

KISII COUNTY.....**2ND**
RESPONDENT

HON. EVANS OMWANSU MOKORO.....**3RD**
RESPONDENT

RULING

1. Pursuant to leave granted on 14th October 2025, the Applicant filed the present Notice of Motion dated 28th October 2025 seeking, an order of mandamus compelling the Respondents to satisfy the decretal sum of Kshs. 337,480/- and costs of Kshs. 133,975/- arising from **Kisii CMELRC No. E007 of 2021**, together with interest thereon from 27th June 2024 until payment in full. The Applicant further seeks directions on the timeline for settlement of the party-and-party costs, with interest, as well as such other orders as the Court may deem fit. She also prays for the costs of the application.

2. The application is premised on the grounds on its face as well as the Applicant's verifying affidavit. The Applicant contends that the judgment in **Kisii CMELRC No. E007 of 2021**, delivered on 27th June 2024 in her favour against the Respondents and Hon. Evans Omwansu Mokoro, awarded her the decretal sum of Kshs. 337,480/-, after which costs were

taxed at Kshs. 133,975/-. She avers that despite service of the certificate of order against the Government and repeated demands, the Respondents have failed and/or neglected to settle the decretal sum, thereby necessitating these proceedings.

3. The Respondents opposed the application through a replying affidavit sworn by Mr. Jacob Oneko, the Clerk of the Kisii County Assembly. They aver that in the proceedings before the Magistrate's Court they were sued together with Hon. Evans Omwansu Mokoro and therefore cannot be held liable for the entire decretal sum. It is their position that, the judgment having imposed joint and several liability, their proportionate share of the decretal amount is Kshs. 235,727.50. They further state that they have already initiated the payment process and are presently awaiting approval for withdrawal of funds from the Controller of Budget, having applied for the requisite disbursement. The Respondents also contend that, since they are more or less the same entity, an order directing individual payment would expose them to the risk of double payment. They accordingly urge the Court to take judicial notice of the statutory

financial procedures governing county governments, particularly the requirement for approval by the Controller of Budget prior to withdrawal of funds. They maintain that allowing the application as framed would occasion a miscarriage of justice by compelling payment beyond what is properly attributable to them.

4. The application was canvassed by way of written submissions.

Applicant's Submissions

5. In support of the application, the Applicant identifies the following issues for determination:

- (i) Whether the Respondents are under a public duty to satisfy the decree;
- (ii) Whether she is entitled to the reliefs sought; and
- (iii) Who should bear costs of the application.

6. On the first issue, the Applicant submits that the Respondents bear a statutory obligation to satisfy the decree. She asserts that the 1st Respondent, as the

accounting officer of the County Assembly, is under a legal duty to ensure payment pursuant to section 148(4) of the Public Finance Management Act. She relies on the case of **Republic v The County Member of Finance County Government of Kisumu Ex-parte Otieno Ragot & Co. Advocates [2024] eKLR**. She also cites **Republic v Principal Secretary Ministry of Internal Security & another ex parte Schon Noorani & another [2018] eKLR**, which sets out the principles governing the grant of mandamus, namely that there must be a legal duty to act, the duty must be owed to the applicant, and the applicant must demonstrate a clear right to performance, including prior demand and reasonable opportunity for compliance.

7. The Applicant submits that having complied with the procedure for execution against the Government as stipulated in section 21 of the County Governments Act, the Respondents are legally bound to satisfy the decree. On entitlement to the reliefs sought the Applicant submits that the decretal amount is not disputed. She asserts that the Respondents are liable to pay the full decretal amount plus

costs as they were collectively responsible for the acts of the 3rd Respondent. She relies on the definition of joint and several liability in the Black's Law Dictionary, emphasizing that each liable party may be compelled to satisfy the whole decree. In respect of the assertion that the Respondents have initiated the payment process, the Applicant submits that it is an afterthought given the over one-and-a-half-year delay after judgment. She maintains that the delay undermines the Respondent's credibility and constitutes a curtailment of her right to enjoy the fruits of judgment citing **Republic v Town Clerk of Webuye County Council & another [2014] KEHC 7207 (KLR)**, where Majanja J. observed:

"a decree holder's right to enjoy the fruits of his judgment must not be thwarted. When faced with such a scenario the court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the Constitution particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay

under Article 159 (2) (a) & (b) and the Applicant's right of access to justice protected under Article 48 of the Constitution."

8. On costs, the Applicant urges the court to award them to her, guided by the principle that costs follow the event, as affirmed in **Jasbir Singh Rai v Tarlochan Singh Rai & 4 others [2014] eKLR**. In conclusion, she urges the court to allow the application so that she may realise the fruits of her judgment.

