



**Republic v Ole Lenku & 2 others; Marima (Ex parte Applicant) (Judicial Review Application E042 of 2025) [2025] KEELRC 2961 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2961 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW APPLICATION E042 OF 2025**

**B ONGAYA, J  
OCTOBER 30, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**GOVERNOR KAJIADO COUNTY HON. JOSEPH OLE  
LENKU ..... 1<sup>ST</sup> RESPONDENT  
KAJIADO COUNTY, PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT  
CHAIRPERSON OF KAJIADO COUNTY PUBLIC SERVICE  
BOARD ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JOHNATHAN KULEI MARIMA ..... EX PARTE APPLICANT**

**JUDGMENT**

1. The ex-parte applicant is Jonathan Kulei Marima who filed a notice of motion dated 22.07.2025 through Kabiru & Company Advocates. He prayed for an order of mandamus to compel the 1<sup>st</sup> respondent and 3<sup>rd</sup> respondent to implement the decree emanating from the judgment of Nairobi ELRC Petition No. E0178 of 2024 between Jonathan Kulei Marima –Versus- Governor Kajiado County Hon. Joseph Ole Lenku and another per the judgment delivered on 19.12.2024 for orders of reinstatement of the ex-parte applicant as an employee with full benefits and deploy the applicant appropriately in the same or similar capacity without loss of remunerative scale and benefits, payment of the applicant’s salary and accompanying benefits from the month of August 2023 being Kshs.199, 616 x 15 months as at December 2024 making Kshs.2, 994, 240.00 (less PAYE), accrued interest and costs of the suit assessed at Kshs.191, 788.40. The applicant further prayed for costs of the suit and any further orders the Court deems just and expedient in the circumstances. The application invoked rule 10(2) of the ELRC (Procedure) Rules 2024, sections 8 and 9 of the [Law Reform Act](#) Cap 26



laws of Kenya, order 53 rules 3 and 4 of the Civil Procedure Rules 2010 (Rev.2020), section 21 of the [Government Proceedings Act](#) Cap. 40 laws of Kenya and all enabling provisions of law.

2. The application was based upon the statutory statement and the applicant's affidavit and exhibits. The applicant urged as follows:
  - a. The Court delivered judgment on 19.12.2024 in Nairobi ELRC Petition No. E0178 of 2024 between Jonathan Kulei Marima –Versus- Governor Kajiado County Hon. Joseph Ole Lenku and another. The Court entered judgment for the petitioner therein against the respondents therein and ordered as follows:
    - a. The declaration that the 1<sup>st</sup> respondent's decision to invoke sections 31(a) and 45 of the County Government Act, 2012 to terminate the petitioner from employment in his own capacity was ultra vires and therefore unlawful on account of violation of and inconsistency with the provisions of Articles 10, 27, 28, 47, 50 and 236 of [the Constitution](#) and provisions of County Government Act.
    - b. The declaration that the rights of the petitioner guaranteed and protected under Articles 27,28,41,47,50 and 236 of [the Constitution](#) have been violated by the respondents.
    - c. The order of certiorari hereby issued to bring to the Honourable Court for purposes of quashing forthwith the letter of termination of contract of employment dated 16/08/2023 and reinstate the petitioner forthwith with full benefits and deployed appropriately in the same or similar capacity without loss of remunerative scale and benefits.
    - d. The declaration that the process employed by the 1<sup>st</sup> respondent in terminating the petitioner was prejudicial, unconstitutional and in gross violation of the petitioner's right as guaranteed under Articles 10, 27, 28, 47, 50 and 236 of [the Constitution](#).
    - e. The petitioner be paid his salary and accompanying benefits from the month of August, 2023 being Kshs.199,616.00 x 15 months as at December 2024 making Kshs.2,994,240.00 (less PAYE) and thereafter to continue working and earning per terms of service unless lawfully separated.
    - f. The amount in (e) above be paid by 01.03.2025 failing interest be paid thereon at Court rates from the date of this judgment until full payment.
    - g. The respondents to jointly or severally pay the costs of the petition.
  - b. On 13.05.2025 the party and party costs were duly taxed in the decided petition and the judgment, decree, and certificate of costs have never been set aside. The same have been notified upon the respondents herein but who have failed or neglected to satisfy the judgment, decree and certificate of costs. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have the overall employment obligations for the purpose of the affairs of the 1<sup>st</sup> respondent. The respondents are obligated to comply and satisfy the decree and certificate of costs.
  - c. The applicant has no any other mechanism to satisfy the decree.
3. On 10.10.2025 the respondents appointed Odhiambo Oronga & Company Advocates to act in the matter and they filed the replying affidavit of George Letema, the Chairperson of the County Public Service Board, Kajiado County. It was stated and urged as follows:



