



**Republic v County Secretary, County Government of Uasin Gishu &  
another (Employment and Labour Relations Judicial Review E002 of 2024)  
[2025] KEELRC 3227 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3227 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E002 OF 2024  
MA ONYANGO, J  
NOVEMBER 13, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

**COUNTY GOVERNMENT OF UASIN GISHU ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Ex Parte Applicant was granted leave to commence Judicial Review proceedings against the Respondents by this court’s order of 19<sup>th</sup> December, 2024. The substantive motion is dated 24<sup>th</sup> January 2025. In the motion the Ex Parte Applicant seeks the following reliefs:
  1. That an order of mandamus do issue to compel the County Secretary of the County Government of Uasin-Gishu and the County Government of Uasin-Gishu to satisfy the judgment in Eldoret Chief Magistrates Court ELRC. No. 75 of 2018 - Thomas Murkomen v The County Government of Uasin-Gishu as entered on the 7<sup>th</sup> April, 2022 and pursuant to the certificate of order against the Government dated the 7th June,2024 as follows: -
    - i. Decretal sum of sh. 538,080 plus interest from 7/4/2022 - 7/4/2024 of sh. 129,139 making sh. 667,219.20 as at 7<sup>th</sup> April, 2024.
    - ii. Party and party costs as assessed and certified at sh. 125,420 on the 31<sup>th</sup> May,2022.
    - iii. Interest be paid on the decretal sum at 14% p.a. from 7/4/2024 to the date of this application being 5/12/2024 in the sum of sh.50,220.80



- iv. Interest on party and party costs from the date of assessment being 31/5/2022 to the date of application of 5/12/2024 at 14% p.a. being sh.43,897
  2. That the costs of this application be sourced by the respondents.
2. The grounds in support of the motion are that:
  - i. That the applicant has a judgment entered against the County Government of Uasin-Gishu requiring the satisfaction of monetary awards.
  - ii. That the respondents are well aware of the judgment, have not contested it on appeal and no order staying execution is in force.
  - iii. That the decree and certificate of costs have been brought to the respondents attention but without satisfaction.
  - iv. That a certificate of order against the Government has been issued and served upon the respondents but there has been no satisfaction of the judgment.
  - v. That the respondents are under a public duty to satisfy a judgment entered against the County Government of Uasin-Gishu.
  - vi. That an order of mandamus ought to issue for the public duty to satisfy the judgment.
3. The motion is opposed. The Respondents filed a replying affidavit of Philip Meli, the County Secretary Uasin Gishu County, the 1<sup>st</sup> Respondent herein, in opposition to the motion.
4. Mr. Meli deposes that the chamber summons is incurably defective, incompetent, frivolous, scandalous and devoid of substance in law. That the application is time barred, contra-statute and a nullity as judicial review proceedings must be instituted within 6 months from the date of the judgment.
5. He deposes that the ruling that is the subject of these JR proceedings was delivered on 31<sup>st</sup> May, 2022, that satisfaction of decrees or judgments is deemed to be an expenditure by Parliament/County Assembly and must be notified in law and provided for in the Government's expenditure.
6. Mr. Meli deposes that section 32 of the [Government proceedings Act](#) provides that any expenditure incurred by or on behalf of the Government by reason of the Act shall be paid out of the monies provided by Parliament. That Parliamentary control over expenditure is based on the principle that all expenditure must rest upon legislative authority, in this case the County Assembly by dint of County Government Act and [Public Finance Management Act](#).
7. It is deposed by the affiant that the trial magistrate erred in law and fact in failing to scrutinize and establish the effects brought about by the failure to pass the Finance Bill, 2024 to the County Governments.
8. He deposes that no payment out of public funds is legal unless it is authorized by statute in this case by fiscal plan and budget process. That it is only through appropriation that the County Government of Uasin Gishu can pay a debtor. That as such immediate payment upon issuing of decree and judgment is not tenable.
9. Mr. Meli deposes that in the event the application is allowed, the County Government be given time so that it can factor the said debt in the next financial cycle 2025/2026 financial year. Further, that the court sets a timeline for payment that will not cause the County Government to clash with any statute.