Respondents' Submissions

9. The Respondents identify two issues for determination: whether an order of *mandamus* can issue where statutory financial procedures are ongoing, and whether they can lawfully be compelled to pay the entire decretal sum. On the first issue, they submit that *mandamus* cannot issue while statutory processes remain incomplete. They aver that the remedy is not automatic but must operate within the framework of the Constitution and the Public Finance Management Act. They point to the steps already taken to

process payment and rely on Article 228(4) of the Constitution, which prohibits withdrawal of public funds without the Controller of Budget's approval, together with sections 107, 109, 148 and 149 of the Public Finance Management Act, which govern appropriation, requisition and authorization of withdrawals. They submit that the duty to pay crystallizes only upon approval by the Controller of Budget, and that mandamus can only compel performance of a legally due obligation. They maintain that they have acted in good faith by formally requesting disbursement, the approval of which lies beyond their control.

10. On whether they should pay the entire decretal sum, the Respondents submit that compelling them to do so would risk double payment, as they are essentially one entity for the purposes of financial responsibility. They assert that the decretal sum ought to be shared with Hon. Evans Omwansu Mokoro, given the finding of joint liability. They therefore contend that mandamus can only enforce the judgment as it is and not enlarge liability beyond what has been decreed. They rely on **Republic v Permanent Secretary in Charge**

of Internal Security Office of the President & another ex parte Joshua Mutua Paul [2013] KEHC 86 (KLR), which explains that under joint and several liability a plaintiff may recover the whole sum from any one defendant, though double recovery is impermissible, and a defendant who pays more than his share may seek contribution from co-defendants.

11. The Respondents further submit that under section 12 of the County Government Act the County Assembly Service Board is a corporate body capable of suing and being sued, whereas the Clerk and the Director of Finance only operate on delegated authority. In conclusion, the Respondents contend that mandamus cannot be used to compel an illegality. They therefore urge the court to dismiss the application or, in the alternative, grant them reasonable time to complete the requisition process. They also seek the costs of the application and any other appropriate orders.

Disposition

12. The Applicant was successful in the Magistrates Court and seeks an order of *mandamus* to compel the 1st and 2nd

Respondents to make good the judgment and decree of the Court. The Applicant asserts she has met the criteria for the issuance of the order. The 1st and 2nd Respondents on the other hand assert that they are not liable for the full sum ordered as the Court awarded the relief against the 3 Respondents jointly and severally. They assert there is the potential of double payment of the sum ordered since the Applicant can obtain payment from either of the Respondents.

13. The Court has discerned that that only issue for determination is the effect of the order and decree that stated "jointly and severally". When a Court of law makes such an award, judgment or decree, the two (or more parties - as the case may be) are collectively responsible to meet the liability so imposed either jointly but also individually responsible for the entire obligation hence the use of the term "severally". A party can sue one party for the full amount, rather than sue all parties. As such, even if the 1st and 2nd Respondents apprehend their share or liability is 50% of the decretal sum, the law does not make a demarcation

between the parties herein. Each is liable for 100% of the decretal sum. Once satisfied, the decree is met. It matters not who among the 3 Respondents meets the decree.

14. In this case, *mandamus* has been sought. Mandamus may lie where there is a clear legal right compelling the performance of the duty (such as an order/decreed of the Court). The duty in question must be a mandatory duty and not one that is discretionary, meaning the person to perform it should not have a discretion as to whether to act or not. Mandamus will not lie where the person to act has no obligation to act. The applicant must demonstrate there has been a refusal to act whether the refusal is one occasioned by mere failure to act, neglect or the like despite a demand (in writing) to act. There should be no other adequate remedy to the action sought to be compelled. In this particular case, there is evidence there has been a request in writing for the 1st and 2nd Respondents to act. They do not have a discretion in whether they can comply with the Court judgment or decree. There has been demonstrable refusal to pay even as the submissions and argument of the 1st and 2nd Respondent go. It is trite that there is no other adequate

remedy other than satisfaction through payment of the decree. In sum, the finding of the Court is that the Applicant has made out a basis for the grant of the order of *mandamus*. The Court is therefore compelled to issue the orders sought in respect of the decree now being sought to be enforced. The Applicant will also have the costs of this Application. Should the sums due remain unpaid after the expiry of 30 days from today, there will be an imposition of interest at 14% per annum on any unpaid sum at the expiry of the 30 days until payment in full.

It is so ordered.

Dated and delivered at Kisii this 24th day of February

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**