



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISII

JUDICIAL REVIEW NO. E003 OF 2026

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW IN FORM OF ORDERS OF MANDAMUS AGAINST NYAMIRA COUNTY ASSEMBLY

AND

IN THE MATTER OF EXECUTION OF DECREE DATED 31ST JULY 2025 IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU IN ELRC PETITION NO. E052 OF 2025 INVOLVING ENOCK OKERO OGORI (DECREE HOLDER) AND NYAMIRA COUNTY ASSEMBLY (JUDGMENT DEBTOR)

BETWEEN

REPUBLIC.....

APPLICANT

VERSUS

NYAMIRA COUNTY ASSEMBLY.....**1ST**

RESPONDENT

CLERK NYAMIRA COUNTY ASSEMBLY.....**2ND**

RESPONDENT

AND

ENOCK OKERO OGORI.....**EX PARTE**
APPLICANT

JUDGMENT

1. Pursuant to leave granted on 10th March 2026, the Ex-parte Applicant moved this Court by way of a Notice of Motion dated 16th March 2026 seeking: an order of *mandamus* to compel the Respondents to pay him the sum of Kshs. 2,320,000/- being taxed costs together with interest thereon at the rate of 12% per annum from 31st July 2025 until payment in full; costs of the application; and such other or further orders as this Court may deem fit and expedient to grant in the circumstances. The application is premised on the grounds set out therein and supported by the verifying affidavit of the Ex-parte Applicant. He avers that on 31st July 2025, the Court in **Kisumu ELRC Petition No. E052 of 2024**, adopted a consent judgment and subsequently issued a Certificate of Order against the government for payment of Kshs. 2,320,000/- being costs due and owing to him. According to the Ex-parte Applicant, despite issuance of a demand letter dated 24th September 2025 and a reminder dated 7th November 2025, the Respondents have failed

and/or neglected to settle the decretal sum. Consequently, he contends that an order of mandamus is the only efficacious remedy available to him, execution against the County Assembly being barred under the ordinary execution process. He further urges the Court to intervene so as to avert prejudice to him, particularly in light of the fact that the 2025/2026 financial year is nearing its end. He maintains that the grant of the orders sought would serve the interests of justice and uphold the sanctity of court decrees and consent judgments.

2. The application is opposed. The Respondents filed a replying affidavit sworn on 13th April 2026 by Mr. Duke Onyari, the 2nd Respondent herein. He deposes that the consent judgment in question was entered into without the Respondents' instructions and that they consequently sought to have the same set aside. Although the application to set aside was dismissed on 26th November 2025, the Respondents aver that they lodged an appeal against the decision, which, has overwhelming chances of success as demonstrated by the draft memorandum of appeal annexed to the replying

affidavit. The deponent further contends that the Ex-parte Applicant has not opposed the Respondents' application for stay pending appeal before the Court of Appeal and, as such, it would be premature for this Court to grant the orders sought while the validity of the underlying consent judgment remains under challenge before the appellate court.

3. The Respondents further contend that should the decretal amount be paid out and the intended appeal subsequently succeeds, there is no guarantee that the Ex-parte Applicant would be in a position to refund the monies paid. They additionally aver that execution against the County Assembly, being a public institution, would adversely affect its operations and disrupt service delivery to the public.
4. Notwithstanding the foregoing, the Respondents also maintain that they were never served with the decree and the Certificate of Order against the government as required under the law and, consequently, the present proceedings are premature. In conclusion, they urge the Court to decline the orders sought on grounds that enforcement of the decree would prejudice public operations and undermine service

delivery. Accordingly, the Respondents maintain that public interest in the circumstances herein outweigh the private interests advanced by the Ex-parte Applicant.

