



Bosire v County Secretary Nyamira County & 3 others (Environment and Land Judicial Review Case E004 of 2025) [2025] KEELC 6536 (KLR) (1 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6536 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2025**

DO OHUNGO, J

OCTOBER 1, 2025

BETWEEN

JOHNSON BOSIRE APPLICANT

AND

THE COUNTY SECRETARY NYAMIRA COUNTY 1ST RESPONDENT

**THE CHIEF OFFICER, FINANCE AND ACCOUNTING SERVICES NYAMIRA
COUNTY 2ND RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE
NYAMIRA COUNTY 3RD RESPONDENT**

**THE CHIEF OFFICER, PUBLIC SERVICES AND MANAGEMENT NYAMIRA
COUNTY 4TH RESPONDENT**

JUDGMENT

1. Having obtained leave on 29th April 2025 in Nyamira ELCLJR No. E003 of 2025, the Applicant filed Notice of Motion dated 20th May 2025. The following orders are sought in the motion:

1. That this honourable court be pleased to grant an order of Mandamus to issue against the Respondents herein namely, the County Secretary, Nyamira County, The Chief Officer, Finance and Accounting Services, Nyamira County, County Executive Committee Member, for Finance Nyamira County and The Chief Officer, Public Service and Management, Nyamira County to compel them to proceed and pay out the Kshs. 750,000/= only being the decretal sum and Kshs. 217,930/= only being party to party cost taxed and certified by the Deputy Registrar in Nyamira Elc Case No. 87 Of 2021; *Johnson Bosire V The County Government Of Nyamira* whose judgement was delivered on 25th day of May, 2023.



2. That the court be pleased to set a timeline and/or duration within which the Respondents will settle the Decretal sum and party to party cost with interest accruing until the date of payment.
 3. That the applicant be at liberty to apply to this court for all necessary and/or consequent orders that this Honourable Court may deem fit and just to grant in the circumstances.
 4. Costs of the application be provided for.
2. The application is supported by an affidavit sworn by the Applicant and is based on the following grounds:
1. The Applicant herein filed a Suit, the same being Nyamira Elc Case No. 87 Of 2021; Johnson Bosire V The County Government Of Nyamira.
 2. Judgment was entered in favour of the Applicant. Among other orders, the Applicant herein was awarded the sum Kshs. 750,000/=only being the decretal sum and Kshs. 217,930/= only being party to party cost taxed and certified by the Deputy Registrar.
 3. A Decree and a Certificate of satisfaction order extracted and issued by the Deputy Registrar.
 4. The Decree, Certificate of Satisfaction Order and Certificate of Order for cost against the government have since been duly served upon the Respondents herein, as required by Law.
 5. Despite such service, the Respondents have blatantly refused and or declined to satisfy the aforesaid Decretal amount.
 6. Owing to the above, it is apparent that the Respondents have deliberately refused and or ignored to settle the same hence the filing and or lodging of the instant Judicial Review proceedings.
 7. It is thus necessary and or imperative orders sought herein be granted.
 8. The Applicant is prejudiced by being denied the fruits of his judgement.
3. The Applicant deposed in the affidavit that judgment was entered in his favour in Nyamira ELC Case No. 87 of 2021; Johnson Bosire v The County Government of Nyamira and that a decree was issued for KShs 750,000 and party and party costs taxed at KShs 217,930 which sums remained unpaid despite the decree, Certificate of Satisfaction Order and Certificate of Order for cost against the government being duly served upon the Respondents.
4. The Respondents opposed the application through a replying affidavit sworn by Jack Magara, the County Secretary and Head of Public Service in the County Government of Nyamira. He deposed that the Respondents acted within their mandate and in accordance with the law and that the decision complained of was made in exercise of discretion. That the Applicant had failed to exhaust all available administrative remedies before moving the Court and that no clear obligation to perform the action demanded exists on their part. They therefore urged the Court to dismiss the application with cost.
5. The application was canvassed through written submissions. The Applicant filed submissions dated 30th June 2025 wherein he argued that it was not disputed that judgment was entered in his favour and that the decretal sum and taxed costs remained unpaid despite the decree, Certificate of Satisfaction Order and Certificate of Order for cost against the government being duly served upon the Respondents. That the County Government of Nyamira is a distinct level of government and that the respondents are therefore under a public duty to pay the decretal sum. Relying on the cases of *Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani &*



another [2018] eKLR, Republic v Attorney General & another ex-parte Stephen Wanyee Roki [2016] eKLR and Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR, among others, he submitted that he was entitled to the orders sought.

