



**Kenya Medical Practitioners, Pharmacists and Dentists' Union (KPM DU) v
County Government of Mombasa & 6 others (Judicial Review Application
E002 of 2015) [2026] KEELRC 162 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 162 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
JUDICIAL REVIEW APPLICATION E002 OF 2015**

**K OCHARO, J
JANUARY 29, 2026**

BETWEEN

**KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS'
UNION (KPM DU) APPLICANT**

AND

**THE COUNTY GOVERNMENT OF MOMBASA & 6 OTHERS & 6 OTHERS & 6
OTHERS RESPONDENT**

JUDGMENT

Background

1. Through a Notice of Motion Application dated 12th February 2025, expressed to be under the provisions of Order 53 Rule 3 of the Civil Procedure Rules, 2010, Rule 7[2] of the Employment and Labour Relations [Procedure Rules], Section 12 of the *Employment and Labour Relations Court Act*, Section 8 and 9 of the *Law Reform Act*, Section 21 of the *Government Proceedings Act* and all other enabling provision of the law, the Applicant seeks;
 - a. This application be and is certified urgent for exparte directions.
 - b. This Honourable Court be pleased to issue an order of mandamus compelling the Respondents to pay to the exparte Applicant through their advocates, the sum of KShs. 833, 815,00, being the certified costs awarded to the exparte Applicant in the ELRC Petition No. E 014 OF 2021, Mombasa, together with interests thereon at 12% per annum from 27th April, 2023, until payment in full.
 - c. Costs of this application and costs for the application for leave be provided for.



2. The Application is grounded on the grounds set out on the face of the application, and the supporting affidavit sworn by Robinson Kigen, sworn on 6th February, 2025.
3. The Respondents oppose the Notice of Motion on the grounds of opposition dated 30th May 2025.
4. When the application came up for directions, this Court directed that the same be canvassed through written submissions. Counsel for the parties obliged. The submissions are on record.

The Application

5. The *ex parte* Applicant states that on 27th April, 2023, a judgment was entered in their favour against the County Government of Mombasa as well as Mombasa County Public Service Board, in Mombasa ELRC Petition No. E014 of 2021, with costs.
6. In compliance with Section 21 of the *Government Proceedings Act*, they extracted a certificate of order of costs against the Mombasa County Government and forwarded it, together with a Certificate of Costs, to the Respondents, requesting that the taxed costs be settled within 21 days. The County Attorney and the Mombasa County Public Service Board acknowledged receipt by rubber-stamping the documents.
7. The Respondents were at all material times represented by Counsel, who have been aware of the Judgment, decree, ruling on the taxation of costs, the certificate of costs, and the Certificate of Order of costs at all times. No justifiable reason has been given for the failure to settle the costs.
8. Section 21[1] of the *Government Proceedings Act* permits service upon the Attorney General, and Section 21[5] provides that the section applies to the county government with necessary modification. Attorney General is thus modified to mean County Government for the purposes of the proceedings herein.
9. It is further stated that, by virtue of Section 103 of the *Public Finance Management Act*, No. 18 of 2023, the 2nd and 3rd Respondents are responsible for the 1st Respondent's financial matters and have failed to settle the certified costs as directed by the Court.
10. An order for mandamus compels the performance of a public duty imposed by statute on a person or body of persons 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. The justice of this matter demands that an order of mandamus be issued as prayed.

The Opposition

11. The Respondents oppose the application based on the following grounds;
 - a. That the Application offends Section 21 of the *Government Proceedings Act*, Chapter 40 Laws of Kenya.
 - b. That the Application is inconsistent with order 29 of the Civil Procedure Rules 2010.
 - c. That these proceedings are special in nature and are inclined more to procedure, and the Applicant has failed to fulfil the requirements of Section 21 of the *Government Proceedings Act*.
 - d. That neither the judgment, decree, nor the certificate of order against the Government nor the certificate of costs was served upon the accounting officer as the judgment debt, the subject matter of these proceedings was being dealt with by an external advocate, and the external



advocate has not communicated the same to the Respondents nor forwarded any of the required documents as per Section 21 of the [Government Proceedings Act](#).

- e. That the Application is inconsistent with the [Public Finance Management Act](#), especially section 103 of the 103 of the said Act.
- f. That this Application is bad in law, premature and vexatious.

