



**Republic v County Secretary, County Government of Uasin Gishu & 2 others (Judicial Review E005 of 2024) [2025] KEHC 14333 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14333 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
JUDICIAL REVIEW E005 OF 2024  
PM NYAUNDI, J  
OCTOBER 15, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF UASIN  
GISHU ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER FINANCE, THE COUNTY GOVERNMENT OF UASIN  
GISHU ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY GOVERNMENT OF UASIN GISHU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before me is an application dated 22<sup>nd</sup> day of April 2024 premised under Section 8 and 9 of the [Law Reform Act](#) and Order 53 of Rule 3 of the Civil Procedure Rules where the Applicant is seeking the following orders:
  - a. The ex-parte applicant be granted an order of mandamus compelling the Respondent to settle the decretal amount/costs, and interest amounting to Kshs. 2, 798, 256.00 owed to the ex-parte Applicant in the following matters:-
    - a. Eldoret HC. Misc. Application No. E007 of 2022
    - b. Eldoret HC. Misc. Application No. 74 of 2008
    - c. Eldoret HC. Misc. Application No. 120 of 2019
    - d. Eldoret HC. Misc. Application No. 5 'A' of 2022
    - e. Eldoret HC. Misc. Application No. E031 of 2022



- f. Eldoret HC. Misc. Application No. E055 of 2022
  - g. Eldoret HC. Misc. Application No. E056 of 2022
  - h. Eldoret HC. Misc. Application No. E063 of 2022
  - i. Eldoret HC. Misc. Application No.125 of 2019
  - j. Eldoret HC. Misc. Application No. E096 of 2022
  - k. Eldoret HC. Misc. Application No. E095 of 2022
  - l. Eldoret HC. Misc. Application No. E102 of 2022
  - m. Eldoret HC. Misc. Application No. E100 of 2022
  - n. Eldoret HC. Misc. Application No. E099 of 2022
  - o. Eldoret HC. Misc. Application No. E101 of 2022
  - p. Eldoret HC. Misc. Application No. E098 of 2022
  - q. Eldoret HC. Misc. Application No. E038 of 2022
  - r. Eldoret HC. Misc. Application No. E040 of 2022
  - s. Eldoret HC. Misc. Application No. 28 'A' of 2021
- b. The costs of this application be awarded to the ex-pate Applicant.
2. The Application is made on the following grounds among others that:
- i. The following matters were cause listed before the taxing master on various dates and the rulings were delivered and the ex-parte applicant's legal fees was taxed as follows: -
    - a. Eldoret HC. Civil Misc. Application No. E007 of 2022-5/9/2022 Kshs.371,065.00
    - b. Eldoret HC. Civil Misc. Application No.74 of 2008-20/8/2021Kshs. 45,531.00
    - c. Eldoret HC. Civil Misc. Application No.120 of 2019-20/5/2022 Kshs.104,190.00
    - d. Eldoret HC. Civil Misc. Application No.5"A' of 2022-21/10/2022 Kshs.273,913.00
    - e. Eldoret HC. Civil Misc. Application No. E031 of 2022-21/10/2022 Kshs.167,950.00
    - f. Eldoret HC. Civil Misc. Application No. E055 of 2022-25/10/2022 Kshs. 56,835.00
    - g. Eldoret HC. Civil Misc. Application No. E056 of 2022-25/10/2022 Kshs. 55,450.00
    - h. Eldoret HC. Civil Misc. Application No. E063 of 2022-25/10/2022 Kshs. 56,835.00
    - i. Eldoret HC. Civil Misc. Application No. E125 of 2022-29/11/2022 Kshs.71,425.00
    - j. Eldoret HC. Civil Misc. Application No. E096 of 2022-29/11/2022 Kshs.93,893.00
    - k. Eldoret HC. Civil Misc. Application No. E095 of 2022-29/11/2022 Kshs.93,893.00
    - l. Eldoret HC. Civil Misc. Application No. E102 of 2022-29/11/2022. Kshs.92,508.00
    - m. Eldoret HC. Civil Misc. Application No. E100 of 2022-29/11/2022 Kshs.92,508.00
    - n. Eldoret HC. Civil Misc. Application No. E099 of 2022-29/11/2022 Kshs.92,508.00



