



Republic v Ministry of Industry, Trade & Co-operative & 2 others (Environment and Land Judicial Review Case 2 of 2019) [2025] KEELC 6271 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 2 OF 2019
BN OLAO, J
SEPTEMBER 25, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

MINISTRY OF INDUSTRY, TRADE & CO-OPERATIVE 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Margaret Nelima Odhiambo (the Applicant) impleaded the Ministry of Trade & Co-operative as well as the National Land Commission (the Respondents) in Bungoma ELC Case No 103 of 2016. She sought against the Respondents an order of injunction restraining them or their agents from interfering with her land parcel No Malakisi/Township/396, an order to release her title deed to the said land or in the alternative, an order directing the Respondents to compensate her for the current market value of the said land which had been compulsorily taken from her.
2. The suit was heard by the late Mukunya J who, in a judgment delivered on 28th March 2018, decreed as follows:

“However, the law requires the land owner not only to be notified but also to be compensated. The Plaintiff prefers compensation and gives the reason that the neighbours and relatives have turned hostile to her. I will therefore grant the Plaintiff her alternative prayer and order that the 1st and 3rd Defendant do pay the Plaintiff Kshs.9,200,000 as the value of compulsory acquisition of her land plus costs of the suit.”



A Decree followed and the taxing officer assessed the costs at Kshs.281,320. The Decree issued on 28th February 2018 reads:

“The 1st and 3rd Defendants do pay the Plaintiff the sum of Kshs.9,200,000 as value of compulsory acquisition of her land plus costs and interests.” Emphasis mine.

The 1st and 3rd Defendants in that judgement are now the Respondents in these Judicial Review proceedings. The Decree in Bungoma ELC CASE No 103 of 2016 was not satisfied. That necessitated the filing of these Judicial Review proceedings in which the Applicant, vide an amended Notice of Motion dated 23rd January 2020, sought the following substantive remedy against the Respondent:

“That an order of mandamus compelling the 1st and 2nd Respondents to settle the decretal sum of Kshs.9,200,000 (Kenya shillings nine million two hundred thousand) and costs of Kshs.281,320 (Kenya shillings two hundred and eighty one thousand) and interest on the above figures at 14% per annum since 28th March 2018 (date of judgement) and since 12th October 2018 (date of taxation).”

Those Judicial Review proceedings were determined by A. Omollo J who vide a Judgement delivered on 24th February 2021, ordered as follows:

“In the end, I find merit in the amended Motion dated 23.1.2020 and do grant the orders prayed for on it’s face.”

3. The Applicant has now approached this Court vide her Notice of Motion dated 11th December 2024 in which she seeks the following substantive order in paragraph 2 thereof:

2: “That a declaration be and is hereby made that the Applicant is entitled to interest on the decretal sum of Kshs.9,200,000 from the date of Judgment till settlement in full.”

The Motion which is the subject of this ruling is supported by the Applicant’s affidavit of even date. It is the Applicant’s case that she had filed Bungoma ELC Case No 103 of 2016 against the Respondents and obtained a judgment in the sum of Kshs.9,200,000 but attempts to have the Respondents settle the same were futile. She therefore filed this Judicial Review application and the Court ordered the Respondents to pay her the sum of Kshs.9,200,000 being the value of the land which had been appropriated together with the sum of Kshs.281,320 being costs. Thereafter, MR TARUS the state counsel representing the Attorney General’s office informed her counsel that whereas the payment of the decretal sum was being processed, the Attorney General’s office strongly believes that no award of interest was made and thus the settlement of the decretal sum had hit a snag. The Applicant believes that the position taken by the Attorney General is wrong and therefore seeks an interpretation of the judgement delivered on 24th February 2021 by A. Omollo J.

4. When that Motion was placed before me on 18th December 2024 I did not certify it as urgent and directed that it be canvassed by way of written submissions. The Applicant was to serve the Respondents with the Motion and submission within 14 days after which the Respondents would have 21 days from the date of service to file their responses and submissions. The matter would be mentioned on 23rd January 2025 to confirm compliance and take a date for ruling. However, although served, neither of the Respondents filed any responses or submissions. The Motion is therefore not opposed. Submissions have however been filed by Mr Ashioya instructed by the firm of Ashioya & Company



Advocates for the Applicant. It is the submission by Mr Ashioya that the Applicant is entitled to the orders sought. In the penultimate and last paragraphs of his submissions, counsel has stated thus:

“We pray that the Court do issue an order on interest in the decretal sum at 14% per annum since 29th March 2018 (date of Judgment) till settlement in full. We also pray for costs of this application.”

