



Naftali (Suing as the Legal Administrator and/or Representative of the Estate of the Late Monica Nafula Lucheli (Deceased)) v Chief Officer for Finance of Kakamega County Government (Judicial Review E005 of 2025) [2026] KEELRC 961 (KLR) (16 April 2026) (Judgment)

Neutral citation: [2026] KEELRC 961 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
JUDICIAL REVIEW E005 OF 2025**

DN NDERITU, J

APRIL 16, 2026

**IN THE MATTER OF AN APPLICATION BY PATRICK KAMADI NAFTALI
(SUING AS THE LEGAL ADMINISTRATOR AND/OR REPRESENTATIVE
OF THE ESTATE OF THE LATE MONICA NAFULA LUCHELI
(DECEASED) FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS**

AND

**IN THE MATTER OF THE CHIEF OFFICER FOR
FINANCE OF KAKAMEGA COUNTY GOVERNMENT**

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, CAP 40, LAWS OF KENYA

BETWEEN

**PATRICK KAMADI NAFTALI (SUING AS THE LEGAL ADMINISTRATOR
AND/OR REPRESENTATIVE OF THE ESTATE OF THE LATE MONICA
NAFULA LUCHELI (DECEASED)) APPLICANT**

AND

**THE CHIEF OFFICER FOR FINANCE OF KAKAMEGA COUNTY
GOVERNMENT RESPONDENT**

JUDGMENT

I. Introduction

1. In a notice of motion (the application) dated 30th May 2025 and filed through Makonjio, Nyaberi & Co. Advocates the Applicant is seeking for the following orders –



1. That an order of mandamus do issue compelling the respondents to settle the decree/order in Kakamega Employment and Labour Relations Court Misc. Cause No. E001 of 2024 to the sum of Kshs3,926,880/=.
2. Any other relief/order the court deems fit to grant.
2. The application is expressed to be brought pursuant to Order 53 of the Civil Procedure Rules and Sections 8 & 9 of the [Law Reform Act](#).
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 Patrick Kamadi Naftali, the ex-parte Applicant (the Applicant), both dated 4th June 2025, with several annexures thereto.
4. The application was filed pursuant to leave granted by the court on 12th June 2025.
5. In response to the application, through the County Attorney, the Respondent filed a replying affidavit sworn by Mildred Wandema on 19th September 2025.
6. The application was canvassed by way of written submissions. Mr. Mbetera for the Applicant filed submissions dated 20th October 2025 and Mr. Malenya for the Respondent 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 ruling/order delivered on 14th November 2024 in Kakamega ELRC Misc. Cause E004 of 2024 the court (Keli J.) awarded the Applicant Kshs3,926,880/=. A certificate of order against the government was issued on 16th January 2025 in line with the ruling/order. Copies of the ruling/order and the certificate are exhibited and attached to the supporting affidavit.
8. On 14th January 2025 counsel for the Applicant notified the Respondent of the ruling/order above and demanded that the same be settled in 45 days of that notice. The notice was served through the County Attorney. A copy of the notice is exhibited and annexed to the supporting affidavit.
9. However, it is the Applicant's case that the Respondent failed, refused and, or neglected to settle the same hence the application herein filed seeking to compel it to settle.
10. In the replying affidavit, the impugned ruling/order is admitted and acknowledged. However, it is deposed that at all material times the Respondent had taken out an insurance policy with AAR Insurance Company Limited (AAR or the insurance company) covering liabilities arising from occupational injuries such as the one that gave rise to the award in the impugned ruling/order cited above.
11. It is deposed that the court should order joinder of the said insurance company in these proceedings as it is allegedly liable to settle the award.

