



Republic v County Assembly of Tana River & another; Nkaduda (Ex parte Applicant) (Judicial Review Application E001 of 2025) [2026] KEELRC 268 (KLR) (27 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 268 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI

JUDICIAL REVIEW APPLICATION E001 OF 2025

K OCHARO, J

JANUARY 27, 2026

IN THE MATTER OF: THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: THE GOVERNMENT
PROCEEDINGS ACT, CAP 10, LAWS OF KENYA**

**AND IN THE MATTER OF: MALINDI ELRC PETITION NO 6 OF 2021, HON. MICHAEL
JUSTINE NKADUDA VS THE COUNTY ASSEMBLY OF TANARIVER & 4 OTHERS**

AND

**IN ACCORDANCE WITH ORDER 53 OF THE CIVIL PROCEDURE
RULES 2010 AND SECTIONS 8 AND 9 OF THE LAW REFORM ACT 26**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY ASSEMBLY OF TANA RIVER 1ST RESPONDENT

THE CLERK COUNTY ASSEMBLY OF TANA RIVER 2ND RESPONDENT

AND

HONOURABLE MICHAEL JUSTINE NKADUDA EX PARTE APPLICANT

JUDGMENT

1. By a Notice of Motion Application herein dated 5TH August 2025, the Exparte seeks against the Respondents the following orders:



- a. That, judicial review for orders of Mandamus do issue compelling the Respondents, by themselves, their servants, employees and/or servants to pay the Applicant within 14 days a sum of KShs. 2, 500,000 awarded to the Applicant as special damages, KShs. 764,318.33 awarded to the Applicant as costs, Kshs. 1,200,000, as per the Judgment dated 29th July 2022 in his favour in Malindi ELRC Petition No. 6 of 2021.
 - b. That judicial review orders of Mandamus do issue compelling the Respondents by themselves, their servants, employees and or agents to return to the Applicant all his personal items left behind after the illegal impeachment and pay the Applicant within 14 days all the allowances and or benefits he is entitled to as per the judgment dated 29th July 2022 in his favour in Malindi ELRC PET. No. 6 of 2021, Hon. Michael Justice Nkaduda v The County Assembly of Tana River & 4 others.
 - c. That the costs of this application be borne by the Respondents.
 - d. That, the Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The Application is premised on the ground set out on the face thereof, and on the supporting affidavit sworn by the Applicant on the 5th of August 2025.
 3. The Application Respondents did not file any response or grounds of opposition to the application.

The Application

4. . the Applicant contends that on 29th July 2022, this Court entered Judgment in his favour, declaring his impeachment unconstitutional, ordering that he be paid all his unpaid salary, and awarding him damages of KShs. 2,500,000 for the violation of his rights. Costs of the petition were awarded in his favour.
5. On 29th July 2022, the decree was duly extracted and served on the Respondents. At all times, the Respondents were aware of the Judgment and the decree that flowed from it.
6. Subsequently, he filed a party-and-party bill of costs, which was ultimately taxed on 21st May 2024 at KShs. 764,318, and a certificate of costs was issued by the court.
7. On 18th June 2024, he wrote to the Respondents through their Advocate on record, demanding inter alia that the Respondents comply with the decree of the Court by paying him the said sum of KShs. 2,500,000 awarded to him as general damages for the violation of his rights, and the taxed costs of KShs. 764, 318.33.
8. When he was illegally hounded out of office, he left behind his personal items and effects. To date, these items have not been returned to him, despite his having demanded their return from the 2nd Respondent, the Clerk of the 1st Respondent, Mr. Abdullah Hussein Dayib. This action reflects impunity and a blatant disregard for the rule of law.
9. The Judgment was unequivocal; he didn't lose his office or benefits as a result of the impeachment. The Respondents were ordered to pay all his benefits. The 1st and 2nd Respondents partially complied with the order by paying him his salary arrears, but refused to settle his unpaid allowances, which he was entitled to after attending various events organised by the County Assembly Forums [CAF], of which the Respondents were aware.