10. The Respondents pray that the application be dismissed.
11. The application was disposed of by way of written submissions. Both parties filed and exchanged submissions.

Submission of the Ex Parte Applicant

12. The Ex Parte Applicant submitted that the objection by the Respondents on the time for filing of the motion should be before the lapse of six months from date of the judgment sought to be enforced is not founded as the provisions of Order 53 rule 2 of the Civil procedure Rules 2010 which do not impose a time limit for the application for an order of mandamus. The Ex Parte Applicant relied on the case of Lucy Mirigo & 550 others v Minister for Lands & 4 others [2014] eKLR in which Justices Koome, Mwilu and Odek (as they were then) held as follows:

“On our part, we have examined the provisions of Order 53 of the *Civil Procedure Act* which is the juridical basis for an application for mandamus. Rule 2 Order 53 provides a six month limitation period for an order of Certiorari. There is no limitation period to institute an action for mandamus.”

13. The Ex Parte Applicant further relied on the decision in Joseph Muriithi Nyaga v Embu County Government [2021] eKLR where Njuguna J held:

“...Further, from the reading of the said section 9(2), the prescription as to the time within which applications for an order of mandamus, prohibition or certiorari ought to be made is in regards to specified proceedings. There are no other rules which have been made in regards to execution against the government taking the same as specific proceedings as contemplated by the said section. It is my view therefore, that the respondent herein misconstrued the law in raising the preliminary objection. It is clear that section 9(2) does not limit the time for filing an application for mandamus to six months but provides that rules made to provide for the procedure of the courts may limit such time. The procedural rules (CPR 2010) which are the only applicable rules do not provide for such a limitation on time in relation to an application for orders of mandamus but only when seeking for orders of certiorari.”

14. On the application it is submitted on behalf of the Ex Parte Applicant that his employment was unfairly terminated. He instituted a claim vide Eldoret Chief Magistrates Court ELRC No. 75 of 2018 – Thomas Murkomen v The County Government of Uasin Gishu which was determined in his favour on 7<sup>th</sup> April, 2022. He was awarded Kshs. 538,080 together with costs and interest. He lodged a party and party bill of costs for assessment which was assessed at Kshs. 124,420 on 31<sup>st</sup> may, 2022. A decree and certificate of costs were issued on 2<sup>nd</sup> June, 2022. A period of 21 days elapsed without the Respondents satisfying the judgment despite having been represented in the defence of the claim by the County Attorney.
15. The Ex Parte Applicant submits that pursuant to section 21(1) of the *Government proceedings Act*, Cap. 21 he moved the Magistrates Court on 5<sup>th</sup> December, 2022 by an application seeking issuance of certificate of order against the County Secretary of the County Government of Uasin Gishu to pay the decretal sum plus costs and interest which application was allowed on 6<sup>th</sup> December, 2022 and an order thereof served upon the Respondents on 21<sup>st</sup> December, 2022.
16. Follow up was made by the Ex Parte Applicants on 10<sup>th</sup> March, 2023. A certificate of order against the County Secretary, Uasin Gishu County was issued on 14<sup>th</sup> June, 2023 and served upon the County Attorney.



17. It is submitted that the Ex Parte Applicant has complied with all legal requirements, that there is no pending appeal or other proceedings barring the enforcement of the Judgment, that the County Government of Uasin Gishu has a public duty to satisfy the judgment hence the need for the mandamus.

18. It is submitted for the Ex Parte Applicant that the reference to the *Public Finance Management Act* and the plea to defer settlement to the Financial Year 2025/2026 financial cycle are not valid defences to the reliefs sought, relying on the decision in *Zedka Services Limited v County Secretary, Uasin Gishu County & another* (Judicial Review 7 of 2023) [2024] KEHC 5908 (KLR) (24 May 2024) (Ruling) where Wananda J observed:

“

“25. As aforesaid, the Respondents argue that by dint of County Government Act and the *Public Finance Management Act*, no payment out of public funds is legal unless it is authorized by statute, in this case by fiscal plan and a budget process, and that only through an appropriation can the Respondents pay a debtor.

