

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLJR No. E001 OF 2023

BETWEEN

REPUBLIC
APPLICANT

AND

THE GOVERNOR, NYAMIRA COUNTY **1ST**
RESPONDENT

COUNTY GOVERNMENT OF NYAMIRA **2ND**
RESPONDENT

THE COUNTY SECRETARY, NYAMIRA COUNTY **3RD**
RESPONDENT

THE EXECUTIVE COMMITTEE MEMBER,
FINANCE
4TH RESPONDENT

AND

EX PARTE
SAMUEL W. M. NYAMAO

RULING

1. This ruling is in respect of Notice of Motion dated 6th November 2025, filed by the Respondents. Before I address the details of the application, it is necessary, for better context, to give a background of litigation in this and another related matter thus far.
2. The Ex Parte Applicant herein filed Nyamira ELCC No. 86 of 2021 against the County Government of Nyamira, the 2nd Respondent herein. The said matter was heard, and judgment

was delivered by this Court (differently constituted) on 21st September 2022 in favour of the Ex Parte Applicant herein as follows:

(a) A permanent injunction do and is hereby issued restraining the defendant either by herself, agent, servants and/or anyone claiming under the defendant from further entering onto, re-entering, trespassing onto, demolishing further buildings and/or structure thereon, undertaking excavation, constructing and/or continuing with the construction of the road of access, interfering with and/or in any other manner dealing with the suit property, that is, LR No West Mugirango/Siamani/2137.

(b) Compensation for the destruction caused by the defendant on the plaintiff's property on LR No West Mugirango/Siamani/2137 in the sum of Kshs 3,740,000/=.

(c) General and aggravated damages for trespass - Kshs 150,000/=.

(d) Costs of the suit at court rates.

(e) Interest on (c) above at court rates from the date of filing this suit i.e. 22/12/2020 and interest on interest (d) and (e) above at court rates from the date of this judgment till payment in full.

3. Subsequently, a decree was issued on 28th October 2022. Further, the Ex Parte Applicant filed a party and party bill of costs which was taxed on 28th November 2022 at KShs 408,206 and certificate of taxation issued to that effect on 6th December 2022.
4. The 2nd Respondent herein did not settle the decretal sum and as a result, the Ex Parte Applicant filed this matter on 1st August 2023 through Notice of Motion dated 26th July 2023, seeking the following orders:
 1. *The Application herein be heard on priority basis owing to the obtaining special and or peculiar circumstances.*
 2. *The Honourable Court be pleased to grant an Order/Writ of Judicial Review, in the nature of Mandamus to issue against the 2nd Respondent herein compelling same to satisfy and/or settle the Decree of this Honourable Court made on the 21st September 2022 in favour of the Ex-parte Applicant, vide NYAMIRA ELC CASE NO. 86 OF 2021, currently standing in the sum of Kshs.4,400,001/= only and which sum continues to attract and/or accrue Interests (sic).*
 3. *The Honourable Court be pleased to set a time line and/or duration within which the Respondents do pay and/or settle the sum of Kshs. 4,400,001/= only, together with accruing Interests.*

4. Costs of this Application be borne by the Respondents jointly and severally.

5. Such further and/or other Orders be made as the Court may deem fit and expedient.

5. On 20th June 2024, this Court (differently constituted) allowed Notice of Motion dated 26th July 2023 in terms of prayers 2, 3 and 4 thereof together with costs. On that occasion, Counsel for the Respondents sought 14 days for the Respondents to settle the decretal sum.
6. The record shows that matter was then mentioned on 4th July 2024, 25th July 2024, 31st July 2024, 5th August 2024, 17th September 2024, 22nd October 2024, 24th October 2024, 29th October 2024, 5th November 2024, 7th November 2024, 10th December 2024, 10th December 2024, 18th December 2024, 13th January 2025, 22nd January 2025, 11th February 2025, 2nd April 2025, 28th May 2025, 10th July 2025, 18th September 2025, 9th October 2025 and 4th November 2025 all with a view to getting the Respondents to settle the decretal sum.
7. The record also shows that on 22nd October 2024, the Court ordered that the 2nd Respondent's County Chief Officer Finance attends Court on 24th October 2024 to show cause why she should not be committed to civil jail for failure to settle the decretal sum. Subsequently on 24th October 2024, the Court ordered that Dr Asenath Moebe the 2nd Respondent's County Chief Officer Finance attends Court physically on 29th October

2024 to show cause failure to which a warrant of arrest would be issued. Ultimately, Dr Asenath Moebe did not attend Court on 29th October 2024. The Court was told that she was sick and in hospital.