Analysis and Determination

12. I have carefully considered the Notice of Motion, the grounds upon which it is premised, the affidavit in support, the supplementary affidavit, the grounds of opposition, and the submissions by the parties, and a sole principal issue for determination emerges: is the application merited?
13. It is not in dispute that by Mombasa ELRC, Petition No. E014 of 2021- Kenya Medical Practitioners, Pharmacists & Dentists Union [KMPDU] versus County Government of Mombasa and Mombasa County Public Service Board, judgment was entered for the Exparte Applicant, with costs, and that party and party costs were taxed subsequently, and a certificate of taxation was issued.
14. In the instant Application, the Exparte Applicant contends, and their Counsel submits, that the certificate of taxation and the Certificate of Order against Government, which were subsequently extracted, were served on the 1st and 2nd Respondents, yet they have, without justifiable reason, failed to settle the costs. The Respondents deny service of the documents. In my view, the instant application turns on this issue of service.
15. Section 21 of the [Government Proceedings Act](#), provides;
 - “ 1. Where any civil proceedings against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order [including an order for costs] is made by any court in favour of any person against the Government, or against a Government Department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made on behalf of that person at any time after expiration of twenty -one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is later, issue to the person a certificate in the prescribed form containing particulars of the order; provided that if the court so directs, a separate certificate shall be issued with respect to the costs[if any] ordered to be paid to the Applicant.
 2. A copy of any certificate issued under this Section may be served by the person in whose favour the order is made upon the Attorney -General.
 3. If the order provides for the payment of any money by way of damages or otherwise, or any costs, the certificate shall state the amount payable, and the accounting officer for the Government Department concerned shall, subject as herein provided, pay to the person entitled or his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon, provided that the court by which any such order is made or any court to which an appeal against the order lies may direct, pending an appeal or otherwise, payment of the whole of any amount so payable, or any



part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted.”

16. In my view, a thorough interpretation of the preceding provision indicates that the issuance of a certificate of order is obligatory and must occur prior to the settlement of a monetary decree or order by the Government, including County Governments, and, where relevant, the execution of such order or decree against the Government. Judicial review proceedings for the order of mandamus, in some situations, such as this matter, are geared toward compelling compliance with, or settlement of, Court decrees or orders and, thus, constitute execution proceedings. Where a certificate of order hasn't been issued and served, any initiation of proceedings for an order of mandamus aimed at compelling compliance or settlement of a decree or order against the Government shall be premature, rendering the application incompetent.
17. The Respondents argue that the Certificate of Order and the Certificate of Taxation were not served. The Ex parte Applicant presented a letter dated 25th November 2024 (Annexure 2), a Certificate of Order for Costs against the Government, and a Certificate of Costs. Inarguably, the letter under which the two documents were served was duly stamped by the 1st and 5th Respondents, acknowledging service. The Respondents have not, in any sufficient manner, discounted the service. I have no reason to hold that the service was not effected.
18. The deponent of the supporting affidavit was explicit on how and who the Certificate of Order and Certificate of Costs were served. The Respondents deliberately or otherwise decided not to file a replying affidavit to challenge the factual issues raised in the supporting affidavit. As such, they remained uncontroverted. In my view, grounds of opposition aren't appropriate as a response to factual issues deposed in an adversary's supporting affidavit.
19. The Respondents contend that the Certificate of Order should have been served upon the Accounting Officer. This contention is incorrect. Section 21 of the Government Proceedings Act does not set out such a requirement. The appropriate person to serve was the County Attorney, whom the Applicant claims was served, and who has not refuted this claim.
20. By reason of the foregoing premises, I find that the certificate of order against the Government and the Certificate of Costs were duly served, and notwithstanding the service, the Respondents have unjustifiably failed to settle the taxed costs. The instant application has merit. It is hereby allowed. Consequently;
 - a. An order of Mandamus is hereby issued directing the Respondents to pay the taxed costs. KShs. 833, 815.00. within 21 days of today.
 - b. As there was no justifiable reason for the failure to settle the costs, the amount shall attract interest at court rates from the date of service of the Certificate of Order [26th November 2024], till full payment.
 - c. The Respondents shall bear the Costs of this application.

READ, SIGNED AND DELIVERED THIS 29TH DAY OF JANUARY 2026

OCHARO KEBIRA

JUDGE

In the presence of:

Applicant:



Respondent:

