

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
JUDICIAL REVIEW NO. E004 OF 2025

**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF
MANDAMUS**

AND

**IN THE MATTER OF KAKAMEGA ELRC NO.36 OF 2023:
NDOLI HYNES HENRY & OTHERS –V- THE COUNTY
GOVERNMENT OF VIHIGA**

AND

**IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT AS
APPLIED TO COUNTY GOVERNMENTS**

BETWEEN

NDOLI HYNES HENRY1ST APPLICANT
DIANAH ANDEMO ATINGO2ND APPLICANT
ELIZABETH ANYANGO AJWANG3RD APPLICANT
ERASTUS MIDAMBO NGASE4TH APPLICANT
SHARON ILLAH AKINYI5TH APPLICANT

VERSUS

**COUNTY SECRETARY,
COUNTY GOVERNMENT OF VIHIGA.....1ST RESPONDENT**
**THE EXECUTIVE COMMITTEE
MEMBER FOR FINANCE,
COUNTY GOVERNMENT OF VIHIGA.....2ND RESPONDENT**

(BEFORE HON. JUSTICE DAVID NDERITU)

JUDGMENT

I. INTRODUCTION

1. In a notice of motion (the application) dated 30th May 2025 filed through Kamau Kuria & Company Advocates the applicants are seeking for the following orders –
 1. ***THAT an order of mandamus do issue compelling the respondents to pay the ex parte applicants an amount of Kshs8,700,229.33 (Kshs8,178,000/- as withheld salary arrears and Kshs522,229.33 as costs) plus interest at 12% per annum from 14th November 2024 till payment in full.***
 2. ***That costs of the application be provided for.***
2. The application is expressed to be brought pursuant to ***Articles 48 & 165 of the Constitution, Sections 8 & 9 of the Law Reform Act, Sections 7 to 11 of the Fair Administrative Actions Act, & Order 53 of the Civil Procedure Rules.***
3. The application is based on the grounds stated on the face of it and supported with a statutory statement and the verifying affidavit of Ndoli Hynes Henry, the 1st applicant, both dated 26th May 2025 with several annexures thereto.
4. The application was filed pursuant to leave granted by court on 29th May 2025.
5. In response to the application through the County Attorney, the

respondents filed a replying affidavit sworn by Vincent Mwamiri Chanzu.

6. The application was canvassed by way of written submissions. Mr. Munyori for the applicants filed submissions dated 21st October 2025 and Mr. Godia for the respondents filed submissions dated 10th November 2025.

II.EVIDENCE

7. The facts pertaining to the subject matter of this application are rather straight forward and not in contest. In a judgment delivered on 14th November 2024 in ***Kakamega ELRC Cause 36 of 2023*** the court (Keli J.) awarded the applicants as follows –

In the upshot, judgment in the claim is hereby entered for each of the claimants against the respondents as follows: -

- i. Payment of salary arrears for 20 months for total sum of Kshs. 1,635,600 less statutory deductions. (Amount payable subject to statutory deductions)***
 - ii. Interest is awarded from the date of judgment until payment in full.***
 - iii. Costs to the claimants.***
8. A decree was subsequently issued on 14th February 2025 and a certificate of taxation in the sum of Kshs522,229.33 issued on 3rd April 2025. A certificate of order against the County Government of Vihiga was issued on 3rd April 2025. The County Government was

notified of all the foregoing and on 3rd April 2025 the Advocates for the applicants addressed to the County Secretary demanding that the amounts due and payable in the sum of Kshs8,700,229.33 be settled within 21 days.

9. The foregoing facts have not been contested as is the fact that the decretal sum or any part thereof has not been paid and no proposal on settlement has been offered. The applicants annexed copies of all the documents mentioned above to the supporting affidavit as evidence in support of the application.
10. In the replying affidavit the respondents allege that an appeal has been filed against the impugned judgment and that an order compelling the County Government of Vihiga to pay the decretal sum shall have serious budgetary impact as there are many other monetary decrees against it and debts pending settlement.