5. In rejoinder, the Ex-parte Applicant swore a further affidavit on 28th April 2026. He deposes that no Notice of Appeal or Memorandum of Appeal has ever been filed in respect of the consent judgment in Kisumu ELRC Petition No. E052 of 2024. He contends that the appeal alluded to by the Respondents relates to Kisii ELRC Petition No. E001 of 2024, which appeal has, in any event, already been withdrawn.
6. Flowing from the foregoing, the Ex-parte Applicant avers that there are no subsisting court orders staying execution of the decree arising from Kisumu ELRC Petition No. E052 of 2024. Consequently, he contends that the Respondents' reliance on alleged pending appellate proceedings is misplaced. He further maintains that the issue of refund of the decretal sum does not arise since no competent appeal has been lodged against the judgment giving rise to the present proceedings.
7. Regarding the Respondents' contention that they were never served, the Ex-parte Applicant counters that proper service

was duly effected, as evinced by annexures EOO 3A and EOO 3B attached to the verifying affidavit.

8. In response to the Respondents' concerns that their computers will be attached thereby negating public interest, the Ex-parte Applicant reiterates that the Government Proceedings Act bars attachment of government property. He clarifies that the present proceedings merely seek to compel compliance with an existing court decree through an order of mandamus. He therefore maintains that public interest is best served by ensuring obedience to lawful court orders and decrees and accordingly urges the Court to grant the orders sought.

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

Ex-Parte Applicant's Submissions

10. The Ex-parte Applicant submits that issuance of an order of mandamus is the only appropriate and available remedy in the circumstances of this case. He asserts that section 25 of the Government Proceedings Act, as read together with Order 29 of the Civil Procedure Rules, bars execution against

Government property by way of attachment and sale. Additionally, he highlights that section 21(4) of the Government Proceedings Act expressly prohibits execution or attachment proceedings against the Government. In support of his position, he relies on **Kenya National Examination Council v Republic; GGN & 9 others (Ex parte) (Civil Appeal 266 of 1996) [1997] KECA 58 (KLR)**, where the Court of Appeal, while citing **Halsbury's Laws of England 4th Edition Vol. 1(1) Page 111 paragraph 89 and 90**, stated:

“The order of mandamus is of a most extensive remedial nature, and is, in form, of 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”

11. He also refers to the case of **Republic v Attorney General & another Ex parte James Alfred Koroso [2013] eKLR**, in which the Court held that the only remedy available to a decree-holder against the Government is an order of *mandamus* compelling the accounting officer to settle the decretal amount.

12. Building on the foregoing authorities, the Ex-parte Applicant submits that he has fully complied with the requirements of section 21 of the Government Proceedings

Act by extracting and serving both the decree and the Certificate of Order against the Government. In this regard, he relies on **Republic v County Secretary of Migori County Government & another; Robi & another (Exparte Applicants) (Judicial Review 8B of 2022) [2022] KEHC 13906 (KLR)** where the Court held that before an order of *mandamus* can issue, an applicant must comply with Section 21 of the Government Proceedings Act and obtain a certificate of order against the Government. In light of the foregoing, the Ex-parte Applicant contends that the Respondents' continued failure to settle the decretal amount amounts to a dereliction of statutory duty, thereby warranting the issuance of an order of mandamus. In support of this argument, reliance is placed on **Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] KEHC 10383 (KLR)**.

13. In conclusion, the Ex-parte Applicant submits that the Respondents' conduct demonstrates a deliberate unwillingness to comply with their legal obligations and urges the Court to uphold the integrity of its processes by granting the order of mandamus compelling the

Respondents, particularly the 2nd Respondent as the accounting officer, to settle the decretal sum within such reasonable period as the Court may direct. The Applicant further prays for liberty to initiate further enforcement proceedings, including committal to civil jail, in the event of continued non-compliance.