- o. Eldoret HC. Civil Misc. Application No. E101 of 2022-29/11/2022 Kshs.92,508.00
  - p. Eldoret HC. Civil Misc. Application No. E098 of 2022-29/11/2022 Kshs.92,508.00
  - q. Eldoret HC. Civil Misc. Application No. E038 of 2022-6/12/2022 Kshs.56,143.00
  - r. Eldoret HC. Civil Misc. Application No. E040 of 2022-6/12/2022 Kshs.56,143.00
  - s. Eldoret HC. Civil Misc. Application No.28' A'of2021-12/5/2023 Kshs.832,450.00
- Total amount less interests. Kshs. 2,798,256.00

- ii. The orders as to costs have not been set aside to date.
- iii. The ex-parte applicant has obtained certificate of costs for all of the above nineteen (19) matters.
- iv. The ex-parte applicant has adhered to and complied with all the due process of law including obtaining certificate of order for costs against the government on all the 19 aforementioned matters against the respondent.
- v. The Respondent has to date not paid the sum of Kshs. 2,798,256/=to the ex-parte applicant being the fees outstanding on the matters he has handled on behalf of the Respondent.
- vi. The Respondent has therefore failed to adhere to the orders of this Honorable Court on the payment of the legal fees due to the ex-parte applicant.
- vii. It is now over one (1) year since the court issued the orders.
- viii. A period of more than one (1) year is inordinate particularly where no order of stay of execution was sought and/or obtained.
- ix. The ex-parte Applicant has issued several demand letters demanding for payment of the taxed costs but to no avail.
- x. The court should therefore grant to ex parte applicant an order of mandamus to compel the Respondents to pay the taxed amount

3. The application is opposed by the Respondent's vide replying affidavit dated 9<sup>th</sup> September 2025 which was sworn by Philip Meli who deponed as follows:

- a. That in response to paragraph 4 and 5 and states that the County Government of Uasin Gishu the Respondent herein acknowledges that the said firm rendered legal services in the referenced matters prior to the demise of the late advocate, but all legal fees dus were fully paid during the lifetime of the deceased.
- b. That in response to paragraph 6 and states that the firm was at all times fully aware of the payments made, which were duly acknowledged either in writing or through internal documentation, and at no point during the deceased's lifetime were any claims made for unpaid legal fees as stated in paragraph 2 of the agreement. (Attached is a settlement agreement dated 28<sup>th</sup> October,2014
- c. That in response to Paragraphs 7,8 and 9 of the Verifying affidavit the annexed bundle of certificates of costs is not conclusive proof of non-payment, and the Applicant has not disclosed the full history of the transactions between the deceased firm and the Respondent.



- d. That in response to paragraphs 10 and 11 of the Verifying affidavit the current claim is misconceived, misleading, and an abuse of the court process, as it seeks to recover fees that were already settled. That as per the said agreement the said law firm was to withdraw all bill costs and render a report to the County Government as to all pending matters, they handled but failed to do so during the life time of the deceased advocate.
  - e. That in further response to paragraph 11 of the Verifying Affidavit the Respondent hereby rely on documentary proof of payments made, including the payment vouchers which are hereby attached.
4. In support of the application, the Legal Counsel for the exparte Applicant placed reliance on the written submissions dated 8<sup>th</sup> September 2025 whereas at the time of preparing this Ruling the Respondent had not filed any written submissions.

