



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT OF KENYA AT KISII
JUDICIAL REVIEW NO. E001 OF 2026

REPUBLIC.....

.....**APPLICANT**

VERSUS

COUNTY GOVERNMENT OF KISII.....**1ST**

RESPONDENT

THE COUNTY SECRETARY, COUNTY GOVERNMENT OF KISII.....**2ND**

RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE MEMBER OF FINANCE (CECM FINANCE), COUNTY GOVERNMENT OF KISII.....**3RD**

RESPONDENT

THE CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF KISII.....**4TH**

RESPONDENT

THE KISII COUNTY PUBLIC SERVICE BOARD.**5TH**

RESPONDENT

AND

KENYA COUNTY GOVERNMENT
WORKERS UNION (KCGWU).....**EX PARTE**
APPLICANT

RULING

1. Pursuant to leave granted on 10th December 2025, the Ex Parte Applicant filed a Notice of Motion dated 16th December 2025. In the application, the Applicant seeks an order of *mandamus* to compel the Respondents to settle the decretal sum of Kshs. 217,317,562/- arising from **Kisumu ELRC No. E007 of 2021, Kenya County Government Workers Union v The County Government of Kisii & Kisii County Public Service Board**. The Applicant also seeks the costs of the application.
2. The application is premised on its statutory statement as well as the verifying affidavit of Hon. Roba S. Duba both dated 7th October 2025. The Ex-parte Applicant contends that it was awarded the decretal sum on 18th April 2024, after which it extracted a decree on 24th May 2024. Additionally, it contends that despite service of the

certificate of order against the Government dated 27th January 2025 together with the decree and court order, the Respondents have failed, neglected, and/or refused to satisfy the decretal sum.

3. Opposing the application, the Respondents filed a replying affidavit sworn on 8th January 2026 by Mr. Ernest Rachami Osoro, the Kisii County Head of Public Service. He deposes that the application constitutes an abuse of the court process, on the basis that the substratum of the dispute is pending before the Court of Appeal in **Civil Appeal (Application No. E064 of 2024), The County Government of Kisii & others v Kenya County Government Workers Union**. He therefore depones that Ex-parte Applicant is being disingenuous by challenging the decision at the Court of Appeal while simultaneously seeking to enforce it. Without prejudice to the foregoing however, the deponent urges the Court to grant additional time to enable harmonization and factorization of the decretal amount into the budgetary allocation of the current financial year. He accordingly prays that the application be dismissed with costs.

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

Ex-Parte Applicant's Submissions

5. In support of the application the Ex-parte Applicant identifies the issues for determination as, whether the order for *Mandamus* should issue; and whether the Respondents should pay costs. On whether an order of *mandamus* should issue, the Ex-parte Applicant submits that it has complied with all procedural requirements, including obtaining and serving the decree dated 24th November 2022, the subsequent court order dated 18th April 2024, the Ruling of the Court of Appeal dated 20th December 2024 dismissing the application for stay, and the Certificate of Order against the Government dated 3rd February 2025. The ex-parte Applicant invokes section 21 of the Government Proceedings Act and submits that once a certificate of order is issued and served, the accounting officer is under a statutory obligation to settle the decretal sum. It relies on the conditions for the grant of *mandamus* set out in **Republic v Principal Secretary, Ministry of Internal Security & another ex**

parte Schon Noorani & Another [2018] eKLR, as: the existence of a public duty to act owed to the Applicants, a clear right to performance, prior demand, refusal or unreasonable delay, and absence of an alternative remedy.

6. The Ex-parte Applicant further submits that the Respondents' failure to satisfy the decretal sum, despite a valid court judgment, amounts to a denial of justice and thus justifies the intervention of *mandamus*. It asserts that the scope and efficacy of *mandamus* are well settled citing **Republic v Kenya National Examinations Council ex parte Gathenji & 9 others [1997] eKLR**, where the Court of Appeal, citing **Halsbury's Laws of England, 4th Edition Volume 1 at page 111 from paragraph 89** held that *mandamus* is a command issued to compel the performance of a public duty where a legal right exists but no adequate remedy is available. In view of the foregoing the Ex-parte Applicant contends that the Respondents, particularly the 4th Respondent as head of the County's treasury are legally liable to pay the decretal amount. It relies on the case of **Republic v County Government of Kiambu ex parte Laban J. Macharia Muiruri [2021] eKLR**, where the Court

held that the County Government and the County Executive Committee Member for Finance are jointly responsible for satisfying court decrees. Consequently, it urges the Court to issue the order of *mandamus* as it is the only remedy available to it. On the issue of costs, the ex-parte Applicant submits that the present application has been necessitated by the Respondents' failure to honour the decree despite demand. It therefore urges the Court to condemn the Respondents to pay the costs of the application.

