



**Kiche v County Secretary, County Government of Kericho & another (Miscellaneous  
Judicial Review E013 of 2025) [2026] KEHC 5449 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5449 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS JUDICIAL REVIEW E013 OF 2025**

**RN NYAKUNDI, J**

**APRIL 28, 2026**

**IN THE MATTER OF AN APPLICATION BY MOSES AOL KICHE**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW BY WAY OF MANDAMUS**

**AND**

**IN THE MATTER OF SECTIONS 2, 103, 147 & 148 OF  
THE PUBLIC FINANCE MANAGEMENT ACT, 2012**

**AND**

**IN THE MATTER OF SECTION 44 & 45 OF THE COUNTY GOVERNMENTS ACT 2012**

**AND**

**IN THE MATTER OF GOVERNMENT  
PROCEEDINGS ACT, CHAPTER 40, LAWS OF KENYA**

**AND**

**IN THE MATTER OF ARTICLES 10, 23 & 41 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**MOSES AOL KICHE ..... EX PARTE APPLICANT**

**AND**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF  
KERICHO ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE MEMBER/OFFICER/OFFICER FOR FINANCE,  
COUNTY GOVERNMENT OF KERICHO ..... 2<sup>ND</sup> RESPONDENT**



## RULING

1. What is pending before this Honourable Court for determination is Ex-parte Chamber Summons dated 3<sup>rd</sup> December 2025 premised under Order 53 Rule 1 (1), (2) and (3) of the Civil Procedure Rules 2010 in which the Exparte Applicant is seeking the following orders: -
  - a. That leave be granted to the Applicant to apply for an order of Judicial Review by way of Mandamus, directed to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein respectively, to pay to the Applicant a sum of Kshs. 1,468,848.80/= together with the interests at court rates of 14% per annum from 4<sup>th</sup> July 2025 being in satisfaction of the decree and certified costs in Eldoret Cmcc E238 of 2022 Moses Aol Kiche Vs County Government of Kericho.
  - b. That costs of this application be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein.
2. The Application is based on the following grounds on the face of it among others: -
  - a. That judgment was entered on 4<sup>th</sup> July 2025 for the Applicant against the Ministry of Health County Government of Kericho vide Eldoret CMCC E238 of 2022 Moses Aol Kiche Vs County Government of Kericho in the sum of Kshs. 1,468,848.80/= together with accruing interest at court rates of 14% per annum running from the date of judgement till payment in full.
  - b. That the Applicant has served the Respondent with a Certificate of Order against the County Government issued on the 2<sup>nd</sup> October 2025 together with the decree issued on the 2<sup>nd</sup> October 2025.
  - c. That despite a due reminder by way of demand, the County Government of Kericho has completely failed to settle the sum herein.
  - d. That no explanation or justification has been given by the Respondents, as the principal officers, under an obligation to settle such debts owing from the County Government of Kericho, for their continued reluctance to make this payment and the Applicant is now desperate and apprehensive that the Respondents have no intention at all to make this payment in fulfilment of a valid standing judgement in a decree and Certificate of costs to date.

### **Analysis and Determination**

3. I have read and considered the Exparte Chamber Summons Application. There is one issue manifest for determination by this Honourable at this stage: -

Whether the Exparte Applicant has established a prima facie case to warrant the grant of leave to institute judicial review proceedings for an order of mandamus.

4. The law governing the grant of leave is set out under Order 53 Rule 1(1) of the Civil Procedure Rules, which provides: -

“No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.”



5. Further, Order 53 Rule 1(2) of the Civil Procedure Rules provides as follows;

“ An application for such leave shall be made ex parte to a judge in chambers...”

6. The purpose of leave is to filter out frivolous or unmeritorious claims and to ensure that only applications that disclose an arguable case proceed to substantive hearing. The remedy sought by the Applicant in this instance case is an order of mandamus. The nature and scope of mandamus is well settled. It is a prerogative order issued to compel the performance of a public duty imposed by law. The duty must be statutory, public in nature and owed to the Applicant. It is equally trite that mandamus will issue where there is a clear legal right and no other adequate remedy.

7. In *Republic Vs Attorney General & Another Ex parte James Alfred Koroso* [2013] eKLR, the Court held that: -

Once a judgment is entered against the Government and it fails to satisfy the decretal amount, the affected party may properly apply for an order of mandamus to compel the responsible accounting officer to make payment. The Government cannot avoid fulfilling its lawful obligations by citing internal budgetary or financial limitations.

