



Republic v County Government of Homabay & 3 others; Ober (Ex parte Applicant) (Judicial Review Application E011 of 2025) [2026] KEELRC 634 (KLR) (4 March 2026) (Ruling)

Neutral citation: [2026] KEELRC 634 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E011 OF 2025**

NZIOKI WA MAKAU, J

MARCH 4, 2026

**IN THE MATTER OF SECTION 98 OF THE CIVIL PROCEDURE
ACT, ORDER 22 RULE 26 OF THE CIVIL PROCEDURE RULES**

AND

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF SECTION 7 & 8 OF THE FAIR ADMINISTRATIVE ACTIONS ACT

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF HOMABAY 1ST RESPONDENT

**HOMA BAY COUNTY SECRETARY PROF BENARD MUOK 2ND
RESPONDENT**

**HAMA BAY COUNTY EXECUTIVE MEMBER FOR FINANCE ALPHONCE
WERA 3RD RESPONDENT**

**HOMA BAY COUNTY HUMAN RESOURCE DIRECTOR IRENE
ADIKA 4TH RESPONDENT**

AND

JARED OMONDI OBER EX PARTE APPLICANT



RULING

1. By way of Chamber Summons dated 22nd May 2025, the Ex-Parte Applicant seeks leave to apply for an order of mandamus to compel the County Executive Officer for Finance, Homa Bay, to pay Kshs. 8,401,754/- being the decretal sum, together with Kshs. 202,095/- in costs, awarded in Kisumu ELRC Cause No. 39 of 2013. He also prays for costs of the application. The chamber summons is supported by the grounds in the statement of facts and verifying affidavit. The Ex-Parte Applicant contends that judgment in Kisumu ELRC Cause No. 39 of 2013 was delivered on 4th October 2018, awarding him Kshs. 8,401,754/- together with costs of Kshs. 202,095/-, both attracting interest at 14% per annum. He avers that despite several demands for payment, the Respondents have failed or refused to settle the decretal sum, which he states has since risen to Kshs. 21,048,849/-. He further asserts that although the court ordered his reinstatement at salary scale 12, he was instead placed at salary scale 18. In a further affidavit dated 21st October 2025, the Ex-Parte Applicant annexed both the Certificate of Order for Costs against the Government and the Certificate of Order against the Government all issued on 4th July 2025.
2. The application was canvassed by way of written submissions. The Respondents neither filed a replying affidavit nor grounds of opposition but instead filed submissions.

Ex-Parte Applicant's Submissions

3. The Ex-Parte Applicant submits that leave ought to be granted, asserting that he has complied with Order 29 Rule 3 of the Civil Procedure Rules, having obtained and served both a Certificate of Order against the Government and a Certificate of Costs against the Government. He submits that despite proper service, the Respondents have declined to satisfy the decree, thereby necessitating the application herein. He further contends that the Respondents do not dispute the existence of the debt. On that basis, he urges the court to allow the application so that he may realise the fruits of his judgment.

1st, 2nd & 3rd Respondents' Submissions

4. The 1st, 2nd and 3rd Respondents submit that the application is fatally defective given the Applicant's failure to exhaust available alternative remedies before approaching court. They refer to the court's earlier direction issued on 23rd November 2018 requiring the parties to undertake a joint reconciliation. They assert that the doctrine of exhaustion can only be departed from in exceptional circumstances, which, have not been demonstrated in this matter. They further submit that the application amounts to piecemeal litigation and raises issues that were previously addressed in Kisumu ELRC JR No. E011 of 2024, which was dismissed by Justice Jacob Gakeri. They therefore assert that the Applicant's attempt to re-litigate the matter undermines the principle of finality in litigation. They therefore urge the court to dismiss the application with costs.

Disposition

5. The Court has been called upon to determine whether there are grounds for the issuance of leave as sought by the Ex Parte Applicant. The Ex Parte Applicant seeks to have orders for the satisfaction of a decree he obtained against the Respondents. For an order of mandamus to lie, the applicant has to surmount the legal hurdles on grant of an order of mandamus which are as follows:-



- a. There is a clear legal right compelling the performance of the duty (such as an order/decreed of the Court).
 - b. 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.
 - c. 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.
 - d. There should be no other adequate remedy to the action sought to be compelled.
6. Analysing the matter before me through this prism, it is clear there is a move to compel payment of a sum that is stated to be due from Government. As the requirements for the execution of decrees against the Government are specially provided for, the order that commends itself for the Court is to grant the leave sought and have the Ex Parte Applicant file the substantive motion within 21 days of the Ruling after which the merits of the prayers sought can be challenged in replying affidavits and the like. Leave is granted. Costs to abide the outcome in the substantive motion to be filed by the Ex Parte Applicant.
- It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 4TH DAY OF MARCH 2026

NZIOKI WA MAKAU, MCIArb.

JUDGE