Respondents' Submissions

14. The Respondents submit that the Applicant has not satisfied the threshold for the grant of the orders sought. They contend that the decree and certificate of costs against the County Government of Nyamira were never served upon them and that the demand notice dated 24th September 2025 was insufficient in the absence of service of the decree and certificate of costs. They further argue that the Applicant failed to disclose the existence of a pending appeal before the Court of Appeal at Kisumu touching on the decretal payment in issue, thereby rendering the present application defective for material non-disclosure.

15. The Respondents maintain that the Ex-parte Applicant has not demonstrated any wilful refusal, implied refusal, or unreasonable delay on their part in settling the decretal sum. They maintain that the monies sought involve public funds and that payment ought to await the outcome of the pending appeal. Additionally, they argue that the Ex-parte Applicant has not demonstrated his capacity to refund the sum of Kshs. 2,320,000/- in the event the appeal succeeds after payment has been effected. In support of their position, the Respondents rely on **Owuor & others (Suing as the proposers of the proposed union) v Gicheha & another; Lidigu & 2 others (Interested Parties) [2023] KEELRC 1390 (KLR)**, where the Court held that entertaining further proceedings while an appeal is pending may lead to conflicting decisions. They also cite the case of **Nyaoga v Kisii County Assembly Service Board & 2 others [2025] KEELRC 3149 (KLR)**, in which the Court declined to determine issues found to be sub judice pending the hearing and determination of the substantive petition. The Respondents additionally rely on **Abdallah A. Hassan v County Government of Mombasa**

[2020] KEHC 9588 (KLR), where the Court held that *mandamus* is a discretionary remedy which only issues where the Applicant demonstrates compliance with the established conditions, including prior demand, reasonable opportunity to comply, and evidence of refusal or unreasonable delay in payment. The Respondents submit that in the present case there is no evidence that the decree or certificate of costs were served upon them pursuant to section 21 of the Government Proceedings Act, nor is there evidence of prior demand sufficient to establish refusal to pay. Furthermore, the Respondents submit that an order of mandamus ought not to issue since the consent forming the basis of the Applicant's claim is itself under challenge before the Court of Appeal. In this regard, they rely on **Hotel Online Kenya Limited & 2 others v Kamau & another** **[2024] KEELRC 121 (KLR)**, where the Court observed that orders should not issue where the foundational agreement or consent remains under challenge and its validity unresolved. Consequently, the Respondents urge the Court to dismiss the application with costs.

Ex-Parte Applicant's Further Submissions

16. In response to the Respondents' submissions, the Ex-parte Applicant reiterates that the Respondents have not denied the authenticity of their receiving stamp appearing on the letter dated 24th September 2025 forwarding the decree and the Certificate of Order against the Government. Finally, the Applicant urges the Court to allow the application so as to bring litigation to an end and enable him enjoy the fruits of his judgment. In support of this contention, he relies on the case of **George Kahura Watuku v Scholastica Gathinja Mwangi [2022] KEHC 2535 (KLR)**, which cited with approval the decision in **Machira T/A Machira & Co Advocates v East African Standard (No. 2) [2002] KLR 63**, where the Court stated:

"To be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court

giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court."

Disposition

17. The Court has considered the matter before it and whilst appreciating the plethora of case law cited, returns that the issue for determination is singular. Is the Ex parte Applicant entitled to the orders sought? The process of execution against Government is well set out. The Government Proceedings Act makes provision under section 21(1) thereof as follows:

21. Satisfaction of orders against the Government

(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.

18. Upon ascertainment of the amount due by way of a decree, a certificate of order against Government must be extracted after expiry of the 21 days. In this case, no

certificate of order against Government has been annexed. Rule 24 of the Employment & Labour Relations Court (Procedure) Rules 2024 makes provision that upon filing pleadings, the party is to avail physical copies to Court. The Applicant has decided not to avail documents as required in law, perhaps aware it has no basis to lay a claim for grant of any of the reliefs sought. The application being devoid of any merit must fail. Motion dismissed with costs to the Respondents.

It is so ordered.

Dated and delivered at Kisii this 13th day of May 2026

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