Respondents' Submissions

7. On whether the Applicant has made out a case to warrant the grant of the orders sought, the Respondents submit that the Application is incurably defective and constitutes an abuse of the court process. They contend that the Applicant is approbating and reprobating by simultaneously pursuing an appeal before the Court of Appeal while seeking to enforce the same decision through the present proceedings. The Respondents urge the Court to decline the Application and allow the appellate process to run its course.

8. In the alternative, and without prejudice to the foregoing, the Respondents submit that they require reasonable time to reconcile the decretal figures and incorporate the same into the budgetary allocations for the current year. They contend that the financial year 2024/2025 is coming to an end and that disbursements for that period have already been made, thereby necessitating provision for the decretal sum in the current financial year. The Respondents further submit that payments by Government entities are subject to statutory and constitutional budgetary processes which cannot be bypassed. They rely on **Kisya Investments Ltd v Attorney General & another [2005] KEHC 3226 (KLR)**, where the Court emphasized that satisfaction of decrees against the Government constitutes public expenditure that must be authorized by Parliament and processed through established financial procedures. They submit that Government departments do not hold readily available funds to settle decrees and must channel such obligations through the Ministry of Finance, Treasury, and other oversight bodies for approval and appropriation. They argue that these processes, by their nature, require reasonable time.

9. The Respondents also submit that the legal framework prohibiting execution against Government property is grounded in public policy considerations, including the need to safeguard government operations from disruption and ensure continuity of public services. They contend that immediate enforcement without regard to these processes would undermine fiscal discipline and the constitutional principle of parliamentary control over public expenditure. On the issue of prejudice, the Respondents submit that granting the orders sought would occasion them substantial prejudice, as they are actively exercising their constitutional right of appeal and fair trial under Articles 10, 27, 47, 48 and 50 of the Constitution of Kenya 2010, as read with the Fair Administrative Action Act. They contend that the Application is premature and has been brought in bad faith, as it seeks to enforce a decision that is the subject of pending appellate proceedings. The Respondents maintain that the Applicant will suffer no prejudice if the Application is declined, given that the substantive dispute remains before the Court of Appeal and awaits further directions. In conclusion the

Respondents urge the Court to dismiss the application with costs.

Disposition

10. The Court is being asked to issue an order of *mandamus* against the County Government of Kisii for payment of sums ordered in **Kisumu ELRC No. E007 of 2021, Kenya County Government Workers Union v The County Government of Kisii & Kisii County Public Service Board**. The sum is Kshs. 217,317,562/-. *Mandamus* lies where there is the existence of a public duty to act owed to the Applicants, there is a clear right to performance, there has been prior demand, and there has been refusal or unreasonable delay, and there is absence of an alternative remedy. These factors have all been satisfied before the Court. Indeed, the Respondents concede there are budgetary considerations before such a sum can be paid. They submit that they require reasonable time to reconcile the decretal figures and incorporate the same into the budgetary allocations for the current financial year. They contend that the financial year 2024/2025 is coming to an end and that

disbursements for that period have already been made, thereby necessitating provision for the decretal sum in the upcoming financial year. The Respondents further submit that payments by Government entities are subject to statutory and constitutional budgetary processes which cannot be bypassed. Clearly, the Respondents are cognisant of the requirement to pay, have been making background preparations for the allocation of the funds in order to meet the judgment of the Court. They cannot therefore approbate and reprobate.

11. The Court of Appeal matter was the only impediment to the grant of the order of *mandamus*. But since the Court of Appeal declined to grant a stay, the Court here can issue the order to compel the due performance of the decree. The issue before the Court of Appeal was an application for stay which the Court declined to grant. In the premises I hereby direct as follows:

- a. An order of *mandamus* be and is hereby issued to compel the Respondents to settle the decretal sum of Kshs. 217,317,562/- arising from **Kisumu ELRC No.**

**E007 of 2021, Kenya County Government
Workers Union v The County Government of
Kisii & Kisii County Public Service Board.**

- b. The Ex-Parte Applicant shall have costs of the application.

It is so ordered.

Dated and delivered at Kisumu this 21st day of April

2026

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