8. On 11th February 2025, Counsel for the Ex Parte Applicant informed the Court that his client had been paid KShs 2,300,000 being part of the decretal sum. After the ensuing mentions and Court attendances, the Court ordered on 4th November 2025 that warrant of arrest to issue against Dr Asenath Moebe the 2nd Respondent's County Chief Officer Finance to show cause why she should not be committed to civil jail for failure to comply with the Court's order as to payment of the balance of the decretal sum.
9. It is the order of 4th November 2025 that jolted the Respondents into filing Notice of Motion dated 6th November 2025. In the heading of the application, the Respondents/Applicants refer to themselves as "Contemnors/Applicants." The following orders are sought in the application:
 - i. *THAT this application be certified as urgent and be heard ex parte, service thereof being dispensed with in the first instance.*
 - ii. *THAT pending inter parties hearing of this application, this Honourable Court be pleased to stay of execution of the warrants of arrest issued on 4th of November 2025*

against the Chief Officer, Finance and or any of the contemnors herein.

iii. THAT the Honourable Court be pleased to discharge, set aside and suspend the warrant of arrest issued on the 4th of November, 2025 against the Chief Officer, Finance and the other two contemnors herein.

iv. Costs of this application be provided for.

10. The application is based on the grounds listed on its face and is supported by an affidavit sworn by Asenath Kenyanya Moebe on 6th November 2025. She deposed that the Respondents had paid KShs 2,461,219.05 on 5th May 2025 and that a voucher in the sum of KShs 1,200,000 had been prepared and payment would be effected within two weeks. She added that the decree was to be satisfied upon appropriation of funds by the County Assembly of Nyamira and that due to leadership wrangles in the County Assembly of Nyamira, the 2nd Respondent had not been able to comply with the order requiring payment.

11. Asenath Kenyanya Moebe further deposed that failure to pay was not wilful but had been occasioned by factors beyond the control of the Respondents. She urged the Court to stay the warrant of arrest until the 2nd Respondent receives adequate funding and prepares an appropriate budget for settlement of the amount.

12. The Ex Parte Applicant opposed the application through Grounds of Opposition dated 14th November 2025 in the following terms:

1. *The Instant Notice of Motion Application, is, Pre-mature, misconceived, Incompetent and otherwise legally untenable.*
2. *At any rate, the Respondents have neither established nor satisfied the requisite conditions and/or Ingredients, inter-alia proof of Substantial loss to warrant grant of the Orders of Stay of Execution of the warrants of arrest.*
3. *Besides, the Respondents/Applicants have not laid out and/or establish any Sufficient cause and/or basis to warrant Review, Variation and/or setting aside of the Orders made on the 4th November 2025, either in the manner sought or at all.*
4. *In any event, the instant Application is an attempt by and/or at the instance of the Respondents to Delay, obstruct and/or otherwise defeat the Due process of the Honourable Court and in particular, realization of the Decretal sum.*
5. *On the other hand, the instant Application has been brought to Court with unclean hands and hence same reeks of Mala-fides. In any event, the Respondents are Devoid of Candor and hence underserving of Equitable Discretion of the Honorable Court, whatsoever.*

6. Consequently, the instant Application is an attempt by the Respondents to deprive the Ex-parte Applicant of the fruits of the successful litigation.

