taken care of.
8. It is the Respondents' assertion that expenditure in government is a process that begins with annual planning and budgeting, and as such, payment of the decretal sum in this matter has been factored into the budgetary allocations for the financial year 2024/2025 and will be paid once budget implementation begins.
9. It is his position that this matter has been explained to the *Ex-parte* Applicant, and her being a former County Executive Committee Member in the County Government, is fully aware of the budgeting cycle in government.
10. The Respondents finally aver that if the court were to allow the orders requested by the *Ex-parte* Applicant, the Respondents would suffer undue hardship and harm and hence pray that the application be dismissed with costs.
11. Parties made oral submissions reiterating their pleadings referred to herein.

Determination

12. I have considered the application, the grounds and affidavit in support, the replying affidavit in opposition and the oral submissions by both Counsels. The singular issue for determination is whether the Applicant has established grounds to warrant orders of *mandamus*.
13. The Court in determining grant of orders of Mandamus is guided by the test laid out in *Apotex Inc. vs. Canada (Attorney General)* and reiterated in *Dragan vs. Canada (Minister of Citizenship and Immigration)* which listed eight factors that must be present for the writ to issue, which 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;
 - iv. The Order sought must be of some practical value or effect;
 - v. There is no equitable bar to the relief sought;
 - vi. On a balance of convenience. mandamus should lie
14. An order of *Mandamus* is an equitable remedy that serves to compel a public authority to perform its public legal duty. It is not disputed that the Respondents have a public legal duty to obey court orders arising from the decree issued in Kisumu ELRC Cause No. E059 of 2021 as well as the subsequent certificate of costs issue in the matter.
 15. The Applicant's evidence is that a decree and a certificate of costs were issued against the Respondents and that the two were similarly served. This fact is not denied by the Respondents both in their pleadings and in their oral submissions.
 16. It is equally not disputed that the Applicant did demand payment of both the decretal sum and the costs of the suit. The Respondents' reasons for not honouring the decree is that the government budget cycle had passed by the time the decree and certificate of costs were issued, and that the application then, is premature as they have now begun the process of making the payment.
 17. Nothing has been placed before this Court to support the Respondents' position that they have made steps to process the Applicant's decree, not even the budget for the year 2024/2025 that is said to have now provided for the payment.
 18. As correctly submitted by the Counsel for the Applicant, there is indeed no other effective remedy available to the Applicant as she cannot otherwise execute the decree against the Respondents.
 19. I also I find no equitable bar to the reliefs sought, leading me to the conclusion that on a balance of convenience, *Mandamus* should issue.
 20. In the premise, the application dated 18th April, 2024 succeeds and orders granted as follows: -
 - a. That an order of Mandamus be and is hereby issued compelling the 1st and 3rd Respondents to pay the decretal sum of Kshs. 4,338,062.50, together with interest at the rate of 12% per annum from the date of judgment.
 - b. An order of Mandamus be and is hereby issued compelling them to pay the taxed costs of Kshs. 690,965, which is due on account of the Ruling delivered by the Taxing Master on 4th October, 2023.
 - c. An order of Mandamus be and is hereby issued compelling the 1st and 3rd Respondents pursuant to Order 7 of the [Advocates Remuneration Order](#) (as amended in 2014), to pay



interest at the rate of 14% per annum on the taxed amount from 4th October, 2023, until payment in full.

d. I make no orders on costs.

21. It is ordered.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 18TH DAY OF JULY, 2024.

C. N. BAARI

JUDGE