- a. The applicant has not provided evidence that the respondents have wilfully and unreasonably failed to comply with the judgment.
  - b. The respondents have noted the judgment, decree and certificate of costs. However it cannot be enforced in the manner sought by the applicant because the applicant's contract of service lapsed on 27.09.2025 making reinstatement impossible and impracticable; the respondents have filled the position substantively in their operational structure; and forcing reinstatement would lead to duplication of office; and reinstatement cannot be ordered whereas there is no contract of employment between the parties. Costs were indeed taxed but cannot be realised through a disruptive reinstatement.
  - c. There is a pending appeal from the judgment and applicant's contract expired on 26.09.2025. the payments for employment in the public service must comply with budgetary provisions and there cannot be double payments. Mandamus can issue but only for practicable actions and not a reinstatement like in the instant case whereby the office held by the petitioner has since been substantively filled. Mandamus should not issue where there are other remedies such as compensation. The judicial review application should be dismissed with costs.
4. The Court has considered the rival parties' positions and the material on record and returns as follows:
- a. There is no dispute that the judgment, decree and certificate of taxation issued in the petition and is subject of the instant application for mandamus. The respondents also admit that they are aware of the same and which they have noted.
  - b. There is no dispute that the applicant's contract of service was lapsing on 27.09.2025. The judgment and decree subject of the mandamus application stated thus, "e) The petitioner be paid his salary and accompanying benefits from the month of August, 2023 being Kshs.199,616.00 x 15 months as at December 2024 making Kshs.2,994,240.00 (less PAYE) and thereafter to continue working and earning per terms of service unless lawfully separated." The Court considers that the order of reinstatement was self-executing and the respondents have not rebutted the applicant's case that they have failed to implement the order of reinstatement, albeit, up to lawful separation date, 27.09.2025.
  - c. The respondents have not demonstrated that indeed they are appealing against the judgment and decree and in any event there is no alleged or actual order of stay of execution of the judgment and decree subject of the instant application.
  - d. The respondents appear misconceived in urging that there exist alternative remedies to reinstatement. They appear to urge that after lapsing of the contract of employment on 27.09.2025, thereafter, the reinstatement is impracticable or impossible in view of the lapse and appointed substantive officer. While the substantive appointment has not been demonstrated by way of exhibiting the relevant letter of appointment, the court has found that indeed the term contract subject of the Court order lapsed on 27.09.2025 and the respondents' compliance with respect to the self-executory reinstatement order is up to the said 27.09.2025. The respondents are bound to pay the applicant up to 27.09.2025 accordingly.
  - e. There is no established bar to grant of an order of mandamus in the instant case and the order will issue in terms of the findings by the Court.
- In conclusion the application is hereby determined with the following orders:
1. The order of mandamus is hereby issued compelling the 1<sup>st</sup> respondent and 3<sup>rd</sup> respondent to implement the decree emanating from the judgment of Nairobi ELRC Petition No. E0178 of



2024 between Jonathan Kulei Marima –Versus- Governor Kajiado County Hon. Joseph Ole Lenku and another per the judgment delivered on 19.12.2024 thus:

- a. The declaration that the 1<sup>st</sup> respondent's decision to invoke sections 31(a) and 45 of the County Government Act, 2012 to terminate the petitioner from employment in his own capacity was ultra vires and therefore unlawful on account of violation of and inconsistency with the provisions of Articles 10, 27, 28, 47, 50 and 236 of the Constitution and provisions of County Government Act.
  - b. The declaration that the rights of the petitioner guaranteed and protected under Articles 27,28,41,47,50 and 236 of the Constitution have been violated by the respondents.
  - c. The order of certiorari hereby issued to bring to the Honourable Court for purposes of quashing forthwith the letter of termination of contract of employment dated 16/08/2023 and reinstate the petitioner forthwith with full benefits and deployed appropriately in the same or similar capacity without loss of remunerative scale and benefits.
  - d. The declaration that the process employed by the 1<sup>st</sup> respondent in terminating the petitioner was prejudicial, unconstitutional and in gross violation of the petitioner's right as guaranteed under Articles 10, 27, 28, 47, 50 and 236 of the Constitution.
  - e. The petitioner be paid his salary and accompanying benefits from the month of August, 2023 being Kshs.199,616.00 x 15 months as at December 2024 making Kshs.2,994,240.00 (less PAYE) and thereafter to continue working and earning per terms of service until 27.09.2025 when the contract of service between the parties lapsed.
  - f. The amount in (e) above be paid by 01.03.2025 failing interest be paid thereon at Court rates from the date of this judgment until full payment.
  - g. The respondents to jointly or severally pay the costs of the suit assessed at Kshs.191,788.40.
2. The respondents to pay the applicant's costs of the application.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 30<sup>TH</sup> OCTOBER, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