7. The instant Notice of Motion Application constitutes and/or amounts to an abuse of the Due process of Court.

8. The Notice of Motion Application herein is Devoid of merits, whatsoever and/or howsoever.

13. The application was canvassed through oral submissions. Learned Counsel for the Respondents/Applicants, Ms Moeche, submitted that the Respondents/Applicants settled part of the decretal sum. She cited **Articles 187 (2) (b)** and **201** of the **Constitution** and submitted that arrest of a public officer may impede service delivery to the public and that Courts had refrained from imposing punitive measures where budget was involved. She further argued that there was a distinction between refusing to pay and inability to pay and that immediate payment was beyond the control of Dr Asenath Moebe. That the Respondents/Applicants had shown good faith by availing a voucher for KShs 1.2 million. In conclusion, she urged the Court to lift the warrants and grant the Respondents/Applicants more time to enable them pay.

14. In response, Learned Counsel for the Ex Parte Applicant, Ms Ochwal, opposed the application and relied on the Grounds of Opposition. She submitted that judgment was delivered on 21st September 2022 and that these judicial review proceedings

were filed owing to non-payment. That the initial judgment and mandamus had not been set aside and that the decretal sum had remained owing since 2022.

15. Ms Ochwal further submitted that the delay negated the Respondents/Applicants' claims of goodwill and added that **Article 159 (2) (b)** of the **Constitution** required that justice not be delayed while **Article 27** entitled each person to equal protection of the law. She contended that the Respondents were not above the law and that arrest and detention was a procedure that was allowed under **Section 40** of the **Civil Procedure Act**. She further submitted that the voucher which the Respondents/Applicants referred to did not show that payment would be made immediately. In closing, she contended that the Ex Parte Applicant, being a successful litigant, should be allowed to execute. She therefore urged the Court to dismiss the application with costs.

16. In a brief rejoinder, Ms Moeche submitted that arrest for failure to pay would violate Dr Asenath Moebe's administrative rights. She urged the Court to give the Respondents/Applicants only two weeks to pay and that if no payment was made during that period then execution should proceed.

17. I have carefully considered the application, the supporting affidavit, grounds of opposition and the submissions. The sole issue for determination is whether the warrant of arrest should be set aside or suspended.

18. There is no dispute that judgment was rendered on 21st September 2022 in Nyamira ELCC No. 86 of 2021 against the 2nd Respondent herein and in favour of the Ex Parte Applicant. The decretal sum awarded in the judgment has not been fully settled. Despite the Respondents' arguments as to budgetary processes, the judgment in issue was delivered more than three years ago. At least three budget cycles have passed since. Beyond giving generalised explanations, the Respondents must give specific details on steps taken to fully comply with the judgment.

19. Other than the part payment which was made after several mentions and summonses, the Respondents must do much more to persuade the Court that they have not deliberately delayed payment. The Ex Parte Applicant is a successful litigant and should therefore not be unnecessarily kept from the fruit of his successful litigation. The record in this matter shows a litany of unfulfilled promises of payment made by the Respondents/Applicants. As is manifest from the narration earlier in this ruling, between 20th June 2024 when the order of mandamus was made and 4th November 2025 when an order was made that warrant of arrest be issued, the matter has been mentioned a record 21 times. I find no merit in Notice of Motion dated 6th November 2025.

20. In her submissions, Ms Moeche urged the Court to give the Respondents/Applicants only two weeks to pay and that if no payment is made during that period then execution should

proceed. I will give the Respondents/Applicants another opportunity to settle the outstanding portion of the decretal sum.

21. In the result, I make the following orders:

- a) Notice of Motion dated 6th November 2025 is dismissed with costs to the Ex Parte Applicant.**
- b) The Respondents/Applicants to fully settle the decretal sum within 14 (Fourteen) days from the date of delivery of this ruling. In default, the warrant of arrest be executed and Dr Asenath Moebe presented before the Court to show cause why she should not be committed to civil jail for failure to comply with the Court's order as to payment of the balance of the decretal sum.**
- c) Considering that this matter is now at the execution stage, future execution proceedings including mentions, presentation in Court upon arrest, showing of cause and any committal proceedings be conducted before the Deputy Registrar pursuant to Order 49 of the Civil Procedure Rules.**

Dated, signed, and delivered at Nyamira, this 3rd day of December 2025.

D. O. OHUNGO
JUDGE

Delivered in the presence of:

Mr Langat for the Ex Parte Applicant

Ms Moeche for the Respondents

Court Assistant: B Kerubo