

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA**  
**ELCLJR No. E006 OF 2025**

**BETWEEN**

**OCHIENG OGINGA AND COMPANY ADVOCATES .....  
APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KISII ..... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY EXECUTIVE OFFICER INCHARGE OF FINANCE,  
COUNTY GOVERNMENT OF KISII ..... 2<sup>ND</sup>  
RESPONDENT**

**CHIEF/ACCOUNTING OFFICER FINANCE,  
COUNTY GOVERNMENT OF KISII ..... 3<sup>RD</sup>  
RESPONDENT**

**JUDGMENT**

1. Leave to commence these judicial review proceedings having been granted to it on 5<sup>th</sup> December 2025, the Applicant moved swiftly and filed Notice of Motion dated 5<sup>th</sup> December 2025 that very day. The following orders are sought in the application:

1. *That an order of mandamus does issue compelling the County Government of Kisii; the County Executive Officer Incharge of Finance, County Government of Kisii; and the Chief/Accounting Officer Finance, County Government of*

*Kisii to forthwith and without any delay pay or cause to be paid the sum of Kenya Shillings Twenty-Three Million, Four Hundred and Fifty-One Thousand, Three Hundred and Nineteen and Eight Cents (Ksh. 23,451,319.8/=).*

- 2. That the said payment of Kenya Shillings Twenty-Three Million, Four Hundred and Fifty-One Thousand, Three Hundred and Nineteen and Eight Cents (Ksh. 23,451,319.8/=), be made in full within Fourteen (14) Days from the date of this order, and in default, a Notice to Show Cause be issued against the Respondents, the County Government of Kisii; the County Executive Committee Member in-charge of Finance; and the Chief/Accounting Officer to show cause why they should not be cited and committed to jail for six months for contempt of court.*
  - 3. That the Honourable Court be pleased to grant such other or further relief as it may deem fit in the circumstances.*
  - 4. That the cost of this application be borne by the Respondents.*
2. The application is premised on the grounds listed on its face and is supported by an affidavit sworn by Arnold Ochieng Oginga who deposed that he was Counsel on record and that the Applicant rendered legal services to the Respondents and subsequently had its Advocate-Client Bill of Cost taxed through a ruling delivered on 31<sup>st</sup> July 2025 wherein it was awarded KShs 23,451,319.8 (Kenya Shillings Twenty Three Million, Four

Hundred and Fifty One Thousand, Three Hundred and Nineteen and Eight Cents). He annexed copies of the ruling, Certificate of Costs and thread of email correspondences from the Applicant to the Respondents.

3. Mr Oginga further deposed that the Applicant had made frantic efforts towards recovery of the said sums, but its efforts had borne no fruits. That the Respondents had continued to frustrate the Applicant's efforts towards recovery of the legal fees and enjoyment of the fruits of its labour thereby violating its rights under Articles 10, 27, 28, 47, 48 and 50 of the Constitution as read with the provisions of Section 4 of the Fair Administrative Actions Act. That the Respondents' actions constituted a violation of the Applicant's right to fair administrative action and failure by a public body to discharge its function contrary to the law.
4. He also deposed that the Respondents had disregarded the rule of law by ignoring and failing to settle the decretal sums arising from the taxed Advocate-Client bill of costs. That the Respondent County closed its financial year on 30<sup>th</sup> June 2025 and subsequently prepared a supplementary budget without factoring in the Applicant's taxed fees and had ignored all correspondences from the Applicant demanding settlement of the decretal sums.
5. Mr Oginga further deposed that the Respondents had failed to act expeditiously or to give written reasons as to why they were neither settling the decretal sums nor complying with the

Court order that awarded the Applicant the decretal sums. That there was imminent danger that the Respondents would not settle the decretal sum any time soon hence further frustrating the Applicant and occasioning it more hardship and inconvenience. He also stated that the Applicant had a legitimate expectation that the Respondents would act within the law and that it was in the interest of justice that the application be allowed.

6. The Respondents reacted to the application by filing a Replying Affidavit sworn on 2<sup>nd</sup> March 2026 by Anne Githinji who deposed that she was in conduct of the matter and was duly authorized to swear the affidavit. She further deposed that the Chief Officer Finance of the First Respondent was doing his level best to ensure payment and that the First Respondent was experiencing budgetary constraints with many decrees to settle and accumulated interest totalling to over 300 million Kenya Shillings.
7. She also deposed that there was commitment to clear the decretal sum but budgetary allocations which were limited were being progressively addressed by the finance department. She added that the Controller of Budget and Office of Auditor General advised that in fairness old debts should be cleared first due to challenges of limited resources and that the First Respondent was consequently restructuring payments and putting plans in place to mitigate gaps and pay debts expeditiously.

