

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E318 OF 2025

ZELIANG YANG.....APPLICANT

VERSUS

THE SECRETARY TO THE IEBC.....1ST RESPONDENT

**THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION.....2ND RESPONDENT**

JUDGMENT

1. On 3rd November, 2024, over one year ago, Ngaah J delivered judgment in HCJR E067 of 2022, determining an application dated 19th July 2022 seeking judicial review orders compelling the respondents herein to settle decree in Milimani CMCC No. 3364 of 2006 Zeliang Yang Versus Attorney General in the sum of Kshs 530,433.00 with interest at the rate of 12% per annum from January, 2019 in terms of the certificate of order against the government dated 20th January, 2019 until payment in full.
2. In the said Judgment, the learned Judge dismissed the application for mandamus for reasons of non-joinder and misjoinder of the accounting officer of the Independent Electoral and Boundaries Commission.
3. The Court did not award any costs as the decree remained unsettled.

4. Following that judgment, the applicant filed a fresh chamber summons dated 10/9/2025 seeking leave of court to apply for judicial review orders of mandamus to compel the respondents, namely-Secretary to the IEBC and the IEBC to settle the aforesaid decree with interest at 12% per annum from 9th January, 2019 in terms of certificate of order against the government issued on 20th February, 2019 until payment in full arising from Milimani CMCC No. 3364 of 2006 Zeliang Yang vs Attorney General.
5. and on 29th September, 2025, this Court granted leave to apply, giving the applicant 21 days of the date of the order for leave, to file and serve the substantive notice of motion for mandamus upon the respondents.
6. Vide Notice of Motion dated 10th September, 2025, the applicant seeks the following orders:
 1. *THAT this Honourable Court be pleased to issue an order of mandamus compelling the Attorney General to pay the applicant the sum of Kshs 530,433,00 with interest thereon at the rate of 14% per annum from 9th January, 2019 in terms of certificate of order against the Government issued on 20th February, 2019 until payment in full from Milimani CMCC 3364 of 2006 Zeliang Yang versus Attorney General*
 2. *THAT this Honourable Court be pleased to give further orders and directions as it may deem fit and just*

3. *THAT costs of this application be provided for.*

7. Before I delve into the grounds upon which the application is predicated, if I have to, I observe that the applicant seeks for orders of mandamus against the Attorney general, yet the leave granted was to apply against the respondents being the Secretary to the Commission and The Commission. It is these parties, which non joinder that made Justice Ngaah to dismiss the first application for mandamus.
8. Additionally, the applicant has now changed the interest rate from 12% per annum as sought in the application for leave to 14% per annum in the application for mandamus.
9. The question is, can this Court grant orders which were not sought and obtained in the application for leave? The answer is a clear No. a party cannot seek leave to apply against totally different parties and give facts which are totally different from those which were contained in the application for leave. That is unacceptable.
10. Although this application was not opposed, it is the duty of this Court to be vigilant and ensure proper parties are before it and that the cause of action accords with the decree and certificate of order against the government, the basis upon which mandamus proceedings are initiated.
11. In the instant case, it is surprising that the applicant has again introduced the Attorney General as the person against whom mandamus should issue yet in the application for leave, the Attorney General was nowhere and

oblivious of the judgment of Ngaah J rendered on 3rd November, 2024 dismissing the mandamus application for non-joinder and misjoinder of parties. It is equally surprising that the interest rate given is 14% per annum. As to where this interest rate was obtained from, only the applicant knows.

12. For the above reasons, I proceed to dismiss the application dated 10th September, 2025 with no orders as to costs.

13. This file is closed.

Dated, Signed and Delivered at Nairobi this 3rd Day of December, 2025

**R.E. ABURILI
JUDGE**