



Republic v County Government of Baringo; Cheletewon (Ex parte Applicant) (Judicial Review E004 of 2024) [2025] KEELC 18359 (KLR) (15 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18359 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

JUDICIAL REVIEW E004 OF 2024

EM WASHE, J

DECEMBER 15, 2025

IN THE MATTER OF AN APPLICATION FOR ORDER OF JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION UNDER ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010 & SECTION 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF AN APPLICATION FOR THE ORDER OF MANDAMUS AGAINST THE COUNTY GOVERNMENT OF BARINGO

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF BARINGO RESPONDENT

AND

KIPYEGON CHELETEWON EX PARTE APPLICANT

JUDGMENT

1. The Ex-parte Applicant filed a Notice of Motion Application dated 08.07.205 (hereinafter referred to as “the present Application”) against the Respondent seeking for the following Orders; -
 - a. An Order Of Mandamus To Compel The Accounting Officer Of The Respondent To Pay The Bill Of Costs Taxed In Eldoret Environment & Land Court Case No. 334 Of 2016 Pursuant To The Certificate Of Costs Issued By The Deputy Registrar, Eldoret.
 - b. The Costs Of The Application Be Provided For.



2. The prayers sought in the present Application are supported by the facts pleaded in the Supporting Affidavit therein which can be summarised as follows; -
 - i. The Ex-parte Applicant and the Respondents were both parties in the proceeding known as Eldoret Environment & Land Court NO. 334 OF 2016.
 - ii. Upon conclusion of the proceeding known as Eldoret Environment And Land Court NO. 334 OF 2016, the Ex-parte Applicant was granted costs.
 - iii. The Costs awarded to the Ex-parte Applicant in the proceeding known as Eldoret Environment And Land Court Case NO. 334 OF 2016 were assessed at Kenya Shillings Two Hundred and Sixty-Eight Thousand Five Hundred and Seventy-Nine (KShs.268, 579/-) on the 10.11.2023 and a Certificate of Costs issued thereof.
 - iv. However, the Respondent herein despite being served with the Certificate of Costs has failed, refused and/or neglected to settle the same.
3. The present Application was duly served on the Respondent who did not file any appearance or response to the same.
4. The Court despite the absence of the Respondent did direct the Ex-parte-Applicant to file their submissions in support of the present Application.
5. In compliance with the above directions, the Ex-parte Applicant did file their submissions thereof.
6. The Court has indeed perused the present application and the Ex-parte Applicant's submissions and identified the following issues for determination; -

Issue No.1- Whether The Ex-parte Applicant Is Entitled To Any Order Of Mandamus Against The Respondent?

Issue No.2- Whether The Present Application Is Merited?

Issue No.3- Who Bears The Costs Of The Present Application?

7. The Court having identified the above issues for determination, the same will now be discussed below.

Issue No.1- Whether The Ex-parte Applicant Is Entitled To Any Order Of Mandamus Against The Respondent?

8. The first issue for determination is whether the Ex-parte Applicant is entitled to an Order of Mandamus.
9. An Order of Mandamus is a discretionary relief granted by a Superior Court to compel an Arm of Government and/or a Government Entity to comply with any lawful Order or direction of the Court.
10. The Ex-parte Applicant herein pleads that it obtained a Certificate of Costs dated 17.11.2023 against the Respondent for the payment of Kenya Kenya Shillings Two Hundred and Sixty-Eight Thousand Five Hundred and Seventy-Nine (KShs.268, 579/-).
11. However, the Respondent upon service of the Certificate of Costs dated 17.11.2023 has failed, neglected and/or refused to comply with the Orders of the Court hence this proceeding.



12. In the case of Republic-versus- Kenya National Examination Council, Ex-parte Geoffrey Gathenji & 9 Others, Civil Appeal NO. 266 OF 1996, the Court did state as follows; -

“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.....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”.

13. The Court is satisfied that indeed, the Ex-parte Applicant in the proceeding known as Eldoret Environment & Land Court Case NO. 334 OF 2016 was awarded Costs which were subsequently assessed at Kenya Shillings Two Hundred and Sixty-Eight Thousand Five Hundred and Seventy-Nine (KShs.268, 579/-) on the 10.11.2023 and a Certificate of Costs issued on 17.11.2023.
14. Once the Certificate of Costs dated 17.11.2023 was served on the Respondent, the Accounting Officer was obligated to comply with the same by paying the sums therein to the Ex-parte Applicant.
15. So far, there is no evidence presented before the Court that the Respondent has complied and/or made payment in satisfaction of the Certificate of Costs dated 17.11.2023.
16. Consequently, the Ex-parte Applicant is entitled to the prayer of Mandamus sought herein.

Issue No.2- Whether The Present Application Is Merited?

17. Based on the finding in Issue No. 1 hereinabove, the Court is of the view and finding that the present Application is merited.

Issue No.3- Who Bears The Costs Of The Present Application?

18. The Ex-parte Applicant having been successful in the present Application, he is entitled to the costs thereof.

Conclusion

19. In conclusion thereof, the Court hereby makes the following Orders in determination of the present Application; -
- a. An Order Of Mandamus Be And Is Hereby Granted Directing And/or Compelling The Accounting Officer In The Department Of Financeto Pay The Certificate Of Costs Dated 17.11.2023 Amounting To Kenya Shillings Two Hundred & Sixty-eight Thousand Five Hundred And Seventy-five (kshs 268,579/-) To The Ex-parte Applicant Herein.
 - b. The Respondent Will Also Pay The Costs Of The Present Application.



DATED, SIGNED & DELIVERED Virtually at ELDORET ELC this 15TH DAY OF DECEMBER 2025.

EMMANUEL.M. WASHE

JUDGE

In The Presence Of:

Court Assistant: Brian

Counsel for the Ex-Parte Applicant: Ms. Salim

Counsel for the Respondent: N/A