8. Ms Githinji went on to state that the budget was processed annually and that the financial year begins in July 2026. She concluded by urging that parties be accorded an opportunity to negotiate on mode of payment so that they revert to the Court with a realistic proposal on timelines and instalments if need be.
9. Parties sought and were granted an opportunity to file written submissions in respect of the application. The Applicant filed submissions dated 16<sup>th</sup> January 2026 through which it urged the Court to allow the application as prayed. The Respondents did not file any submissions.
10. I have carefully considered the pleadings, the affidavits and the submissions. The sole issue for determination is whether the reliefs sought should issue.
11. When the matter came up in Court on 4<sup>th</sup> March 2026, Ms Githinji who appeared for the Respondents sought time to enable the Respondents to pay the decretal sum. The matter was then scheduled for mention on 17<sup>th</sup> March 2026 on which date Ms Githinji told the Court that payment could only be effected in the next financial year due to scheduled payments in other matters as well as guidelines from the Controller of Budget.
12. The Applicant is seeking an order of mandamus to compel the Respondents to pay the sum of KShs 23,451,319.80 (Kenya Shillings Twenty Three Million, Four Hundred and Fifty One Thousand, Three Hundred and Nineteen and Eight Cents)

being Advocate-Client costs awarded to it through ruling delivered on 31<sup>st</sup> July 2025 in Nyamira ELCLMisc. No.E001 of 2025.

13.The Court of Appeal discussed the scope and efficacy of an order of mandamus in **Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR** as follows:

*The order of mandamus is of a 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. ...*

*The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be*

***done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.***

14. In the subsequent case of **Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another [2018] eKLR**, Mativo, J. (as he then was) discussed the test for mandamus as follows:

***Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in Apotex Inc. vs. Canada (Attorney General), [23] and, was also discussed in Dragan vs. Canada (Minister of Citizenship and Immigration). [24] The eight factors that must be present for the writ to issue are:-***

- (i) There must be a public legal duty to act;***
- (ii) The duty must be owed to the Applicants;***
- (iii) There must be a clear right to the performance of that duty, meaning that:***
  - a. The Applicants have satisfied all conditions precedent; and***

***b. There must have been:***

***I. A prior demand for performance;***

***II. A reasonable time to comply with the demand, unless there was outright refusal; and***

***III. An express refusal, or an implied refusal through unreasonable delay;***

***(iv) No other adequate remedy is available to the Applicants;***

***(v) The Order sought must be of some practical value or effect;***

***(vi) There is no equitable bar to the relief sought;***

***(vii) On a balance of convenience, mandamus should lie.***

15. There is no dispute that the bill of costs was filed and that it was taxed as noted above. The Respondents have conceded that the amount claimed is due. They are in fact seeking more time to pay. As noted above, they were given time by the Court and the instant application itself has been pending since December 2025. The bill of costs was taxed on 31<sup>st</sup> July 2025. As is manifest in the ruling on taxation, it was delivered in the presence of the Respondents' counsel. Thus, the Respondents are not strangers to the edicts of the decree and by extension the issues raised in the present application.

16. The Respondents have claimed in the replying affidavit that they are giving priority to older claims from other advocates and that there are guidelines from the Controller of Budget. They have neither given any details as to the specific older claims and the sums due in each nor annexed any directions from the Controller of Budget for the Court to consider. Directions from the Controller of Budget, if any, do not change a decree issued by a Court of law.
17. The award of costs was done by a Court of competent jurisdiction. There is no evidence that the resulting decree has either been stayed or set aside. The Respondents have not disputed either the validity of the decree or that demand for settlement was made. Instead, they have admitted that the amount claimed is due. They owe the Applicant a public legal duty to act by settling the sums awarded by the taxing master. Settlement of a lawful decree is not a discretionary matter.
18. The First Respondent is a level of government established pursuant to **Articles 6** and **176** of the **Constitution of Kenya** while the other Respondents are its officers. The Applicant cannot enforce the decree against the Respondents by attachment and sale of assets or even by way of committal to civil jail. See **Permanent Secretary Office of the President Ministry of Internal Security & Another Ex Parte Nassir Mwadhidi [2014] eKLR**. In those circumstances, no other adequate remedy is available to the Applicant to obtain satisfaction of the decree.

19. The Applicant has made a case for the granting of an order of mandamus. In view of the issues of budget cycle raised, I will give the Respondents an opportunity to pay the decretal sum at the beginning of the next financial year.

20. Arising from the foregoing discourse, I find merit in Notice of Motion dated 5<sup>th</sup> December 2025. I enter judgment in favour of the Applicant as follows:

**a) An order of mandamus is hereby issued compelling the Respondents to pay or cause to be paid to the Applicant the sum of KShs 23,451,319.8 (Kenya Shillings Twenty Three Million, Four Hundred and Fifty One Thousand, Three Hundred and Nineteen and Eight Cents).**

**b) The above sum be paid in full on or before the 31<sup>st</sup> day of August 2026. In default, the Applicant shall be at liberty to take out a Notice to Show Cause against the Respondents.**

**c) The Applicant shall have costs of these proceedings and interest thereon at Court rates.**

**Dated, signed, and delivered at Nyamira, this 13<sup>th</sup> day of May 2026.**

**D. O. OHUNGO  
JUDGE**

Delivered in the presence of:

Mr Oginga for the Applicant  
Ms Githinji for the Respondents  
Court Assistant: Edinah N