6. On their part, the Respondents filed submissions dated 7th July 2025. They submitted that the Applicant's case was based on an incorrect premise that they had failed to discharge a clear legal duty and added that the conditions for issuance of an order of mandamus had not been met by the Applicant. That the acts that the Applicant sought to compel were discretionary and that the Applicant had failed to exhaust alternative remedies. Relying on the cases of Republic v County Government of Mombasa & Another Ex-Parte Josephat Kioko Mutuku [2015] eKLR, Republic v Cabinet Secretary Ministry of Lands and Physical Planning Ex-Parte Kivondo [2017] eKLR and Republic v Kenya Revenue Authority Ex-Parte Yaya Towers Limited [2008] eKLR, the Respondents urged the Court to dismiss the application with costs.
7. I have carefully considered the application, the pleadings, affidavits, and submissions. The only issue that arises for determination is whether the reliefs sought should issue.
8. The Applicant is principally seeking an order of mandamus. In Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR, the Court of Appeal discussed the scope and efficacy of an order of mandamus as follows:

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. ...

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.

9. In Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR, Mativo, J. (as he then was) discussed the test for mandamus 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 Applicant has demonstrated, through uncontested evidence, that judgment was entered on 25th March 2023 in his favour and against the County Government of Nyamira in Nyamira ELC Case No. 87 of 2021 *Johnson Bosire v The County Government of Nyamira*. He has exhibited a copy of the decree issued on 27th June 2023 for KShs 750,000 and costs of the suit. He has also annexed a copy of certificate of taxation issued on 18th August 2023 confirming that party and party costs were taxed at KShs 217,930.
11. The Applicant's statement on oath that the sums in the decree and certificate of taxation remain unpaid despite the decree, Certificate of Satisfaction Order and Certificate of Order for cost against the government being duly served upon the Respondents has not been controverted. In their replying affidavit, the Respondents did not offer any evidence of payment. Instead, they opted to advance legal arguments in the affidavit, contrary to Order 19 rule 3 of the [Civil Procedure Rules](#).
12. The decree in Nyamira ELC Case No. 87 of 2021 was issued by a court of competent jurisdiction. There is no evidence that it has either been stayed or set aside. The Respondents who are officers of the County Government of Nyamira have not disputed either the validity of the decree or that demand for settlement has been made. They owe the Applicant public legal duty to act by settling the sums awarded. Settlement of a lawful decree is not a discretionary matter.
13. The County Government of Nyamira is a level of government established pursuant to Articles 6 and 176 of the [Constitution](#) of Kenya, 2010. The Applicant cannot enforce the decree against it by attachment and sale of assets or even by way of committal to civil jail. See [Permanent Secretary Office of the President Ministry of Internal Security & Another Ex Parte Nassir Mwachidhi](#) [2014] eKLR. I am satisfied that no other adequate remedy is available to the Applicant to obtain satisfaction of the decree and that the Applicant has made a case for the granting of an order of mandamus.
14. In the result, I find merit in the Applicant's case, and I enter judgment in his favour as follows:
- a. An order of mandamus is hereby issued compelling the Respondents herein to forthwith pay to the Applicant the sum of KShs 750,000 (Seven Hundred Fifty Thousand) being the decretal sum and KShs 217,930 (Two Hundred Seventeen Thousand Nine Hundred Thirty) being party and party costs taxed and certified by the Deputy Registrar in Nyamira ELC Case No. 87 of 2021; *Johnson Bosire v The County Government of Nyamira*.
 - b. The Applicant is awarded costs of this case.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 1ST DAY OF OCTOBER 2025.

D. O. OHUNGO



JUDGE

Delivered in the presence of:

Ms Chepkorir for the Applicant

Ms Moeche for the Respondents

Court Assistant: B Kerubo