III.SUBMISSIONS

11. Counsel for the applicant submitted that the material facts as deposed to by the applicants are not contested and as such the court should proceed on the presumption that they are factually correct. Counsel cited *Kariuki Gathitu V Attorney General (2013) eKLR* in support of that position.
12. It is further submitted that the financial position of the respondent cannot and should not be a bar to the court allowing the application.

The court is reminded of its own decision and holding in *Kenya*

Union of Clinical Officers & 76 Others V Secretary, County Government of Vihiga & Another (2025) KEELRC 1121 (KLR).

13. It is submitted that the applicants have complied with the law and procedure in obtaining the judgment and since the County Government of Vihiga has failed, refused, and or neglected to settle the decretal sum the applicants have a legal right to enforce payment through the orders sought in this application. It is submitted that the respondents herein are the accounting officers of the County Government and should thus be compelled to settle the monies that are now owing, due, and payable. Counsel cited a variety of decisions in support of the obligation of the accounting officers to settle a decree against a public body, entity, or authority, or a County Government.
14. Counsel for the respondents argued that the judgment giving rise to the application herein is subject of an appeal in the Court of Appeal at ***Kisumu Civil Appeal No. E060 of 2025***. It is further submitted that the County Government of Vihiga is heavily indebted with many unsettled decrees and that if the application is allowed it will add to that financial burden that has not been allocated a budget.

IV. ANALYSIS & DETERMINATION

15. The facts as set out by the applicants have not been disputed and hence there is no need of re-evaluating the same as the court has confirmed them based on the documentary evidence availed

alongside the supporting affidavit and statement of facts in support of the application.

16. In the circumstances, the court shall consider the opposition to the application by the respondents through the lenses that the factual basis of the application is as presented by the applicants. It is not denied that the respondents are the accounting officers of the County Government of Vihiga. It is further not denied that a judgment was delivered and a decree issued against the said County Government as pleaded by the applicants and that the same has not been settled. Further, no offer or proposal has been submitted by the respondents on how the decree shall be settled.
17. The factual and legal position is also ascertained that there is no stay of execution issued either by this court or the Court of Appeal. In those circumstances, one would have expected the respondents to either make proposals on how the amounts due shall be paid or offer to settle the same without any further delay. A decree flows from a lawful judgment and it is an order compelling and directing a judgment-debtor to oblige and comply therewith. Strictly speaking, failure to settle a decree is in contempt of court that is actionable upon an application made.
18. In the considered view of the court, no lawful or reasonable explanation has been offered as to why the decretal sum has not been settled and the court finds no difficulties in allowing the

application as prayed.

19. One of the fundamental obligations of an employer is to pay salaries and wages to the employees for services rendered as and when the same falls due and payable – see ***Section 28 of the Employment Act***. The decree alluded to herein arises from the failure by the County Government to pay monthly salaries and wages and hence falling into arrears. That is unacceptable conduct for any employer and the court shall not countenance or condone such evidently illegal and unlawful conduct.
20. If it is the respondents' case that the salaries and wages in arrears were not budgeted for, then the County Government has the lawful means of eliminating what it considers to be excess labour force through lawful means in accord with the law. It is no defence at all for the respondents to at this stage allege lack of budget. As noted above, the applicants obtained judgment for salary arrears that are now long overdue.
21. In ***Kenya Union of Clinical Officers & 76 Others V County Secretary, Vihiga (supra)*** this court made it clear, and I have no reason to change that position, that accumulated debts or lack of budgetary allocation is no reason for the court to fail to order settlement of a monetary decree that is due and payable.
22. For all the foregoing reasons the application herein has merits and the same is allowed as per the orders below.

V.ORDERS

23. The court finds and holds that the application herein has merits and makes the following orders –

- a) That an order of mandamus be and is hereby issued compelling the respondents to pay to the ex parte applicants an amount of Kshs8,700,229.33 (Kshs8,178,000/- as withheld salary arrears and Kshs522,229.33 as costs) plus interest at court rates from the date of the impugned judgment till payment in full.*
- b) Costs of the application to the applicants.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 19TH DAY OF MARCH 2026.**

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DAVID NDERITU
JUDGE