



Ochieng & another v The Managing Director Kenya Railways Corporation & 2 others (Environment and Land Judicial Review Case E002 of 2025) [2025] KEELC 7122 (KLR) (14 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2025
SO OKONG'O, J
OCTOBER 14, 2025**

BETWEEN

AMINA ACHIENG' OCHIENG 1ST APPLICANT

TILAPIA BEACH RESORT LIMITED 2ND APPLICANT

AND

THE MANAGING DIRECTOR KENYA RAILWAYS CORPORATION 1ST RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT 2ND RESPONDENT

THE CHIEF FINANCE OFFICER COUNTY GOVERNMENT OF KISUMU 3RD RESPONDENT

RULING

1. On 24th October 2019, the applicants filed a suit against, among others, Kenya Railways Corporation, County Government of Kisumu, and the Attorney General, namely, Kisumu ELC Suit No. 40 of 2019, Amina Achieng' Ochieng' & Another v. Kenya Ports Authority & 3 Others (hereinafter referred to only as the "primary suit"). On 24th February 2022, the court entered judgment for the applicants in the primary suit against Kenya Railways Corporation, County Government of Kisumu, and the Attorney General (hereinafter referred to only as the "defendants in the primary suit") jointly and severally as follows;
 - (a) For the 1st applicant: Kshs. 27,000,000/- together with interest from the date of filing the suit until payment in full and the costs of the suit.



- (b) For the 2nd applicant: Kshs. 49,873,366/- together with interest from the date of filing suit until payment in full and the costs of the suit.
2. On 28th September 2022, the applicants' costs were taxed by the taxing officer at Kshs. 963,543.33. On 5th October 2022, a certificate of order against the government was issued by the court for a sum of Kshs. 108,330,011.33 together with interest from 24th October 2019 until payment in full, plus costs of the suit as assessed by the taxing officer.
 3. What is now before me is the applicants' ex parte Chamber Summons application dated 1st April 2025 seeking leave to apply for a judicial review order of Mandamus to compel the respondents to forthwith pay to the applicants the sum of Kshs. 76,873,366.00 plus interest at court rates, making an aggregate total of Kshs. 117,233,983/- as at 1st April 2025, being the amount that was awarded to the applicants by this court in the judgment above delivered on 24th February 2022 and the certificate of order against the government issued on 5th October 2022. The application has been brought on the grounds set out on the face thereof, the statutory statement dated 1st April 2025, and a verifying affidavit sworn by the 1st applicant on the same date on her own behalf and on behalf of the 2nd applicant.
 4. The application was brought on the ground that the decree of this court in the primary suit had remained unsettled, even after the conditional stay of execution granted to the defendants in the primary suit lapsed when the defendants in the said suit failed to comply with the conditions imposed by the court. The applicants averred that, the Managing Director of Kenya Railways Corporation (the 1st respondent) is the accounting officer of Kenya Railways Corporation under the [*Kenya Railways Corporation Act*](#), the Principal Secretary, Ministry of Interior and Coordination of National Government (the 2nd respondent) is the accounting officer of the said Ministry, while the Chief Finance Officer of the County Government of Kisumu (the 3rd respondent) is the accounting officer of that county. The applicants averred that the respondents, as the accounting officers of the defendants in the primary suit, had a duty to settle the decretal sum. The applicants averred that they had no other means for recovering the decretal sum from the defendants in the primary suit.
 5. Although the application was made ex parte, the same was served upon the respondents. The 1st respondent filed a replying affidavit sworn by Christine Macharia on 10th September 2025. The 1st respondent admitted that the court delivered a judgment on 24th February 2022 against the defendants in the primary suit jointly and severally in the sum of Kshs. 76,873,366/- together with interest and costs. The 1st respondent denied that it had refused to settle the decretal sum. The 1st respondent averred that it had budgeted for the decretal sum and sought to be allocated the funds to settle the same and was waiting for a response from the Cabinet Secretary for Finance. The 1st respondent averred that the delay in settling the decretal sum was beyond his control.
 6. The 3rd respondent did not file a response to the application, but was represented by an advocate at the hearing of the application. The 3rd respondent's advocate told the court that the 3rd respondent had difficulty in settling the decretal sum due to the nature of the liability of the respondents, which, according to the judgment of the court, was joint and several. The advocate argued that the 3rd respondent did not know how to apportion the liability.
 7. I have considered the application together with the statutory statement and the verifying affidavit filed in support thereof. I have also considered the replying affidavit filed by the 1st respondent and the



submissions by the advocate for the 3rd respondent. In *Njuguna v. Minister for Agriculture* [2000] 1 E. A 184, it was held that:

“the test as to whether leave should be granted to an applicant for judicial review is whether, without examining the matter in any depth, there is an arguable case, that the reliefs might be granted on the hearing of the substantive application.”

8. Section 88 of *Kenya Railways Corporation Act*, Chapter 397 Laws of Kenya provides as follows:

“Notwithstanding anything to the contrary in any law—

- (a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixtures or fittings; but the Managing Director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgment or order, be awarded against the Corporation to the person entitled thereto;
- (b) no immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixtures or fittings shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Managing Director.”

9. Section 21 of the *Government Proceedings Act*, Chapter 40 Laws of Kenya, which deals with the satisfaction of orders against the government, provides as follows:

1. “Where in any civil proceedings by or against the government or any 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 21 days from the date of the order or, in case the order provides for the payment of costs and the costs are required to be taxed, at any time after the costs have been taxed, whichever is the latter, issue to that person a certificate in the prescribed form containing the 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 any costs, the certificate are(sic) state the amount 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 orders are 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.
 5. This section shall, with necessary modification, apply to any civil proceeding by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.”
10. It is not in dispute that the applicants obtained a judgment against the Defendants in the primary suit for a total sum of Kshs. 76,873,366/- plus costs and interest from the date of filing suit. It is also not in dispute that the execution of the said judgment has not been stayed. It is not disputed that the respondents are the accounting officers of the defendants in the primary suit who are the judgment debtors to the applicants, and as such have a statutory obligation under Section 88 of the [Kenya Railways Corporation Act](#) and Section 21 of the [Government Proceedings Act](#) to settle the decretal amount due to the applicants. It is not in dispute that the decretal sum remains unsettled.
11. I am satisfied that the applicants have established an arguable case of breach of statutory duty against the respondents. The applicants are therefore entitled to the leave sought. The arguments put forward by the respondents are not relevant at this stage. I therefore find merit in the Chambers Summons application dated 1st April 2025 and allow the same as follows;
1. The applicants are granted leave to apply for judicial review order of Mandamus to compel the respondents to forthwith pay the sum of Kshs. 76,873,366.00 plus interest from 24th October 2019 until payment in full, together with costs of Kshs. 963,543.33, being the principal amount, interest, and costs awarded to the applicants on 24th February 2022 in Kisumu ELC Suit No. 40 of 2019, Amina Achieng’ Ochieng’ & Another v. Kenya Ports Authority & 3 Others.
 2. The judicial review application shall be filed within 21 days from the date hereof.
 3. The costs of the application shall abide the outcome of the judicial review application.

DELIVERED AND SIGNED AT KISUMU ON THIS 14TH DAY OF OCTOBER 2024

S. OKONG’O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

M.C.Ouma for the Applicant

Ms. Moraa for the 1st Respondent

N/A for the 2nd and 3rd Respondents

Ms. J. Omondi-Court Assistant