8. Similarly, in the case of *Republic Vs Kenya National Examinations Council ex parte Gathengi & 8 Others* Civil Appeal No 234 of 1996, the Court of Appeal cited, with approval, Halsbury’s Law of England, 4th Edn. Vol. 7 p. 111 para 89 thus: -

“The order of mandamus is of most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

9. Of executions against national government the law is that before an order of mandamus is issued, an Applicant must abide by the procedure in Section 21 of *Government Proceedings Act*. Section 21 of the *Government Proceedings Act* provides for Satisfaction of orders against the Government and states as follows: -

1. Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.



2. A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
  3. If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:
 

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.
  4. Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
  5. This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.
10. The reading of section 21(4) of the [Government Proceedings Act](#) prohibits execution against the Government thus leaving the applicant no other appropriate remedy except mandamus. That was the position in the English case of R (Regina) Vs Dudsheath, ex parte, Meredith [1950] 2 ALL ER 741, at 743, Lord Goddard C. J. said -
- “It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy opens to the party seeking it. This is one of the reasons, no doubt, why, where there is a visitor of a corporate body, the court will not interfere in a matter within the province of the visitor, and especially this is so in matters relating to educational bodies such as colleges.”
11. In the circumstances of this case, the ex parte applicant has no alternative means of enforcing the judgment, as execution cannot be taken out against the Government. Mandamus is therefore the only avenue available to secure the fruits of the judgment awarded to him. Without intervention, he would be left indefinitely holding a decree that yields no practical outcome. Such a situation is incompatible with our current constitutional framework, particularly Article 48, which obligates the State to guarantee access to justice for all. Access to justice cannot be said to have been ensured if successful litigants are unable to enjoy the fruits of judgments issued in their favour because of obstacles created by the acts or omissions of public officers.
  12. It must be remembered that public offices are positions of trust and public officers are duty-bound to act for the benefit of the people of Kenya. In my view, it is wholly incompatible within a democratic society to deprive a citizen of rights that have been lawfully confirmed by a court of competent jurisdiction. Public officers must keep in mind that, under Article 129 of the [Constitution](#), executive



authority originates from the people of Kenya and must be exercised in line with the Constitution in a way that reflects service to the public and promotes their welfare and best interests. In the case of Republic Vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza [2012] eKLR, the Court stated:

“An order of mandamus is a command issued by the High Court to compel the performance of a public duty which is imposed by statute, where the person or body has failed to perform that duty. Once a judgment is entered against the Government and a certificate of order is issued, the obligation to pay becomes a statutory duty.”

13. The effect of these provisions is that a decree-holder cannot execute against the Government in the ordinary manner. Instead, the law imposes a statutory obligation upon the accounting officer to settle the decretal sum upon service of a Certificate of Order against the Government. Where the accounting officer fails to perform this duty, the only available remedy is an order of mandamus. In the present case, the Applicant has demonstrated that judgment was entered in his favour on 4<sup>th</sup> July 2025; that a decree and Certificate of Order against the County Government were issued on 2<sup>nd</sup> October 2025 and that the same were duly served upon the Respondents. There is no indication that the decree has been set aside, stayed, or otherwise challenged. There is also no evidence that payment has been made or that any lawful justification has been offered for the failure to settle the decretal sum.
14. The Respondents, as principal officers of the County Government of Kericho, bear the statutory responsibility to satisfy decrees issued against the County Government. Their failure to do so, in the absence of any explanation, amounts to a dereliction of a public duty imposed by law. This Court is therefore satisfied that the Applicant has established a prima facie arguable case for the grant of leave to institute judicial review proceedings. The Applicant has demonstrated the existence of a valid judgment and decree, compliance with the statutory requirements under Section 21 of the Government Proceedings Act and a failure by the Respondents to perform their legal duty.
15. In the premises, the Court finds merit in the Ex-parte Chamber Summons dated 3<sup>rd</sup> December 2025 and makes the following orders: -
  - a. That Leave be and is hereby granted to the Ex-parte Applicant to apply for an order of Judicial Review by way of Mandamus to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay to the Applicant the sum of Kshs. 1,468,848.80/= together with interest at court rates from 4<sup>th</sup> July 2025 until payment in full, being in satisfaction of the decree and certified costs in Eldoret CMCC E238 of 2022.
  - b. The substantive Notice of Motion shall be filed and served within twenty-one (21) days from the date hereof.
  - c. Costs of this application shall abide the outcome of the substantive motion.
  - d. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 28<sup>TH</sup> DAY OF APRIL 2026**

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**R. NYAKUNDI**

**JUDGE**