DIVISION - Statement of the case

5. As averred in the affidavit the firm of Paul Gicheru T/A Gicheru & Company Advocates entered into a professional retainer agreement vide legal services for the 1<sup>st</sup> Respondent spanning the year 2022 as evidenced by the following cases which were of necessity the basis of the instructions on presentation issued by the 1<sup>st</sup> Respondent:



Item No.	Case and Date of ruling	AMount Awarded on Taxation	Interests Accrued from the Ruling on Taxation
a.	Eldoret HCC Civil Misc. Application No. E007 of 2022 – 5/9/2022	371,065.00	$(\frac{2^{11}}{12}X^{\frac{14}{100}}X371,065.00)$ =151,518.21
b.	Eldoret HCC Civil Misc. Application No. 74 of 2008 – 20/8/2021	45,531.00	$(\frac{14X^{14}}{100}X45,531.00)$ = 497.36
c.	Eldoret Hcc Civil Misc. Application No. 120 of 2019 – 20/5/2022	104,190.00	$(\frac{3^3}{12}X^{\frac{14}{100}}X104,190.00)$ = 47,406.45
d.	Eldoret HCC Civil Misc Application No 5'a' of 2022 – 21/10/2022	273,913.00	$(\frac{2^9}{12}X^{\frac{14}{100}}X273,913.00)$ = 105,456.51
e.	Eldoret HCC Civil Misc. Application No. E031 of 2022 – 21/10/2022	167,950.00	$(\frac{2^9}{12}X^{\frac{14}{100}}X167,950.00)$ = 64,660.75
f.	Eldoret HCC Civil Misc. Application No. E055 of 2022 – 25/10/2022	56,835.00	$(\frac{2^9}{12}X^{\frac{14}{100}}X56,835.00)$ =21,881.48
g.	Eldoret HCC Civil Misc. Application No. E056 of 2022 – 25/10/2022	55,450.00	$(\frac{2^9}{12}X^{\frac{14}{100}}X55,450.00)$ = 21,348.25
h.	Eldoret HCC Civil Misc. Application No. E063 of 2022 – 5/9/2022	56,835.00	$(\frac{2^9}{12}X^{\frac{14}{100}}X56,835)$ = 21,881.48
i.	Eldoret HCC Civil Misc. Application No. E125 of 2022 – 29/11/2022	71,425.00	$(\frac{2^8}{12}X^{\frac{14}{100}}X71,425.00)$ = 26,665.33



j.	Eldoret HCC Civil Misc. Application No. E096 of 2022 – 29/11/2022	93,893.00	$(\frac{2^8}{12}X^{14}/_{100}X71,425.00)$ = 26,665.33
k.	Eldoret HCC Civil Misc. Application No. E095 of 2022 – 29/11/2022	93,893.00	$(\frac{2^8}{12}X^{14}/_{100}X93,893.00)$ = 35,053.39
l.	Eldoret HCC Civil Misc. Application No. E102 OF 2022 – 29/11/2022	92,508.00	$(\frac{2^8}{12}X^{14}/_{100}X92,508.00)$ = 34,536.32
m.	Eldoret HCC Civil Misc. Application No. E100 of 2022 – 29/11/2022	92,508.00	$(\frac{2^8}{12}X^{14}/_{100}X92,508.00)$ = 34,536.32
n.	Eldoret HCC Civil Misc. Application No. E099 of 2022 – 29/11/2022	92,508.00	$(\frac{2^8}{12}X^{14}/_{100}X92,508.00)$ = 34,536.32
o.	Eldoret HCC Civil Misc. Application No. E101 of 2022 – 29/11/2022	92,508.00	$(\frac{2^8}{12}X^{14}/_{100}X92,508.00)$ = 34,536.32
p.	Eldoret HCC Civil Misc. Application No. E098 of 2022 – 29/11/2022	92,508.00	$(\frac{2^8}{12}X^{14}/_{100}X92,508.00)$ = 34,536.32
q.	Eldoret HCC Civil Misc. Application No. E038 of 2022 – 6/12/2022	56,143.00	$(\frac{2^8}{12}X^{14}/_{100}X56,143.00)$ = 20,960.05
r.	Eldoret HCC Civil Misc. Application No. E040 of 2022 – 6/12/2022	56,143.00	$(\frac{2^8}{12}X^{14}/_{100}X56,143.00)$ = 20,960.05
s.	Eldoret HCC Civil Misc. Application	832,450.00	$(\frac{2^3}{12}X^{14}/_{100}X56,143.00)$ = 262,221.75