I have considered the Motion, un-opposed as it is, together with the submissions by counsel. Although the motion is not opposed, this Court is nonetheless enjoined to consider it and determine whether the orders sought are infact justified and ought to be granted as prayed.

5. It is common ground that in this judgment dated 28th March 2018 and delivered in Bungoma ELC Case No 103 of 2016 and which I have already cited in part at the beginning of this ruling, the late Mukunya J did not make any orders for payment of interest. The late Judge only made an order for the payment of Kshs.9,200,000 plus costs.
6. However, when the Applicant filed this Judicial Review Motion dated 23rd January 2020 she sought, in addition to the substantive order of mandamus, the gist of what I have already cited above, an additional order of payment of interest on the principal sum and taxed costs “at 14% per annum since 28th March 2018 March 2018 (date of Judgement) and since 12th October 2018 (date of taxation).” In her Judgment delivered on 24th February 2021 in this Judicial Review application, Omollo J found merit in the amended Motion and granted the orders as prayed.
7. In my view, this Judicial Review application was founded on Bungoma ELC Case No 103 of 2016 in which no order of interest was made leave alone at 14% vide the Judgment of the late Mukunya J. And although the Applicant’s Motion is not opposed, he has himself deponed in his supporting affidavit at paragraphs (g) (h) and (i) as follows:
 - (g) “That Mr Tarus learned state counsel has informed counsel for the Applicant Mr Oye Ashioya that whereas payment was being processed, such has hit a snag because the Attorney General’s office believes strongly that no award on interest was made.”
 - (h) “That the position held by the Attorney General is wrong.”
 - (i) “That the Applicant seeks for interpretation of the Judgment delivered on 24.2.2021 by Hon Justice Anne Omollo.”

I am not sitting on appeal over the Judgment of Omollo J delivered on 24th February 2021 and cannot possibly do so. But the Applicant himself has requested me to interpret that Judgement and I will gladly do so.

8. My interpretation is that following the Judgment of the late Mukunya J delivered on 28th March 2018 in Bungoma ELC Case No 103 of 2016, the Applicant’s costs were taxed at Kshs.281,320 as per the certificate of costs dated 31st October 2018. And as is now already clear, there was no order for interest in the Judgment delivered on 28th March 2018. The late Judge only said the following in the last sentence of that judgment.

“I will therefore grant the Plaintiff her alternative prayer and order that the 1st and 3rd Defendant do pay the Plaintiff Kshs.9,200,000 as the value of compulsory acquisition of her land plus costs of the suit.”



Unfortunately, the Decree that followed issued on 18th May 2018 by the Deputy Registrar reads:

“It is hereby ordered and decreed that:

The 1st and 3rd Defendants pay the Plaintiff the sum of Kshs.9,200,000 as value of compulsory acquisition of her land plus costs and interest.”

That was in error because the judgment delivered on 28th March 2018 made no provision for interest on the sum of Kshs.9,200,000. The interest could only be on the costs and not on the sum of Kshs.9,200,000. That is because, the judgment of the late Mukunya J in Bungoma ELC Case No 103 of 2016 and which formed the basis of the Judicial Review proceedings herein made no provision of interest on the sum of Kshs.9,200,000.

9. The up-shot of the foregoing is that having considered the Notice of Motion dated 11th December 2024, I issue the following disposal orders:
1. The Motion partly succeeds with the order that the interest payable is only on the taxed costs of Kshs.281,320.
 2. No interest is payable on the sum of Kshs.9,200,000.
 3. No orders as to costs of this Motion.

BOAZ N. OLAO

JUDGE

25TH SEPTEMBER 2025

Ruling dated, signed and delivered by way of electronic mail on this 25th day of September 2025.

BOAZ N. OLAO

JUDGE

25TH SEPTEMBER 2025