10. In response to the Respondents' claim that he did not attend the meetings, his Advocate on record contacted the County Assemblies Forum [CAF], asking them to confirm if such meetings took place and if he was present.
11. Through their Letter dated 15th November 2024, CAF, through their Chief Executive Officer, confirmed that the meetings took place and that he had participated in them, and concluded that he was entitled to allowances in relation thereto.
12. Without a justifiable reason, the Respondents have refused to comply with the decree. The intervention of this Court has therefore become necessary.

Analysis and Determination

13. I have carefully considered the Applicant's application, the grounds upon which it is based, the affidavit in support, and the Replying Affidavit by the Respondents, and a single principal issue for determination emerges, namely, whether the order of mandamus as sought is merited.
14. It is not in contest that the Applicant was a successful party in the forecast petition and that, flowing from the judgment, it was decreed inter alia ;

“ [c]. THAT the Petitioner is deemed not to have lost his office and benefits attendant thereto as a result of the impugned impeachment, and the 1st Respondent shall, through the 2nd Respondent, pay the Petitioner his salary.

(d) That an injunction be and is hereby issued barring the 1st, 2nd, 3rd and 4th Respondents, either by themselves or through their agents and or employees and or other servants, from implementing the impugned decision of the ad hoc committee dated 4th May 2021 and the impugned resolution of the 1st Respondent dated 4th May 2021 purporting to impeach the Petitioner.

(e) That a declaration is hereby issued that the Respondents' actions aforesaid against the Petitioner violated the Petitioner's rights to equal protection of the law, due process, fair administrative action and human dignity.

[f]. THAT the Petitioner be and is hereby awarded general damages of Two Million Five Hundred Thousand for the violation of his rights aforesaid.

(g) That the Petitioner is awarded costs of the case.”

15. An order of mandamus is a prerogative remedy issued by the Court to compel the performance of a public duty imposed by law. Its core purpose is to enforce obedience to the law where a public body, public officer, tribunal, or inferior court has failed, refused, or neglected to perform a mandatory, clear, and unequivocal duty.
16. While mandamus may be used to compel compliance with a decree or judgment, its reach is strictly confined to the four corners of that decree. It cannot be used to extend, vary, or embellish the terms of the decree or judgment under the guise of enforcement. As such, mandamus cannot compel payment of sums that are not expressly granted in the decree sought to be enforced.
17. I have carefully considered the decree presented to this Court in relation to the Petition hereinabove mentioned. I am not convinced that the Court, in the Petition, awarded the sum of KShs. 1,200,000 and an order directing the release of personal items and effects. In light of the foregoing premises



[paragraph 17], the order of mandamus that this Court shall give shortly hereafter shall not apply to compel the payment of this sum or the release of any items and personal effects.

18. Without successfully challenging the decree in any of the forums recognised by the law, the Respondents were bound and remain bound by the said decree. They have not advanced in these proceedings sufficient reason for not settling the sum of KShs. 2,500,00.00 as general damages awarded, and the taxed costs of KShs. 764,381.33. They had a duty to. They failed to discharge the same.
19. In the premises, I find the Applicant's application merited only in respect of the general damages and taxed costs. Consequently, judgment is hereby entered for the Applicant in the following terms:
 - a. An order of mandamus is hereby issued compelling the 1st Respondent through the 2nd Respondent to pay the Applicant the general damages of KShs. 2,500,000, and the taxed costs of KShs. 764, 318.33, within 30 days of this order.
 - b. As there is no valid reason why the sums have not been paid to date in adherence to the decree of the Court, the said sums shall attract interest at Court rates, from the date of the judgment, and issuance of the Certificate of costs, respectively.
 - c. Costs of this application shall be in favour of the Applicant.

READ SIGNED AND DELIVERED THIS 27TH DAY OF JANUARY 2026.

OCHARO KEBIRA

JUDGE