	No. 28 'A' of 2021 – 12/5/2023		
Totals		2,798,256.00	1,033.246.28

6. The *ex parte* applicant has provided documentary evidential material in support of compensation for the legal services rendered in the various adjudicatory cases involving the 1<sup>st</sup> Respondent. From the application it so happened that in spite of being served with the necessary demand letters and certificate of costs duly taxed by the Taxing Master the 1<sup>st</sup> Respondent continues to withhold the payment occasioning prejudice and deprivation of the social economic rights guaranteed in our Constitution. The 1<sup>st</sup> Respondent being a devolved unit within the constitutional and statutory legal framework, the remedy available is that of judicial review. The fundamental principles are as laid down in the case of *Pastoli vs. Kabale District Local Government Council & Others* 2 EA 300 where it was held:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...i/legality is when the decision making authority commits an error of law in the process of making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instance of illegality...irrationality is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision...such a decision is in defiance of logic and acceptable moral standards.. procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to fail to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in statute or legislative instrument by which such authority exercises jurisdiction to make a decision.”

7. For an applicant to succeed under the judicial review jurisdiction there is need to establish sufficient interest. This was the position taken by the House of Lords in the case of *R. V. Inland Revenue Commissioners ('IRC') ex parte (1) National Federation of Self Employed and (2) Small Businesses Ltd.* [1982] AC 617, in which three key principles were enunciated to constitute sufficient interest. It was held:

“1. Generally, at the permission stage, an application should be refused for lack of standing only where “the applicant has no interest whatsoever, and is a mere busybody’. If, however, the case is arguable and there are no other discretionary bars to bringing it, permission should be granted and standing can be reconsidered in conjunction with merits at the substantive hearing; 2.the question of standing is one which goes to the Court’s jurisdiction. This means that the parties cannot simply agree the point between them, and the Court can consider the point of its won motion, even if not raised by the parties; and 3. the question of sufficient interest is not merely a threshold issue. Even after passing the initial hurdle of establishing an interest in the subject matter, the question may still be relevant to the issue of what, if any, remedy should be granted.”



8. The doctrine of Judicial Review in Kenya as supported by various decisions is to protect the integrity of a new born constitutional democracy 2010. Therefore a Constitution is in fact and must be regarded by the Judges as a fundamental law of the land. In terms of exercising jurisdiction to interpret *the Constitution* it is for the Judges to ascertain the meaning as well as meaning of any particular Act proceeding from the Legislative body. The Kenyan Constitution under Article 159 has made the Judiciary an independent body to determine legal controversies without any fear of favour and influence. The component of independence of the Judiciary from the Executive and Legislature makes it a suitable constitutional organ for Judicial Review of their impugned actions.
9. The basic premise of this application is that the *ex parte* applicant had a legitimate expectation with certainty that once his law firm offered legal services the 1<sup>st</sup> Respondent will budget and compensate him for the professional legal services offered over a period of time. The Court in *National Director of Public Prosecutions v Philips* 2002 (4) SA 60 (W) held as follows on the requirements of legitimate expectations which manifested itself as between the *ex parte* Applicant and the 1<sup>st</sup> Respondent:
  - (i) That there must be a representation which is “clear, unambiguous and devoid of relevant qualification,”
  - (ii) that the expectation must be reasonable in the sense that a reasonable person would act upon it,
  - (iii) that the expectation must have been induced by the decision-maker and
  - (iv) that it must have been lawful for the decision-maker to make such representation. If such an expectation exists it will be incumbent on the administrator to respect it. If the court finds that a legitimate expectation did in fact exist, it will ordinarily invalidate the administrative action and refer the matter back to the decision-maker to deal with it in a procedurally fair manner.
10. The Learned Author H.W.R Wade & C.F. Forsyth went further to state that: it is not enough that an expectation should exist; it must in addition be legitimate ... First of all, for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfil the expectation ... Second, clear statutory words, of course, override and expectation howsoever founded .... Third, the notification of a relevant change of policy destroys any expectation founded upon the earlier policy ....” An expectation whose fulfillment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation. It is inherent in many of the decisions, and express in several, that the expectation must be within the powers of the decision-maker before any question of protection arises. There are good reasons why this should be so: an official cannot be allowed in effect to rewrite Acts of Parliament by making promises of unlawful conduct or adopting an unlawful practice.”
11. The Court in *Council of Civil Service Unions and Others v Minister for the Civil Service* [1985] AC 374 emphasized this point on Judicial Review especially refusal by a public institution to perform a public duty requiring of the Court to exercise jurisdiction for grant of a writ of mandamus. Thus;