They have then stated that in the event that the Application is allowed then the Respondents should be given time so that they can factor in the debt in the next financial cycle of 2024/2025 financial year and that the Court do set a timeline for payment that will not put the Respondents in clash with any statute.

26. I must disabuse the Respondents from the myth that compliance with a Court order can be subject to any other extra judicial processes outside Court or that it can be subject to the whims or discretion of any third party or process. I must remind the Respondents that once a Court order of any nature is given, compliance therewith becomes immediately mandatory. Disregard or non-compliance may as well amount to contempt of Court. In regard to a money decree, whether there is a budget or contingency fund for payment is not and cannot be a ground for failure to comply.

27. In any event, the Court order in issue herein was given on 2/10/2018 vide the Ruling delivered by Hon. Justice D. O. Ogembo. That is almost 6 years ago. The Respondents cannot therefore be heard to still plead for more time. The Court has to balance the interests of both parties in making decisions and in this case, considering the delay and length of time that the Applicant has been waiting for payment, the interest of the Applicant must prevail...”

19. It was submitted that the decretal sum and costs continue to accrue interest to date of payment. The Ex Parte Applicant urged the court to order payment of the decretal sum with interest as provided under section 20 of *Government proceedings Act*.

### **Submissions of the Respondents**

20. The Respondents identified the following issues under which they submitted:

- a. Whether the Judicial Review is time barred,
- b. Whether the application offends the provisions of the Civil Procedure Rules and the *Law Reform Act* Cap 26 of the Laws of Kenya,



- c. What is the scope and efficacy of an Order of Mandamus against the county government.
21. On the 1<sup>st</sup> and 2<sup>nd</sup> issues the Respondents referred the court to the decision in Judicial Review Application No. 1 of 2021: Peter Orengo Migiro v Samwel Omagwa James & 2 others. The Respondents submitted that under Order 53 Rule 1 and 2 of the Civil Procedure Rules an application for mandamus must be filed within 6 months from the date of judgment or decision.
  22. On what is the scope and efficacy of an Order of Mandamus against the County Government, the Respondent submitted that Court of Appeal in its decision in Republic v Kenya National Examinations Council ex-parte Gathenji and 9 Others, [1997] eKLR held that:
 

“The next issue we must deal with is this: What is the scope and efficacy of an Order of Mandamus? Once again we turn to Halsbury's Law of England, 4th Edition Volume 1 at page 111 from Paragraph 89. That learned treatise says: "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." At paragraph 90 headed "the mandate" it is stated: "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." What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”
  23. The Respondent submitted that in this case the Applicant has not demonstrated that the Respondent has failed to perform the duty. This is based on the fact that the Respondent has averred that if the court fails to dismiss the application it will in the alternative be granted an agreed form of settling the said decretal sum.
  24. The Respondents submitted further that the Applicant has not exhausted the set out alternative dispute resolution mechanism that include but not limited to negotiation, arbitration as provided for in the contract agreement between the Applicant and the Respondents. That it is the opinion of the Respondent that the process of paying the Applicant would be more effective if the alternative dispute resolution mechanism were employed rather than hastily rushing to court process. The Respondent prayed that the application be dismissed since it was prematurely filed in this Court.
  25. The Respondent in conclusion submitted that the application is contra-statute and therefore incompetent and should not be allowed to proceed.

### **Determination**

26. I have considered the pleadings and submissions of both parties. It is not in dispute that there is a judgment in favour of the Ex Parte Applicant against the Respondents in Eldoret Chief Magistrates



Court ELRC No. 75 of 2018 – Thomas Murkomen v The County Government of Uasin Gishu in the sum of Kshs. 538,080 with costs and interest