III. Submissions

12. Counsel for the Applicant identified the following three issues for determination –
 1. Whether the Applicant has established a prima facie case for the issuance of an order of mandamus compelling the respondent to settle the decretal sum of Kshs. 3,926,880/-



2. Whether the respondent's failure to settle the decree, despite due service and statutory notices, constitutes an abdication of its public duty under the [Work Injury Benefits Act](#), Kenya, 2010, warrants judicial intervention.
3. Whether the respondent's prayer for joinder of AAR Insurance Company Limited as a party, and redirection of settlement obligations thereto, vitiates the mandamus relief or necessitates deferral of these proceedings.
13. On the first issue, it is submitted that since the lawful ruling/order and the award is not in dispute the Applicant has proved his case to the required standard laying the ground for the court to order settlement of the same by the Respondent.
14. On the second issue, it is submitted that failure to settle the award by the Respondent amounts to dereliction of its statutory duty and constitutional obligation. It is further submitted that the Applicant has followed the law to the letter this far and applied the procedure and hence the orders sought should be granted towards enforcement of a settlement.
15. On the third issue, it is submitted that the ruling/order was made against the Respondent and it is the Respondent that is under legal and statutory obligation to settle the same. It is submitted that the Applicant is not privy to the alleged contract between the Respondent and the insurance company and as such he had no business joining the insurance company in these proceedings. It is submitted that if it was the desire of the Respondent to have the said company joined in these proceedings, it was free to do so but it opted not to.
16. Counsel for the Respondent submitted that the insurer is obligated to settle the claim and that it ought to have been joined in these proceedings. It is submitted that the Respondent complied with Section 7 of the [Work Injury Benefits Act](#) (WIBA) and at all times took out an insurance policy and cover with AAR. It is submitted that despite being duly notified, the insurance company has failed and or refused to settle the claim.

IV. Analysis & Determination

17. The facts as set out by the applicant have not been disputed and hence there is no need of evaluating the same as the court has confirmed them based on the documentary evidence availed alongside the verifying affidavit and statement of facts in support of the application.
18. In the circumstances, the court shall consider the opposition to the application by the Respondent through the lenses that the factual basis of the application is as presented by the Applicant. In any event, the facts as laid out by the Applicant are admitted in their entirety by the Respondent in the replying affidavit.
19. The only defence raised by the Respondent, so to say, is that the insurance company ought to have been joined in the proceedings. In my considered view, this is not a defence but rather an excuse. Joinder or non-joinder of a party does not defeat a cause or an application. It is upon the court to hear the parties before it and determine the issues as between them. In any event, the Respondent was equally free to join the insurance company in these proceedings. There is no application pending to that effect or an application made for stay of the proceedings pending such joinder. Either party in these proceedings was free to apply for such joinder. There is no reason given as to why the Respondent did not exercise or take that option to have the issues between it and the insurance company determined.
20. Further, the purported insurance policy and cover between the Respondent and AAR was not availed to the court for scrutiny. Further, it is vehemently denied that the Applicant was either a party or



privity to such a contract. Therefore, even if the Respondent joined AAR in these proceedings the court would have been called to determine a dispute based on a commercial contract. That is not within the jurisdiction and purview of this court as created under Article 162(2) of *the Constitution* and established and institutionalized under in the *Employment and Labour Relations Court Act*.

21. In any event, if the Respondent was insured as claimed, it can still claim indemnity from the insurance company.
22. The uncontroverted evidence on record is that the Applicant has a valid judgment against the Respondent for the decretal sum stated above. The requested order of mandamus is intended to compel the officers or officials of the Respondent to settle the same by effecting payment. I see no reason for the court not to issue the orders and allow the application as prayed.
23. For all the foregoing reasons the application herein has merits and the same is allowed as per the orders below.

V. Orders

24. 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 Respondent to pay to the Applicant Kshs3,926,880/= as awarded in the impugned ruling/order.
 - b. The said amount shall attract interest at court rates from the date of the impugned ruling/order till payment in full.
 - c. Costs of the application to the Applicant.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 16TH DAY OF APRIL 2026.

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DAVID NDERITU

JUDGE