“Judicial review ... provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) whom I will call the ‘decision-maker’ or else a refusal by him to make a decision. The relief granted by the court, in such circumstances, is alternatively known as mandamus or as a “mandatory order”. The mandatory order compels the decision maker to do an act or make a decision, which the decision-maker had previously refused to do or make.”



12. In the instant case, there is cogent and credible evidence that the 1<sup>st</sup> Respondent has failed to budget sufficient financial resources to meet the outstanding pending bills due to the exparte Applicant. It has been shown that there has been a distinct demand for the 1<sup>st</sup> Respondent to settle the certificate of taxed costs but there is no evidence that there are any positive steps to make payment due and owing. This is what the Learned Authors of Textbook on Administrative Law cited in part, that;

“Mandatory orders are granted infrequently in the case law and they tend to issue where there is only one course of action lawfully open to the decision-maker. Where a duty entails the exercise of discretion on the part of the decision-maker, the courts will therefore typically consider that a mandatory order would be inappropriate. Although the extend of any discretion is, at the same time, a matter for judicial interpretation of the relevant statute, the courts consider that the existence of discretion militates against mandamus as a remedy. The corresponding rationale is of the need to observe the constitutional limits to the judicial role, as it is perceived at an order of mandamus could result in the courts dictating how a particular choice should be made ...”

13. With the above background in mind I have reviewed the chronology of events in relation to the agreements on professional services entered between the exparte Applicant and the 1<sup>st</sup> Respondent. I am hard pressed to find that based on the affidavits of the exparte Applicant in support of the application that there was and has been in fact a refusal on the part of the 1<sup>st</sup> Respondent as described in the petition or application to warrant this Court to issue an order of mandamus. The evidence shows that the exparte Law Firm and the 1<sup>st</sup> Respondent were in correspondence for sometime before the referral of this matter to this High Court for a judicial review remedy. That the refusal by the 1<sup>st</sup> Respondent became the subject matter of this litigation.

14. There is a judgment in place declaring the rights of both the exparte Applicant and the 1<sup>st</sup> Respondent. In law, a declaration of rights, also known as a declaratory judgment is the declaration by a Court of the legal rights and obligations of parties in a suit with or without making any consequential order. A declaration of right is a declaration that that one party is right and another party is wrong, that one party has a right and the other party owes an obligation and the making of an appropriate order by Court to do justice in the circumstances. It is a judgment declaring the legal rights of a party. A declaration of rights is binding whether a Court makes consequential orders along with it or not, unless the judgment is reversed on appeal.

15. Why Mandamus? The term “Mandamus” is a Latin word meaning ‘we command’. The prerogative writ of mandamus is a judicial command addressed to and compelling the respondent to perform a public duty. A writ of mandamus does not issue except to command the fulfilment of some duty of the nature, which remains unperformed.

16. From the reading of this dispute the law has conferred a discretion upon the 1<sup>st</sup> Respondent that when it invites bidders to offer certain services to the government or to do a particular thing, it cannot exercise the discretion to make payment at whim or capriciously. The duty in question is imposed by Statute. It is for these reasons that I grant the application for the writ of mandamus against the 1<sup>st</sup> Respondent to settle the outstanding decretal sum of Kshs 2,798,256.00 with costs of this application.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT AT ELDORET THIS 15<sup>TH</sup> OCTOBER 2025**

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**R. NYAKUNDI**



**JUDGE**