27. It is further not in dispute that the decretal sum therein has not been satisfied and that there is no appeal or orders staying execution of the said judgment.
28. It is further not disputed that the Ex Parte Applicant lodged a party and party bill of costs and that costs were assessed at Kshs. 124,420. A decree and certificate of costs were issued and the Ex Parte Applicant further obtained a certificate of order against the County Secretary, Uasin Gishu County. The Ex Parte Applicant has thus complied with all legal requirements for execution of a money decree against the Government as provided in both the [Government Proceedings Act](#) and the Civil Procedure Rules.
29. The issues for determination are therefore whether the application is time barred, whether the application offends the provisions of the Civil Procedure Rules and the [Law Reform Act](#), the scope and efficacy of an order for Mandamus and whether the Ex Parte Applicant is entitled to the reliefs sought.
30. It is the submission of the Respondents that the application is barred under order 53 rules 1 and 2 of the Civil procedure Rules. Order 53 of the Civil procedure Rules provides as follows:  
[Order 53, rule 2.] Time for applying for certiorari certain cases.
  2. Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
31. Order 53 rule 1 provides for the procedure for applying for orders of mandamus, prohibition or certiorari.
32. It is clear from Order 53 rule 2 that only an application for an order of certiorari ought to be made within 6 months from the date of judgment. There is no time limit for application for an order of mandamus. This was the essence of the decision in Lucy Mirigo & 550 others v Minister for Lands & 4 others (supra). I therefore find that the application by the Ex Parte Applicant is not time barred.
33. It is further the submission of the Respondents that the application offends the [Law Reform Act](#). No mention was made of the sections of the [Law Reform Act](#) that the application is alleged to offend and my reading of the Act does not disclose any section of the Act that the application offends. I thus find that the Ex Parte Applicant's application does not offend any provisions of the [Law Reform Act](#).
34. The Respondents further questioned the efficacy of an order of Mandamus against a County Government. According to Black's Law Dictionary, a writ of mandamus is a court-issued order compelling a lower court, government officer, or government agency to perform a mandatory duty. It is used to enforce a non-discretionary duty, which can be a required action or the correction of a prior failure to act. The purpose of such order is to compel the performance of a mandatory or ministerial duty that the law requires but the official or court has failed or refused to do. The order is issued by a court of superior jurisdiction issues the writ to a lower court, government officer, public body, or corporation. The scope of the order is to command an action or a command to refrain from a particular action.
35. In the case of Republic v National Examinations Council Ex Parte Gathenji and 9 others quoted by the Respondents, the court observed that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of



persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”.

36. In the case of Zedka Services Limited v County Secretary, Uasin Gishu County & another, the court observed that In regard to a money decree, whether there is a budget or contingency fund for payment is not and cannot be a ground for failure to comply.
37. In the instant case the Ex Parte Applicant has a judgment from the lower court which the Respondents have failed to satisfy. I find that an order of Mandamus is the most efficacious mode of compelling the Respondents to comply and settle the decretal sum.
38. For the foregoing reasons I find merit in the application by the Ex Parte Applicant and grant the orders sought therein in the following terms:
  1. That an order of Mandamus do and is hereby issued to compel the County Secretary of the County Government of Uasin-Gishu and the County Government of Uasin-Gishu to satisfy the judgment in Eldoret Chief Magistrate Court ELRC. No. 75 of 2018-Thomas Murkomen v The County Government of Uasin-Gishu as entered on the 7<sup>th</sup> April, 2022 and pursuant to the certificate of order against the Government dated the 7<sup>th</sup> June,2024 as follows:-
    - i. Decretal sum of sh. 538,080 plus interest from 7/4/2022 - 7/4/2024 of sh. 129,139 making sh. 667,219.20 as at 7<sup>th</sup> April, 2024.
    - ii. Party and party costs as assessed and certified at sh. 125,420 on the 31<sup>th</sup> May, 2022.
    - iii. Interest be paid on the decretal sum at 14% p.a. from 7/4/2024 to the date of this application being 5/12/2024 in the sum of sh.50,220.80.
    - iv. Interest on party and party costs from the date of assessment being 31/5/2022 to the date of application of 5/12/2024 at 14% p.a. being sh.43,897.
  2. That the costs of this application be paid by the respondents.
39. Orders accordingly.

**DATED, DELIVERED AND SIGNED THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**M. ONYANGO**

**JUDGE**

